



DEPARTMENT of  
ENVIRONMENTAL AFFAIRS  
& DEVELOPMENT PLANNING

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Provincial Government of the Western Cape

# EIA GUIDELINE AND INFORMATION DOCUMENT SERIES

## GUIDELINE ON PUBLIC PARTICIPATION

OCTOBER 2011

# EIA GUIDELINE AND INFORMATION DOCUMENT SERIES

## GUIDELINE ON PUBLIC PARTICIPATION

**Issued by:** Western Cape Department of Environmental Affairs & Development Planning (DEA&DP)  
Private Bag X9086, Cape Town, 8000, South Africa.

**EIA Guideline & Information Document Series:** This guideline forms part of the DEA&DP's *Environmental Impact Assessment Guideline and Information Document Series*. As soon as concurrence has been obtained from the National Department of Environmental Affairs, the final versions of the documents will be formally published in terms of Section 24J of NEMA. The latest versions of the documents available in this series consist of the following drafts –

- *Guideline on Transitional Arrangements (October 2011)*
- *Guideline on Alternatives (September 2011)*
- *Guideline on Public Participation (October 2011)*
- *Guideline on Exemption Applications (October 2011)*
- *Guideline on Need and Desirability (September 2011)*
- *Guideline on Appeals (September 2011)*
- *Guideline on the Interpretation of the Listed Activities (to be released before the end of 2011)*
- *Guideline on Generic Terms of Reference for EAPs and Project Schedules (October 2011)*
- *Information Document on the Guidelines, Policies and Decision-Making Instruments Relevant to EIA Applications in the Western Cape (September 2011)*
- *Information Document on Biodiversity Offsets (October 2011)*

**The EIA Guideline & Information Document Series, the relevant legislation and DEA&DP's applications forms are available on the DEA&DP website: <http://www.capegateway.gov.za/eadp>**

**Please note:** This guideline must be read together with the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), the EIA Regulations, the relevant Specific Environmental Management Act(s) ("SEMA") (e.g. Environment Conservation Act, 1989 – Act No. 73 of 1989, National Environmental Management: Air Quality Act, 2004 – Act No. 39 of 2004, the National Environmental Management: Integrated Coastal Management Act, 2008 – Act No. 24 of 2008, and the National Environmental Management: Waste Act, 2008 – Act No. 59 of 2008, and the SEMA's Regulations), and is not intended to be a substitute for the provisions of the NEMA, the EIA Regulations or the SEMAs, in any way. Adherence to the requirements in terms of the NEMA, the EIA Regulations, and the SEMAs does, however, not absolve the applicant from also adhering to the requirements of any other legislation applicable to the undertaking of the activity.

**Enquiries and Comments:** All enquiries and comments should be addressed to – The Chief Director: Environmental and Land Management, Department of Environmental Affairs & Development Planning, Private Bag X9086, Cape Town, 8000, South Africa.

**Referencing:** When referencing this document, it must be cited as follows –  
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## ACRONYMS

DEA&DP	Western Cape Department of Environmental Affairs and Development Planning
EAP	Environmental Assessment Practitioner
ECA	Environment Conservation Act, 1989 (Act No. 73 of 1989)
EIA	Environmental Impact Assessment
I&AP	Interested and Affected Party
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)
NEMAA	National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008)
NEM: AQA	National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)
NEM: WA	National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)
SEMA	Specific Environmental Management Act

## 1. INTRODUCTION

On 18 June 2010 the Minister responsible for Environmental Affairs promulgated new Environmental Impact Assessment (“EIA”) Regulations in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”)<sup>1</sup>. From the date of effect of these EIA Regulations, 2 August 2010, these EIA Regulations replaced the previous EIA Regulations<sup>2</sup> that were promulgated in terms of NEMA on 21 April 2006<sup>3</sup>, and the EIA Regulations that were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) (“ECA”) in 1997<sup>4</sup>, and introduced new provisions for EIAs. On 30 July 2010<sup>5</sup> and on 10 December 2010<sup>6</sup> corrections on the 2010 EIA Regulations were published. These corrections all came into effect on 2 August 2010.

The National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (“NEMAA”), was promulgated on 9 January 2009<sup>7</sup> and came into effect on 1 May 2009<sup>8</sup>. The NEMAA made a number of significant amendments to the general provisions applicable to EIAs. The definition of “Environmental Authorisation” in terms of NEMA was amended and now reads “*when used in Chapter 5 means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act*”. This means that, *inter alia*, the following are considered to be an “Environmental Authorisation”: an Environmental Authorisation issued for an activity listed in Listing Notice 1, 2 or 3<sup>9</sup>; an atmospheric emissions licence in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (“NEM: AQA”); and a waste management licence in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (“NEM: WA”). As such, the general provisions of NEMA that applies to an application for environmental authorisation, applies to all of these applications.

It must further be noted that as part of an application for a waste management licence or an atmospheric emissions licence, the application must also be subjected to the EIA process as stipulated in the EIA Regulations promulgated in terms of NEMA. While a number of different authorisations might therefore be required (an Environmental Authorisation, a waste management licence and/or an atmospheric emissions licence), the assessment process to be followed must be in accordance with the requirements stipulated in the EIA Regulations, with the specific requirements of the relevant specific environmental management Act (“SEMA(s)”) to also be adhered to over and above the requirements of the EIA Regulations<sup>10</sup>.

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<sup>1</sup> Government Notice No. R. 543, R. 544, R. 545, R. 546 and R. 547 in Government Gazette No. 33306 of 18 June 2010 refer.

<sup>2</sup> Government Notice No. R. 385, R. 386, and R. 387 in Government Gazette No. 28753 of 21 April 2006 refer.

<sup>3</sup> Government Notice No. R. 612, R. 613, R. 614, R. 615, and R. 616 in Government Gazette No. 28938 of 23 June 2006 refer.

