



DEPARTMENT of
ENVIRONMENTAL AFFAIRS
& DEVELOPMENT PLANNING
Provincial Government of the Western Cape

EIA GUIDELINE AND INFORMATION DOCUMENT SERIES

GUIDELINE ON APPEALS

OCTOBER 2011

EIA GUIDELINE AND INFORMATION DOCUMENT SERIES

GUIDELINE ON APPEALS

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 (October 2011)*
- *Guideline on Public Participation (October 2011)*
- *Guideline on Exemption Applications (October 2011)*
- *Guideline on Need and Desirability (October 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 (October 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 –
DEA&DP (2011) **Guideline on Appeals**, EIA Guideline and Information Document Series. Western Cape Department of Environmental Affairs & Development Planning (DEA&DP), October 2011.

CONTENTS

1. INTRODUCTION

2. DEFINITIONS

3. APPEAL APPLICATIONS

3.1 Types of appeal applications

3.1.1 Decision by the Department to grant or refuse environmental authorisation

3.1.2 Decision by the Department to amend an environmental authorisation

3.1.3 Decision by the Department to amend an environmental management programme

3.1.4 Decision by the Department to suspend an environmental authorisation

3.1.5 Decision by the Department on an exemption application

3.2 Notification of a decision made by the Department

3.3 Lodging a Notice of Intention to appeal

3.4 Submitting an appeal

3.5 Responding and Answering Statements

3.6 Processing of Appeals

3.8 Validity of an Appeal

APPENDICES

A Flow diagram of the appeal process

B Notice of Intention to Appeal Form

C Appeal Form

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”)¹. From the date of effect of these EIA Regulations, 2 August 2010, these EIA Regulations replaced the previous EIA Regulations² that were promulgated in terms of NEMA on 21 April 2006³, and the EIA Regulations that were promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) (“ECA”) in 1997⁴, and introduced new provisions for EIAs. On 30 July 2010⁵ and on 10 December 2010⁶ 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 2009⁷ and came into effect on 1 May 2009⁸. 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 3⁹; 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 Regulations¹⁰.

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

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

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

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

⁵ Government Notice No. R. 660 in Government Gazette No. 33411 of 30 July 2010 refers.

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

⁷ Government Notice No. 22 in Government Gazette No. 31789 on 9 January 2009 refers.

⁸ Government No. 27 in Government Gazette No. 32156 of 21 April 2009 refers.

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

¹⁰ 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.capecapegateway.gov.za/eadp>), provides information and guidance for applicants, authorities and interested and affected parties ("I&APs") on appeals 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"¹¹ 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: WA¹² or NEM: AQA¹³.

"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.

"Environmental Assessment Practitioner" (EAP), means the individual responsible for planning, management and coordination of an environmental impact assessment, strategic environmental assessment,

¹¹ Section 24C of NEMA refers.

¹² Section 43 of the NEM: WA refers.

¹³ Section 36 of the NEM: AQA refers.

environmental management programme 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.

“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) of NEMA, 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”)¹⁴.

“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 Municipalities), Heritage Western Cape, CapeNature, the Department of Water Affairs, etc.

“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.

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).

¹⁴ Government Notice No. R. 543, R. 544, R. 545, R. 546 and R. 547 in Government Gazette No. 33306 of 18 June 2010, as well as Government Notice No. R. 660 in Government Gazette No. 33411 of 30 July 2010 and Government Notice N No. R. 1159 in Government Gazette No. 33842 of 10 December 2010 refer.

3. APPEAL APPLICATIONS

3.1 Types of appeal applications

The provisions of the NEMA EIA Regulations¹⁵ give effect to the appeal right afforded by the provisions of NEMA¹⁶. No appeal is available if the Provincial Minister responsible for Environmental Affairs took a decision himself in his capacity as the competent authority. An appeal may, however, be lodged with the Provincial Minister responsible for Environmental Affairs against a delegated decision taken by the Department on an application, which may include a:

3.1.1 Decision by the Department to grant or refuse environmental authorisation

Any person may appeal against the decision taken by the Department to grant or refuse environmental authorisation to undertake a listed activity in terms of the NEMA EIA Regulations.

3.1.2 Decision by the Department to amend an environmental authorisation

In terms of the NEMA EIA regulations¹⁷ either an applicant may apply to or the Department on its own initiative may decide to amend an environmental authorisation. The amendment decision taken by the Department may be appealed.

3.1.3 Decision by the Department to amend an environmental management programme

In terms of the NEMA EIA regulations¹⁸ either an applicant may apply to or the Department on its own initiative may decide to amend an environmental management programme. The amendment decision taken by the Department may be appealed.

3.1.4 Decision by the Department to suspend an environmental authorisation

In terms of the NEMA EIA Regulations¹⁹ the Department may suspend an environmental authorisation. The Department's decision to suspend an environmental authorisation may be appealed.

