



CIRCULAR: DEA&DP 0003/2020

To whom it may concern:

- **DECISION I.T.O. SECTION 47C OF NEMA TO EXTEND THE TIMEFRAMES APPLICABLE IN TERMS OF NEMA AND THE EIA REGULATIONS AFFECTED BY THE COVID-19 NATION-WIDE 21-DAY LOCKDOWN PERIOD**

1. The declaration of a National State of Disaster on 15 March 2020¹ as well as well the Nation-Wide 21-Day Lockdown for the period 27 March 2020 to 16 April 2020² refer.
2. Section 47C of the of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) states:

47C. Extension of time periods

The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period which binds the Minister or MEC.

3. NEMA defines "this Act" as "includes the schedules, and regulations and any notice issued under the Act".
4. Due to the special circumstances caused by the COVID-19 Pandemic and the Nation-Wide 21-Day Lockdown period, **Minister Anton Bredell (the Western Cape Provincial Minister of Local Government, Environmental Affairs and Development Planning) has, in terms of Section 47C of NEMA in terms of all matters for which he is the Competent Authority in terms of NEMA, extended all timeframes in terms of NEMA and the EIA Regulations for actions and processes affected by the 21-Day Lockdown period by two months effective from (and including) 27 March 2020 to (and including) 26 May 2020.**
5. The two-month extension does not apply to actions related to decisions issued after the 21-Day Lockdown period.

¹ Government Gazette No. 43096 of 15 March 2020 refers.

(Available at: http://www.gpwonline.co.za/Gazettes/Gazettes/43096_15-3_CoOperativeGovTradAff.pdf)

² The Statement by President Cyril Ramaphosa on Escalation of Measures to Combat COVID-19 Epidemic of 23 March 2020 refers. (Available at: <http://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-escalation-measures-combat-covid-19-epidemic%2C-union>)

6. No extension will apply to matters related to Section 28, 30 and 31 of NEMA.
7. It is anticipated that Minister Creecy (the National Minister of Environment, Forestry and Fisheries) might in the near future decide on a similar time extension for all EIA processes across South Africa.

- **PROTOCOL FOR THE ADMINISTRATION OF EIA, AEL, WML AND SECTION 24G APPLICATIONS AND RELATED FORMAL ENQUIRIES/REQUESTS IN THE WESTERN CAPE PROVINCE DURING COVID-19 NATION-WIDE 21-DAY LOCKDOWN PERIOD**

8. The COVID-19 Epidemic and the Nation-Wide 21-Day Lockdown will have a significant impact on the undertaking of Environmental Impact Assessment (EIA) processes by applicant, applications by environmental assessment practitioners (EAPs) and specialists, as well as on the government's business processes related to the administration of EIA processes in terms applications for Environmental Authorisations, for Atmospheric Emission Licences (AELs), Waste Management Licence (WMLs), applications in terms of Section 24G of NEMA Provision, and the submission of comments in terms of Section 24O of NEMA when the National Minister/Department or the National Minister of Mineral Resources/Department of Mineral Resources are the competent authority.
9. The Western Cape Government and my Department have implemented Business Continuity Plans and Contingency Plans, which include certain officials working-at-home, in order to continue operations remotely, administration and services will be disrupted during this period.
10. Under normal circumstances proponents/applicants and their EAPs might hold face-to-face meetings with my Department's officials, place noticed in newspapers, place copies of reports for commenting at libraries, hold face-to-face public meetings, in-person submit documents at my Department's offices, etc. The required social distancing and the 21-Day Lockdown period mean that face-to-face contact will not be possible, with people not being able to go out to buy newspapers (and therefore will not see notices placed in newspapers), not being able to visit libraries, not being able to attend public meetings, EAPs not being able to submit documents at my Department's offices, etc.
11. While a two-month time extension have now been decided by Minister Anton Bredell, if additional time is required in terms of a specific case, the EAP may timeously submit a request for an additional extension of time to be agreed to as allowed for by Regulation 3(7) of the EIA Regulation ("*In the event where the scope of work must be*

expanded based on the outcome of an assessment done in accordance with these Regulations, which outcome could not be anticipated prior to the undertaking of the assessment, or in the event where exceptional circumstances can be demonstrated, the competent authority may, prior to the lapsing of the relevant prescribed timeframe, in writing, extend the relevant prescribed timeframe and agree with the applicant on the length of such extension").

12. In order to make use of Regulation 3(7) of the EIA Regulations would, however, mean that each applicant would have to timeously request such an extension and the Department's officials – which will also be in lockdown from 27 March – would have to timeously consider and decide each Regulation 3(7) request for extension of time.

13. Submission of new applications or non-applications: Stakeholders, proponents, applicants and/or their EAPs should refrain from submitting:

- 13.1. Checklists for the determination of the Applicability of the EIA Regulations, 2014;
- 13.2. Requests for the relevant Competent Authority to define or adopt a Maintenance Management Plan;
- 13.3. Checklist for the definition/adoption of an ad hoc Development Setback Line;
- 13.4. Notice of intent to submit an Application for Environmental Authorisation forms;
- 13.5. Application Forms; and
- 13.6. Reports (including Basic Assessment Reports, Scoping Reports and Environmental Impact Assessment Reports);

during the lockdown period, namely from (and including) **Friday, 27 March 2020** to (and including) **Thursday, 16 April 2020**, (referred to as "the lockdown period").