<sup>4</sup> Government Notice No. R. 1182 and R. 1183 in Government Gazette No. 18261 of 5 September 1997 refer.

<sup>5</sup> Government Notice No. R. 660 in Government Gazette No. 33411 of 30 July 2010 refers.

<sup>6</sup> Government Notice N No. R. 1159 in Government Gazette No. 33842 of 10 December 2010 refers.

<sup>7</sup> Government Notice No. 22 in Government Gazette No. 31789 on 9 January 2009 refers.

<sup>8</sup> Government No. 27 in Government Gazette No. 32156 of 21 April 2009 refers.

<sup>9</sup> Government Notice No. R. 544, R. 545, and R. 546 in Government Gazette No. 33306 of 18 June 2010 refer.

<sup>10</sup> Section 24(4)(b)(vii) of NEMA refers.

In light of the above, this guideline, which forms part of the *Environmental Impact Assessment Guideline and Information Document Series* (available on the Department's website at <http://www.capecgateway.gov.za/eadp>) provides information and guidance for applicants, authorities and interested and affected parties ("I&APs") on the public participation requirements in terms of NEMA and the EIA Regulations.

This guideline must be read together with the NEMA, the EIA Regulations, the relevant SEMA(s) and its Regulations, and is not intended to be a substitute for the provisions of the NEMA, the SEMAs or the Regulations, in any way. Adherence to the requirements in terms of the NEMA and the EIA Regulations, the SEMAs and its Regulations does, however, not absolve the applicant from also adhering to the requirements of any other legislation applicable to the undertaking of the activity.

## 2. DEFINITIONS

**"Applicant"**, means a person who has submitted or who intends to submit an application.

**"Competent Authority"**, means the authority that in terms of the provisions of the NEMA and the EIA Regulations is identified as the authority that must consider and decide on an application in respect of a specific listed activity.

**Note:** The "Competent Authority"<sup>11</sup> in terms of an application for environmental authorisation for an activity listed in Listing Notice 1, 2 or 3, is not necessarily the same authority as the "Licensing Authority" in terms of the NEM:WA<sup>12</sup> or NEM: AQA<sup>13</sup>.

**"Days"** means calendar days.

**Note:** 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. The period of 15 December to 2 January must be excluded in the reckoning of days. Where a timeframe is affected by the 15 December to 2 January period, the timeframe must be extended by the number of days falling within the 15 December to 2 January period. Where a 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.

**"Department"**, means the Western Cape Department of Environmental Affairs and Development Planning.

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<sup>11</sup> Section 24C of NEMA refers.

<sup>12</sup> Section 43 of the NEM: WA refers.

<sup>13</sup> Section 36 of the NEM: AQA refers.

**“Environmental Assessment Practitioner” (EAP)**, means the individual responsible for planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management programmes or any other appropriate environmental instrument introduced through the Regulations.

**Note:** If 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.

**“Environmental Authorisation”**, means the authorisation by a competent authority of a listed activity or specified activity in terms of this Act, and includes a similar authorisation contemplated in a specific environmental management Act.

**“Interested and Affected Party” (I&AP)**, for the purposes of Chapter 5 of the NEMA and in relation to the assessment of the environmental impact of a listed activity or related activity, means an interested and affected party contemplated in Section 24(4)(a)(v), and which includes-

- (a) any person, group of persons or organisation interested in or affected by such operation or activity; and
- (b) any organ of state that may have jurisdiction over any aspect of the operation or activity.

**“NEMA EIA Regulations”**, mean the Environmental Impact Assessment Regulations promulgated in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”)<sup>14</sup>.

**“Organ of State”**, means -

- (a) any department of State or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –

- i. exercising a power or performing a function in terms of the Constitution or a Provincial Constitution; or
- ii. exercising a public power or performing a public function in terms of any Legislation

but does not include a court or a judicial officer.

**Note:** Examples of organs of State are: Municipalities (both the District and Local Municipality), Heritage Western Cape, CapeNature, the Department of Water Affairs, etc.

**“Previous regulations”** means the Environmental Impact Assessment regulations published in terms of:

- sections 26 and 28 of the ECA, by Government Notice No. R. 1183 of 5 September 1997; or
- NEMA, by Government Notice No. R. 385 in the Government Gazette of 21 April 2006.

**“Public Participation Process”**, means a process by which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, an application.

**“State department”**, means any department or administration in the national or provincial sphere of government exercising functions that involve the management of the environment or that administer a law relating to a matter affecting the environment.

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<sup>14</sup> Government Notice No. R. 543, R. 544, R. 545, R. 546 and R. 547 in Government Gazette No. 33306 of 18 June 2010 refer.

**Note:** Examples of State departments are: the Department of Water Affairs, Department of Agriculture, etc. Whilst all State departments are organs of State, not all organs of State are State departments (e.g. Municipalities are organs of State, but not State departments).

**“Registered interested and affected parties”** means

- a) all persons who, as a consequence of the public participation process conducted in respect of an application, have submitted written comments or attended meetings with the applicant or EAP;
- b) all persons who, after completion of the public participation process, have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and
- c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

**Note:** The Department also requires that if the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the person who owns or is in control of the land must also be included in the register of interested and affected parties and consulted with throughout the public participation process.

To be registered as an interested and affected party the persons referred to in (a) and (b) above must provide their names, contact details and addresses to the EAP managing the application process. Registered I&APs must ensure that they notify the EAP if their contact details and/or address changes during the application process. A Registered I&AP is entitled to comment, in writing, on all written submissions made to the Department by the applicant or the EAP, provided that comments are submitted within the specified timeframes and 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.

### **3. PUBLIC PARTICIPATION ALWAYS REQUIRED**

In terms of NEMA<sup>15</sup> procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment must, *inter alia*, ensure, with respect to every application for environmental authorisation:

- *coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;*
- *that the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in the NEMA and the principles of environmental management set out in Section 2 of the NEMA are taken into account in any decision made by an organ of state in relation to any proposed policy, programme, process, plan or project; consequences or impacts; and*
- *public information and participation procedures which provide all interested and affected parties, including all organs of state in all spheres of government that may have jurisdiction over any aspect of the activity, with a reasonable opportunity to participate in those information and participation procedures.*

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<sup>15</sup> Section 24(4)(a) of NEMA refers.

The general objectives of integrated environmental management laid down in the NEMA, inter alia, calls for “adequate and appropriate opportunity for public participation in decisions that may affect the environment”<sup>16</sup>. The National Environmental Management Principles include the principle that “The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary to achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured”.

**Note:** With public information and participation procedures being specified as a minimum requirement in terms of NEMA<sup>17</sup>, exemption from having to undertake public participation cannot be applied for in terms of either NEMA or the EIA Regulations<sup>18</sup>. Exemption can, however, be applied for in terms of the extent and level of public participation to be undertaken. It must, however, be noted that in terms of the extent and level of public participation to be undertaken, permission may be granted to deviate from some of the specific requirements in terms of the EIA Regulations related to the public participation steps to be taken (in terms of the different notices to be given in terms of Regulation 54(2) of GN No. R. 543 – as indicated in the Application Form for Environmental Authorisation)<sup>19</sup>. If permission to deviate from a specific requirement is granted, then exemption from that requirement is not required. It must, however, be noted that the EIA Regulations does not allow for deviation from having to notify the owner or person in control of the land, if the applicant is not the owner or person in control of the land<sup>20</sup>. Deviation from the specific method of notification to the owner or person in control of the land could, however, be granted by the Department<sup>21</sup>.

#### **4. WHEN TO CONDUCT PUBLIC PARTICIPATION AND NOTICE TO THE OWNER OR PERSON IN CONTROL OF THE LAND**

If the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the person who owns or is in control of the land must first be notified of the intended application and the opportunity to participate during the public participation process<sup>22</sup>. In instances where the owner of the property requires special means of notification due to illiteracy, disability or any other disadvantage, the proposed alternative means of notification to the owner of the land must be agreed upon with the Department. Proof of the notice to the owner or person in control of the land must then be submitted together with the application.

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<sup>16</sup> Section 23(2)(d) of NEMA refers.

<sup>17</sup> Section 24(4)(a) of NEMA refers.

<sup>18</sup> Section 24M(1) of NEMA refers.

<sup>19</sup> Regulation 54(4) of GN No. R. 543 refers.

<sup>20</sup> Regulation 15(1) of GN No. R. 543 refers.

<sup>21</sup> Regulation 15(5) of GN No. R. 543 refers.

<sup>22</sup> Regulation 15(1) of GN No. R. 543 refers.



When applying for environmental authorisation that must be subjected to Basic Assessment or to Scoping and Environmental Impact Reporting, the EAP managing the application must conduct at least a public participation process after the application has been accepted by the Department.

When applying for exemption, the EAP must first submit to the Department a notice of the intended exemption application or the exemption application, as well as the proposed method of notifying the interested and affected parties ("I&APs") of the intended exemption application/exemption application. The EIA Regulations<sup>23</sup> specifies that the notice to I&APs of the intended exemption application must be in the form of a site notice, written notice to the different parties, or placing an advertisements in newspapers, or a combination thereof as agreed to by the Department, including having to notify the owner or person in control of the land if the applicant is not the owner or person in control of the land<sup>24</sup>. After the Department has agreed to the method of notification of the I&APs, the EAP must give notice of the intended exemption application to the I&APs in accordance with the agreed to method<sup>25</sup>. A notice of the intended exemption applications and exemption application form, as well as the proposed method of notifying the I&APs of the intention to apply for exemption, has also been incorporated into the Application Form for Environmental Authorisation.

If it seems as if the exemption applied for/to be applied for might be appropriate, the DEA&DP will allow an integrated process to be followed for the exemption and environmental authorisation applications (i.e. the applicant will be allowed to continue with both the exemption application process and the environmental authorisation process – through an integrated process e.g. through both the notice of the application for exemption and the notice of the application for environmental authorisation being included in the same public participation notice to the I&APs – with both applications being decided at the end of the process). An applicant must bear in mind that should an exemption application be refused by the Department, the applicant will be required to meet the requirements of the provision(s) for which exemption was applied for. If it, however, seems as if the exemption applied for/to be applied for might not be appropriate, DEA&DP will require separate sequential processes to be followed for the exemption and environmental authorisation applications (i.e. the exemption process must first be concluded and the exemption application decided before the application process for the environmental authorisation may be proceeded with).

If an applicant intends to deviate from the specific I&AP notification requirements, the EAP must first submit the request for permission to deviate to the Department. After the Department has agreed to the deviation, the EAP can then proceed with the public participation process in accordance with the permission to

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<sup>23</sup> Regulation 51(3) of GN No. R. 543 refers.

<sup>24</sup> Regulation 15(1) of GN No. R. 543 refers.

<sup>25</sup> Regulation 51(3) of GN No. R. 543 refers.

deviate. The notices to the I&APs must, however, indicate the permission to deviate that has been granted. A request for deviation has also been incorporated into the Application Form for Environmental Authorisation.

I&APs must be afforded an opportunity to participate throughout the assessment process. It should be noted that all exemption applications and deviations must be clearly communicated to I&APs including the relevant organs of State, throughout the EIA application process.

## 5. NOTIFICATION OF I&APs

A person conducting the public participation process must give notice to all potential I&APs of the application.