The Department recommends that the submission of such documents should resume from Monday, 20 April 2020.

14. Public Participation Process (PPP):

- 14.1. If notices of an application have not yet been placed/given and a Register of Interested and Affected Parties have not yet been created, then the EAP should refrain from starting a PPP during the lockdown period.
- 14.2. If notices were already placed/given and a Register of Interested and Affected Parties already open, then, while during the lockdown period no reports may be left at libraries, no site notices put up, no public meetings held, etc., it would be acceptable to electronically make a report available to Registered Interested and Affected Parties to comment, but more than the minimum 30-day commenting period must be provided for. The two-month time extension decided in terms of Section 47C, does allow for additional time to be provided for in terms of commenting periods.

- 14.3. Depending on the circumstance of each case, an EAP might decide to, following the lockdown period provide for additional public participation.
15. Corresponding with officials: correspondence with the relevant officials of my Department must during the lockdown period be via e-mail. Kindly note that my Department currently does not have an automated or computer-generated acknowledgment of receipt system. The onus is on the sender to follow-up that the documents have been received.
16. Issuing of Decisions by my Department: The two-month time extension decided by Minister Bredell in terms of Section 47C of NEMA does not apply to timeframes applicable to the MEC or to any official delegated by the MEC. As such, if timeframes allow, no Environmental Authorisation, AEL or WML will be issued by my Department during the period 27 March 2020 to 16 April 2020. If, however, in terms of the decision-making timeframe applicable to my Department a decision must be issued during this period, then the decision may be issued, but the two-month extension of time will apply to the applicant/EAPs responsibilities in terms of giving notice of the decision to the Registered Interested and Affected Parties as well as to persons wanting to appeal such decisions. It must, however, be noted that Regulations may be published in terms of the National Disaster Management Act, 2002 (Act No. 57 of 2002) which will impact on the timeframes applicable to the MEC and the officials delegated by the MEC/HOD.
17. Enquiries: Any enquiries with regard to the above protocol may be directed to the following officials:

<p>Mr Zaahir Toefy Director: Development Management (Region 1) Email: zaahir.toefy@westerncape.gov.za</p> <p>Mr Eldon van Boom Head of Component Region 1 Email: eldon.vanboom@westerncape.gov.za</p> <p>Ms Mare-Liez Oosthuizen Head of Component Region 2 Email: _____ mare-liez.oosthuizen@westerncape.gov.za</p>	<p>Region 1: City of Cape Town and West Coast District Municipal area.</p> <p>Region 2: Cape Winelands District Municipal area and Overberg District Municipal area</p>
<p>Mr Gavin Benjamin</p>	

<p>Director: Development Management (Region 3) Email: gavin.benjamin@westerncape.gov.za</p> <p>Mr Danie Swanepoel Head of Component Region 3 Email: danie.swanepoel@westerncape.gov.za</p>	<p>Region 3: Garden Route District Municipal area and Central Karoo District Municipal area.</p>
<p>Mr Eddie Hanekom Director: Waste Management Email: eddie.hanekom@westerncape.gov.za</p> <p>Mr Lance McBain-Charles Head of Component Waste Management Email: lance.mcbain- charles@westerncape.gov.za</p>	<p>Western Cape</p>
<p>Dr Joy Leaner (PhD) Director: Air Quality Management Email: joy.leaner@westerncape.gov.za</p> <p>Mr Peter Harmse Head of Component Air Quality Management Email: peter.harmse@westerncape.gov.za</p>	<p>Western Cape</p>
<p>Adv Charmaine Maré Director: Environmental Governance Email: charmain.mare@westerncape.gov.za</p> <p>Ms Jaqueta Keet Head of Component: Environmental Appeals Management Email: jaqueta.keet@westerncape.gov.za</p> <p>Mr Marius Venter Environmental and Planning Appeals Coordinator</p>	<p>Western Cape</p>

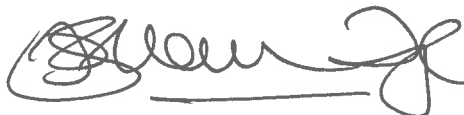
Email: DEADP.Appeals@westerncape.gov.za	
Ms Zaidah Toefy Head of Component: Rectification (S24G) E-mail: zaidah.toefy@westerncape.gov.za	

18. Appeals: Please note that the provisions of Section 47C of NEMA may be used to motivate a request to the Minister for the condonation of late submission of an appeal or responding statement.

19. For the latest developments on the COVID-19 virus, please visit URL: www.westerncape.gov.za/coronavirus.

Thanking you for your cooperation.

Yours faithfully,



PIET VAN ZYL
HEAD OF DEPARTMENT

DATE: 26.03.2020