### 5.1. Method of Notification

Notice must be given by<sup>26</sup>:

- (a) fixing a notice board at a place conspicuous to the public at the boundary, or on the fence of the site where the activity to is to be undertaken and any alternative sites being considered (see 5.6 below);

**Note:** The site notice must be displayed for the duration of the commenting period.

- (b) giving written notice to:

- (i) the owner or person in control of the land and of any alternative land where the activity is to be undertaken if the applicant is not the owner or person in control of the land;
- (ii) the occupiers of the site where the activity is to be undertaken and of any alternative site where the activity is to be undertaken;
- (iii) the owners and occupiers of land adjacent to the site where the activity is to be undertaken and to any alternative site where the activity is to be undertaken;
- (iv) the municipal councillor of the ward in which the site and any alternative site are situated and any organisation of ratepayers that represents the community in the area;
- (v) the relevant officials (e.g. Health Officer, Planner, Environmental Manager, Engineer, etc.) of the municipality who has jurisdiction in the area within the site and any alternative site are situated;

**Note:** Take note that it must be determined, in consultation with the relevant municipality, which officials (e.g. Health Officer, Planner, Environmental Manager, and Engineer) within the municipality must all be given an opportunity to comment. Both the Local Municipality and the District Municipality must be notified.

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<sup>26</sup> Regulation 54(2) of GN No. R. 543 refers.

- (vi) any organ of state having jurisdiction in respect of any aspect of the activity (e.g. Department of Water Affairs for dam applications; the Department of Agriculture for agricultural activities, etc.); and
- (vii) any other party as required by the competent authority.

(c) placing an advertisement in:

- (i) the local newspaper circulating in the area where the site and any alternative site is located; or
- (ii) any official Gazette that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of the NEMA EIA Regulations; and

(d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official Gazette (referred to in (c)(ii) above); and

**Note:** With no Gazette specifically concerned with publications in respect to the NEMA EIA regulations currently existing, all applications for activities where it is anticipated that the impacts will not extend beyond the boundaries of the local municipality, an advertisement must be placed in the local newspaper. For such applications, applicants may, however, decide to also place an advertisement in a provincial or national paper. In this regard it must further be noted that the requirements specified in the EIA Regulations constitute the minimum requirements, and depending on the facts and circumstances of each application, additional public participation measures might be required. In terms of the NEM: WA and NEM: AQA a notice must be placed in at least two newspapers circulating in the area in which the activity applied for is to be carried out.

(e) using reasonable alternative methods as agreed to by the competent authority, in those instances where a person desiring of but unable to participate in the process due to –

- (i) illiteracy;
- (ii) disability; or
- (iii) any other disadvantage

**Note:** This proposed use of alternative methods of notification must be included in the request for deviation and must be agreed to by the Department prior to the commencement of the public participation process.

## 5.2. "Proof" of Notification

The EIA Regulations 2010<sup>27</sup> ask for "*proof that notice boards, advertisements and notices notifying potentially interested and affected parties in relation to the application have been displayed, placed or given*". In terms of the required "proof" the following must be submitted to the Department:

- (a) a copy of the newspaper advertisement ("newspaper clipping") that was placed, indicating the name of the newspaper and date of publication (of such quality that the wording in the advertisement is legible);
- (b) a site map showing where the site notice was displayed, a dated photographs showing the notice displayed on site and a copy of the text displayed on the notice;
- (c) in terms of the written notices given, a copy of the written notice sent, as well as:
  - (i) if registered mail was sent, a list of the registered mail sent (showing the registered mail number, the name of the person the mail was sent to, the address of the person and the date the registered mail was sent);
  - (ii) if normal mail was sent, a list of the mail sent (showing the name of the person the mail was sent to, the address of the person, the date the mail was sent, and the signature of the post office worker or the post office stamp indicating that the letter was sent);
  - (iii) if a facsimile was sent, a copy of the facsimile report;
  - (iv) if an electronic mail was sent, a copy of the electronic mail sent; and
  - (v) if a "mail drop" was done, a signed register of "mail drops" received (showing the name of the person the notice was handed to, the address of the person, the date, and the signature of the person).

As already indicated, proof<sup>28</sup> that the owner or person in control of the land on which the activity is to be undertaken, was notified of the intended application and the opportunity to participate during the public participation process must also be submitted together with the application for environmental authorisation.

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<sup>27</sup> Regulations 22 (2)(f)(ii) and 28 (1)(h)(ii) of GN No. R. 543 refers.

<sup>28</sup> Regulation 15(3) of GN No. R. 543 refers.

### 5.3. Format of a Notice

The following format should be used for the introductory section of a notice:

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#### **EIA PUBLIC PARTICIPATION PROCESS**

DEA&DP Reference No(s): #####<sup>29</sup>

Project title: e.g. *Klapmuts Township Development*.

Project proposal: *Short description of proposed development (e.g. Klapmuts Township Development consisting of approx. 200 erven and associated infrastructure).*

Location(s): e.g. *Erf / Farm No. ##, Town, Municipality*<sup>30</sup>

Application for environmental authorisation to undertake the following activities:

EIA activities: LN 1: #; LN 2: # & LN 3: # (GN No. R. 544, R. 545 and R. 546 refer.)

Waste management activities: Category A: #; Category B: # (GN No. 718 refers).

Atmospheric emission activities: # (GN No. 248 refers)

Exemption: Application for exemption from the provision to put up a site notice is will also be applied for (Exemption Reference Number: ###)

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The minimum information to be provided in the notice (see 6.5 below) must then be included below the above introductory section.

### 5.4. Format of the Notice for a Joint Public Participation Process

In certain instances an application in respect of any activity requiring environmental authorisation in terms of the NEMA 2010 EIA Regulations might also require approvals in terms of other legislation. In the spirit of co-operative governance<sup>31</sup> and in order to avoid duplication, a joint public participation process must be followed that meets the regulatory requirements of all the authorities concerned. If a joint process is proposed, prior consultation with the relevant authorities is however important.

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<sup>29</sup> In terms of all the applications: environmental authorisation, exemption, waste management licence, and/or atmospheric emission licence.

<sup>30</sup> All alternatives to be highlighted.

<sup>31</sup> To give effect to Chapter 3 of the Constitution, section 24(4)(g) of NEMA and Regulation 6 of the EIA Regulations.

The following format should be used for the introductory section of a combined notice:

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### **PUBLIC PARTICIPATION PROCESS**

Reference No(s): #####

Project title: e.g. *Klapmuts Township Development*.

Project proposal: *Short description of proposed development (e.g. Klapmuts Township Development consisting of approx. 200 erven and associated infrastructure, including the mining of sand to prepare the site).*

Location(s): e.g. *Erf / Farm No. ##, Town, Municipality*<sup>32</sup>

Notice is hereby given of a joint public participation process in terms of:

- the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA");
- the National Environmental Management: Waste Act (Act No. 59 of 2008) ("NEM:WA");
- the National Environmental Management: Air Quality Act (Act No. 39 of 2004) ("NEM:AQA");
- the National Environmental Management: Integrated Coastal Management Act (Act No. 24 of 2008) ("NEM: ICM");
- the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985) ("LUPO");
- the National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA"); and
- the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) ("MPRDA").

Application for environmental authorisation to undertake the following activities:

EIA activities: LN 1: #; LN 2: # & LN 3: # (GN No. R. 544, R. 545 and R. 546 refer.)

Waste management activities: Category A: #; Category B: # (GN No. 718 refers).

Atmospheric emission activities: # (GN No. 248 refers)

Exemption: Application for exemption from the provision to put up a site notice is will also be applied for (Exemption Reference Number: ###)

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The minimum information to be provided in the notice (see 6.5 below) must then be included below the above introductory section.

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<sup>32</sup> All alternatives to be highlighted.

## 5.5. Minimum Information to be provided in a Notice

Apart from the information to be included in the introductory section, a notice must also contain the following minimum information:

- (a) how to register as an interested and affected party (highlighting that I&APs must provide their name, contact details (indicating their preferred method of notification, e.g. e-mail or fax, etc.) and must disclose any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application);
- (b) the manner in which representations on the application may be made (highlighting that I&APs should refer to the department's reference number(s) in their comments);
- (c) reasonable timeframes for responses to notice (see 6.6 below);
- (d) where further information on the application or activity can be obtained; and
- (e) the contact details of the person(s) to whom representations may be made.

If applicable, the following must also be indicated in the notice:

- (f) an indication if permission has been granted by the competent authority to apply Scoping and EIA instead of Basic Assessment to the application or *visa versa*;
- (g) an indication of the intended application for exemption from certain provisions; and
- (h) an indication if certain deviations from the public participation requirements have been agreed to by the Department.

Example of notice:

<b>EIA PUBLIC PARTICIPATION PROCESS</b> (DEA&DP reference number: E13/2/3/1-F3/8-0228/07; E12/2/3/1-F3/8-0228/07; E12/2/3/5-F3/8-0228/07)
<b>Proposed Klapmuts Township Development</b>
<b>Project Proposal:</b> Proposed Klapmuts Township Development consisting of approx. 200 erven and associated infrastructure.
<b>Location:</b> Erf 223 located approx. 1km south of Klapmuts.
<b>Application for environmental authorisation to undertake the following activities:</b> EIA activities: LN 1: 1 & 12; LN 2: 15 & 16 & LN 3: 18 GN No. R. 544, R. 545 and R. 546 refer.) Waste management activities: Category A 1, 12 & 15; Category B:16 & 18 (GN No. 718 refers). Atmospheric emission activities: Category 1 Sub-category 1.4 (GN No. 248 refers)
<b>Exemption:</b> The intention is to apply for exemption from the following provision: <ul style="list-style-type: none"><li>• provision to put up a site notice.</li></ul>
<b>Opportunity to participate:</b> Interested and affected parties (I&APs) are invited to provide written comments. I&APs should refer to the all the relevant DEA&DP reference number(s) above, and must provide their comments together with their name, contact details (preferred method of notification, e.g. e-mail address or fax number) and an indication of any direct business, financial, personal or other interest which they have in the application to the contact person indicated below <u>within 40 days</u> from the date of this notice.
<b>For more information contact:</b> Mr Koos Jooste, EnviroConsulting, PO Box 6015, Stellenbosch, 7612, tel & fax: 021-8891234, e-mail: <a href="mailto:KJooste@kingsley.co.za">KJooste@kingsley.co.za</a>

## **5.6. Commenting Periods and Consultation with State Departments and other I&APs**

In accordance with the EIA Regulations, I&APs must be provided with a reasonable<sup>33</sup> opportunity to make representations on proposed applications and all written submission made to the Department by the applicant or the EAP<sup>34</sup>. In this regard it is important that notices to I&APs explicitly indicate the duration of the commenting period. The requirements of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA") further highlights the need for I&APs to be afforded a reasonable opportunity to make representations.

### 21-day Registration and Initial Commenting Period

In terms of the EIA Regulations the EAP must, after the application has been accepted, first notify the I&APs of the application (i.e. first allow for a period during which I&APs can register and provide initial comments). A minimum of 21 days must be allowed for I&APs to respond to such an initial notification.

### 40-day Commenting Period on Draft and Amended Reports

Following the closing of this registration period and initial commenting period, the draft Basic Assessment Report/Scoping Report (which must include details of the initial notification<sup>35</sup>), must then be send to the Department, and then made available, for a minimum of 40 days, to all Registered I&APs, including all the relevant State department, to make representations on the draft Basic Assessment Report/Scoping Reports. A 40-day commenting period must also be provided for on Environment Impact Reports, as well as amended Basic Assessment Reports/Scoping Reports/Environmental Impact Assessment Reports). The EAP/applicant must notify this Department of the State departments (name and contact details of the official) which have received or will be receiving the relevant reports and on which date such reports have been or will be made available to those State departments. This Department will then request written comment from the relevant State departments to be submitted within 40 days of such request having been made by this Department. Comments by the State departments must be submitted to this Department and copied to the EAP.

### Commenting Period on Additional Information

If a Basic Assessment Report is rejected because the Department requires additional information<sup>36</sup>, or if in response to a Scoping Report additional information is requested<sup>37</sup>, then the registered I&APs must be afforded, unless otherwise indicated by the Department, at least 21 days to comment on the additional information. Only once the commenting period has closed, must the additional information, together with the comment received, be submitted to the Department.

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<sup>33</sup> Regulation 54(7) of GN No. R. 543 refers.

<sup>34</sup> Regulation 56(1) of GN No. R. 543 refers.

<sup>35</sup> Regulation 22(2)(f) and 28(1)(h) of GN No. R. 543 refers.

<sup>36</sup> Regulation 24(2)(a) of GN No. R. 543 refers.

<sup>37</sup> Regulation 30(1)(b) of GN No. 543 refers.



### 21-day Commenting Period on Final Reports

Prior to submission of a final report to the Departments, the registered I&APs must be afforded, unless otherwise indicated by the Department, at least 21 days to comment on the final report. Only once the commenting period has closed, may the final report together with the comment be submitted to the Department.

A minimum notice period of 14 days must be provided for a public meeting.

As stated earlier: "Days" refers to calendar days. 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.

The period of 15 December to 2 January must be excluded in the reckoning of days. Where a timeframe is affected by the 15 December to 2 January period, the timeframe must be extended by the number of days falling within the 15 December to 2 January period. Where a 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.

### **5.7. Minimum Size of Notice Boards and Newspaper Notices**

The EIA Regulations specifies the minimum size in terms of notice boards (at least 60cm by 42cm, in lettering with a format that may be indicated by the competent authority). It is recommended that consideration be given to the sensitivities of the project. The greater the sensitivity, the larger and more prominent the notices should be.

For activities whose extent of impact will be site specific or of local significance, a notice in a newspaper may as a minimum be 2 columns wide and 8cm long insofar as it will be noticeable and can be clearly read and understood.

### **5.8. Identifying and Approaching Specific Stakeholders**

Over and above the placement of general notices in the media calling for I&APs to participate, certain stakeholders should be specifically approached. The following means of identifying stakeholders should be used when appropriate:

- Social profiles or probes provide a comprehensive summary of the key characteristics of the people of a community or area and can serve as a starting point for identifying stakeholders.

- Brainstorming sessions with the proponent and/or authorities, based on previous experience, to identify key stakeholders who may be interested or affected by the proposal.
- Established lists and databases, held by consultancies, authorities or research institutions, may hold additional contact details of residents, Non-Government Organisations, Community Based Organisations or constituents.
- Network or chain referral systems according to which key stakeholders are asked to assist in identifying other stakeholders.

### 5.9. Facilitation, Broadening Participation, Capacity Building & Special Needs

The person responsible for conducting the public participation process 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<sup>38</sup>.

Appropriate participation measures should be put in place to deal with the range of cultural and language requirements of I&APs. The language used by the I&APs must be taken into account when serving a notice, selecting a newspaper, holding a public meeting and writing a report.

**Note:** Where environmental reporting is done in a specific official language, executive summaries in the other official languages should be made available, on request.

Where I&APs include historically disadvantaged communities or people with special needs (e.g. a lack of skills to read or write, disability, or any other disadvantage), the following must, *inter alia*, be considered:

- the project and public participation process could be announced on an appropriate local radio station in a local language, at an appropriate time;
- Participatory Rural Appraisal ("PRA") and Participatory Learning and Action ("PLA") approaches and techniques could be used to build the capacity of these stakeholders to engage and participate more effectively (see references below);
- existing community structures, committees and leaders must specifically be approached;
- public meetings could be held at times and venues suitable to the community;
- determine the need for separate meetings with vulnerable and marginalised groups;
- appropriate access to information must be provided; and
- reasonable assistance to people with special needs must be provided.

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<sup>38</sup> Regulation 54(7) of GN No. R. 543 refers.

## 6. GUIDANCE ON THE LEVEL OF PUBLIC PARTICIPATION

The minimum requirements for public participation outlined in the Regulations will not necessarily be sufficient for all applications. This is mainly due to the fact that the circumstances of each application are different, and it may be necessary in some situations to incorporate additional steps in the public participation process. This section provides guidance for deciding on the required level of public participation.

Three categories of variables need to be taken into account when deciding on the level of public participation and the process to be followed:

- the scale of anticipated impacts of the proposed project;
- the sensitivity and the degree of controversy of the project; and
- the characteristics of the potentially affected parties.

The following aspects need to be considered in this regard:

<b><i>Scale of anticipated impacts:</i></b>
Are the impacts of the project likely to extend beyond the boundaries of the local municipality?
Are the impacts of the project likely to extend beyond the boundaries of the province?
Is the project a greenfields development (a new development in a previously undisturbed area)?
Does the area already suffer from socio-economic problems (e.g. job losses) or environmental problems (e.g. pollution), and is the project likely to exacerbate these?
Is the project expected to have a wide variety of impacts (e.g. socio-economic and environmental)?
<b><i>Public sensitivity of the project:</i></b>
Are there widespread public concerns about the potential negative impacts of the project?
Is there a high degree of conflict among I&APs?
Will the project impact on private land other than that of the applicant?
Does the project have the potential to create unrealistic expectations (e.g. that a new factory would create a large number of jobs)?
<b><i>Potentially affected parties:</i></b>
Has very little previous public participation taken place in the area?
Did previous public participation processes in the area result in conflict?
Are there existing organisational structures (e.g. local forums) that can represent I&APs?
What is the literacy level of the community in terms of their ability to participate meaningfully during the public participation process?
Is the area characterised by high social diversity (i.e. socio-economic status, language or culture)?
Were people in the area victims of unfair expropriations or relocation in the past?
Is there a high level of unemployment in the area?
Do the I&APs have special needs (e.g. a lack of skills to read or write, disability, etcetera).

Based on the above, the use of the following public participation mechanisms, over and above the requirements, should also be considered (see 6.9 above):

- Public meetings and open days
- Conferences
- Press releases
- Questionnaires or opinion surveys
- Information desks and/or info lines (helplines)
- Meetings/workshops with constituencies (e.g. National Standing Committees, Non-Government Organisations / Community Based Organisations)

As already highlighted, the person conducting the public participation process must give notice by reasonable alternative methods, as agreed to by the Department, in those instances where a person is desiring of but unable to participate due to illiteracy, disability, or any other disadvantage<sup>39</sup>. This proposed use of alternative methods of notification must be included in the request for deviation and must be agreed to by the Department prior to the commencement of the public participation process.

## 7. INTERESTED AND AFFECTED PARTIES (“I&APs”)

In terms of the Regulations “*registered interested and affected parties*” means:

- (a) all persons who, as a consequence of the public participation process conducted in respect of an application, have submitted written comments or attended meetings with the applicant or EAP;
- (b) all persons who, after completion of the public participation process, have requested the applicant or the EAP managing the application, in writing, for their names to be placed on the register; and
- (c) all organs of state which have jurisdiction in respect of the activity to which the application relates.

**Note:** To be registered as an interested and affected party the persons referred to (a) and (b) above must provide their names and contact details (postal address or facsimile or email or all three) to the EAP managing the application process. The preferred method of notification should be indicated. Registered I&APs must ensure that they notify the EAP if their contact details change during the application process. Seeing as all people that attend meetings are automatically registered as an I&AP, attendance registers that contains the name, contact details, preferred method of notification, and an indication of the person’s interest in the application must be kept by the EAP and submitted to the Department.

The Department also requires that if the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the person who owns or is in control of the land must also be included in the register of interested and affected parties and consulted with throughout the public participation process.

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<sup>39</sup> Regulation 54(2)(e) of GN No. R. 543 refers.

### 7.1. Access and opportunity to comment on all written submissions

A Registered I&AP is entitled to comment on all written submissions made to the competent authority by the applicant or the EAP managing an application, and to bring to the attention of the competent authority any issues which the Registered I&AP believe may be of significance to the consideration of the application, provided that:

- (a) comments are submitted within the specified timeframes or any extension of a timeframe agreed to by the applicant or EAP;
- (b) a copy of comments submitted directly to the competent authority is served on the applicant or EAP; and
- (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.

Draft reports must be submitted to the Department before it is made available to interested and affected parties, including the relevant organs of State and State departments which have jurisdiction with regard to any aspect of the activity, for a 40-day commenting period. With regard to State departments, the 40-day period commences the day after the date on which the Department as the competent/licensing authority requests such State department in writing to submit comment. The applicant/EAP is therefore required to inform this Department in writing when the draft report will be made available to the relevant State departments for comment. Upon receipt of the draft report and this confirmation, this Department will in accordance with Section 24O(2) and (3) of NEMA request the relevant State departments to comment on the draft report within 40 days.

All initial comments of I&APs (given during the registration period) must be included in Comments and Response Report to be included in the draft report. All comments of I&APs on a draft report must be recorded, responded to and included in the Comments and Responses Report to be submitted with the final report. If necessary, any amendments in response to comments received must be effected in the report itself. The Comments and Responses Report must also include a description of the public participation process followed.

Final reports must be made available to registered interested and affected parties for comment before submitting it to the Department for consideration. Unless otherwise indicated by the Department, a final report must be made available to the registered I&APs for comment for a minimum of 21 days. Comments on a final report do not have to be responded to, but the comments must be attached to the final report.

Only registered I&APs:

- will be notified of the availability of reports and other written submissions made (or to be made) to the Department by the applicant, and be entitled to comment on these reports and submissions;
- will be notified of the outcome of the application, the reasons for the decision, and that an appeal may be lodged against a decision; and

- will be notified of the applicant's intention to appeal the decision of the competent authority, together with an indication of where and for what period the appeal submission will be available for inspection.

## 7.2. Responding to comments received: feedback to I&APs

All comments received from I&APs must be acknowledged by the EAP, with the EAP indicating how the comments received will be responded to (even if just referring to the fact that a response will be contained in the "Comments & Response Report"). Comments and responses must be indicated in the Comments & Response Report (submitted with the Basic Assessment or Scoping and EIA Reports).

**Note:** The EAP is responsible for ensuring that the issues raised by I&APs are addressed in an objective manner. Where issues are not addressed, the reasons for this must be provided in the Comments & Response Report.

## 7.3. Disclosure of I&APs' interests

I&APs must disclose any direct business, financial, personal or other interests which they may have in the approval or refusal of an application.

**Note:** In terms of NEMA EIAA Regulations<sup>40</sup> Registered I&APs are entitled to comment on all written submissions made to the Department and to bring to the attention of the Department any issues which they believe may be of significance to the consideration of the application, **only if** they disclose any direct business, financial, personal or other interest which they may have in the approval or refusal of the application.

## 7.4. Notifying I&APs of the Department's Decision

The *Guideline on Appeals* (August 2010) must also be considered with regard to the specific requirements in this regard.

The applicant must, in writing, within 12 days of the date of the decision (i.e. within 12 days after the date the decision was made by the Department and not within 12 days of having been notified of the decision) notify the registered I&APs of the outcome of the decision, refer to the Department's reasons for the decision as contained in the copy of the Department's decision to be attached to the notice, and draw their attention to the fact that an appeal may be lodged against the decision. In addition to the notice to the registered I&APs, the applicant must also within 12 days of the date of the decision place a notice in the same newspaper(s) used for the placing of notices during the public participation process that was undertaken, informing I&APs of the Department's decision, where the I&APs can access a copy of the Department's decision (note that the applicant must give access to a copy of the decision to I&APs), and draw their attention to the fact that an appeal may be lodged against the decision, and the manner in which to lodge an appeal against the decision.

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<sup>40</sup> Regulation 56(1) of GN No. R. 543 of 18 June 2010 refers.

## 8. PUBLIC PARTICIPATION PROCESS REPORT

A Basic Assessment Report, Scoping Report and Environmental Impact Report must include details of the public participation process conducted (during the Basic Assessment, Scoping phase and Environmental Impact Assessment phase respectively) including –

- a list of all the potential interested and affected parties that were notified;
- the steps that were taken to notify potentially interested and affected parties;
- proof that notice boards, advertisements and notices notifying potentially interested and affected parties, and (if applicable) the owner or person in control of the land, of the application have been displayed, placed or given;
- a list of all persons, organisations and organs of state that were registered as interested and affected parties in relation to the application;
- a Comments and Response Report containing a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues (or the reason for not addressing an issue); and
- copies of all the comments received from interested and affected parties.

**Note:** As already states, all comments of interested and affected parties on a draft report must be recorded, responded to and included in the Comments and Responses Report to be submitted with the final report. If necessary, any amendments in response to comments received must be effected in the report itself. The Comments and Responses Report must also include a description of the public participation process followed. Comments on a final report must be submitted to the Department and copied to the EAP, but do not have to be responded to, but the comments must be attached to the final report.

## 9. APPLICATIONS FOR EXEMPTION(S) AND DEVIATIONS

As stated earlier, with public information and participation procedures being specified as a minimum requirement in terms of NEMA<sup>41</sup>, exemption from having to undertake public participation cannot be applied for in terms of either NEMA or the EIA Regulations<sup>42</sup>. Exemption can, however, be applied for in terms of the extent and level of public participation to be undertaken. It must, however, be noted that in terms of the extent and level of public participation to be undertaken, deviation from some of the specific requirements in terms of the EIA Regulations related to the public participation steps to be taken (in terms of the different notices to be given in terms of Regulation 54(2) of GN No. R. 543 – as indicated in the Application Form for Environmental Authorisation) can, however, be requested<sup>43</sup>. Requests for deviation must be well motivated and the Department will consider the merits of each request for deviation. If a deviation is agreed to, then exemption is not required. It must, however, be noted that deviation from having to notify the owner or person in control of the land, if the applicant is not the owner or person in control of the land, cannot be obtained because the requirement for the notice to the owner or person in control of the land is also specified by another provision of the regulations<sup>44</sup>. Any notices to potential interested and affected parties must clearly describe the deviation, the reasons for the deviation and the

<sup>41</sup> Section 24(4)(a) of NEMA refers.

<sup>42</sup> Section 24M(1) of NEMA refers.

<sup>43</sup> Regulation 54(4) of GN No. R. 543 refers.

<sup>44</sup> Regulation 15(1) of GN No. R. 543 refers.

Department's agreement in this regard. The information on the deviation (description, reasons and the Department's agreement) and any responses by I&APs to the deviation must also be recorded in Comments and Responses Report.

**Note:** A more detailed explanation of the exemption application process is provided in the Department's *Guideline on Exemption Applications* (May 2011).

## **10. AMENDMENTS OF ENVIRONMENTAL AUTHORISATIONS**

If a holder of an environmental authorisation applies for an amendment of an authorisation as, the applicant must, to the extent appropriate and as required by the competent, conduct a public participation process. While a new public participation process might be required for the amendment, depending on the time that has passed since the issuing of the original authorisation, the I&APs that registered during the original process might also have to be notified of the proposed amendment and given an opportunity to comment. The requirement to notify the original registered I&APs must be confirmed with the Department.

## **11. SUSPENSION, LAPSING OR DELAYS**

If a process<sup>45</sup> or a decision has been suspended<sup>46</sup>, In terms of the EIA Regulations<sup>47</sup> 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 relating to the consideration of the application. An EAP must inform the Registered Interested and Affected Parties if the application has lapsed or if the Department has accepted delays that have been experienced.

## **12. PUBLIC PARTICIPATION IN TERMS OF THE SPECIFIC ENVIRONMENTAL MANAGEMENT ACTS**

### **12.1. National Environmental Management: Waste Act, Act No. 59 of 2008**

The public participation process as discussed in this guideline is also applicable to an application for a waste management licence in terms of the NEM: WA. As highlighted earlier, the NEM: WA, however, requires that advertisements are placed in two separate circulating in the area in which the activity is to be undertaken.

### **12.2. National Environmental Management: Air Quality Act, Act No. 39 of 2004**

The public participation process as discussed in this guideline is also applicable to an application for an atmospheric emission licence in terms of the NEM: AQA As highlighted earlier, the NEM: AQA, however, requires that advertisements are placed in two separate circulating in the area in which the activity is to be undertaken.

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<sup>45</sup> Regulation 19 of GN No. R. 543 refers.

<sup>46</sup> Section 43(7) of NEMA and Regulation 47 of GN No. R. 543 refer.

<sup>47</sup> Regulation 67 of GN No. R. 543 refers.