3.1.5 Decision by the Department on an exemption application

NEMA²⁰ and the EIA Regulations²¹ allow an applicant to apply for exemption from certain provision of NEMA and any provision of the EIA Regulations. Any person may appeal the decision taken by the Department to grant or refuse the exemption applied for.

¹⁵ Chapter 7 of GN No. R. 543 refers.

¹⁶ Section 43 of NEMA refers.

¹⁷ Regulation 39 and 43 of GN No. R. 543 of 18 June 2010 refers.

¹⁸ Regulation 46 of GN No. R. 543 of 18 June 2010 refers.

¹⁹ Regulation 47 of GN No. R. 543 of 18 June 2010 refers.

²⁰ Section 24M of NEMA refers.

²¹ Regulation 40 of GN No. R. 543 of 18 June 2010 refers.

3.2 Notification of a decision made by the Department

On having decided on an application, the Department must, in writing and within 2 days, notify the applicant of the outcome of the decision, give reasons for the decision, and draw the attention of the applicant to the fact that an appeal may be lodged against the decision.

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.

Note: An appeal may suspend an environmental authorisation and/or an exemption.²² If it has been decided that an appeal will suspend an environmental authorisation and/or an exemption, the effect of the environmental authorisation and/or exemption will be suspended until such time as the appeal is decided.

3.3 Submitting a Notice of intention to Appeal (see attached)

A person who wishes to appeal against a decision of the Department, must submit a Notice of Intention to Appeal with the Provincial Minister responsible for Environmental Affairs within 20 days after the date of the decision (i.e. within 20 days after the date the decision was made by the Department the Notice must reach the Provincial Minister and not within 20 days of having been notified of the decision).

If the appellant is the applicant, the appellant must provide each registered I&AP, within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, with a copy of the Notice of Intent to Appeal as well as a notice indicating that a copy of the appeal submission will be made available for inspection for a 30-day period starting on the day of lodging the appeal submission with the Provincial Minister²³ (i.e. the notice to the registered I&APs must reach the registered I&APs within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, while notice of the lodging of the appeal submission must happen either prior to the lodging of the appeal submission or on the same day, with access to the appeal submission to be provided from the day of lodging of the appeal submission with the Provincial Minister).

²² Section 43(7) of NEMA refers.

²³ Regulation 60(2)(b) of GN No. R. 543 refers.

If the appellant is a person other than the applicant, the appellant must provide the applicant, within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, with a copy of the Notice of Intent to Appeal as well as a notice indicating that a copy of the appeal submission will be made available for inspection for a 30-day period starting on the day of lodging the appeal submission with the Provincial Minister (i.e. the notice to the applicant must reach the applicant within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, while notice of the lodging of the appeal submission must happen either prior to the lodging of the appeal submission or on the same day, with access to the appeal submission to be provided from the day of lodging of the appeal submission with the Provincial Minister).

3.4 Lodging of an appeal submission (see attached)

Following the lodging of the Notice of Intent to Appeal, the appeal submission must be submitted, on the official Appeal Form (see attached), to the Provincial Minister (see the address in the Appeal Form attached) within 30 days after the lapsing of the 20 day period allocated for the submission of the Notice of Intention to Appeal (i.e. within 50 days after the date of the decision the appeal submission must reach the Provincial Minister). An appeal submission must be accompanied by:

- a statement setting out the grounds of the appeal,
- supporting documentation that is referred to in the appeal but is not in the possession of the Provincial Minister (i.e. new information),
- a statement by the appellant confirming that copies of the Notice of Intent was given to the I&APs/applicant and that the appeal submission was made available for inspection,
- proof of the fact that a copy of the Notice of Intent to Appeal was given to the registered I&APs/applicant (e.g. a list of the registered mail sent or a copy of the facsimile report or a copy of the electronic mail sent), and
- proof of the fact that notice of the lodging of the appeal submission and access to the appeal submission was given to I&APs/applicant, must accompany the appeal submission when it is lodged with the Provincial Minister (e.g. a copy of the notice with a list of the registered mail sent or a copy of the facsimile report or a copy of the electronic mail sent).

Note: Proof of the fact that notice of the lodging of the appeal submission and access to the appeal submission was given to I&APs/applicant, if not submitted with the appeal submission, must be submitted within 10 days of the lodging of the appeal submission with the Provincial Minister.

3.5 Responding and Answering Statements

A person who has received a Notice of Intention to Appeal from an appellant may make a submission called a Responding Statement to the Provincial Minister within 30 days from the date the appeal submission was lodged with the Provincial Minister. The respondent must, within 10 days of having submitted the responding statement, serve a copy of the statement on the appellant. The Responding Statement must

also clearly indicate whether the Responding Statement introduces new information not dealt with in the appeal submission of the appellant.

Note: Proof of the fact that a copy of the Responding Statement was also served on the appellant, must be submitted to the Provincial Minister either on same day that the Responding Statement is submitted to the Provincial Minister or within 10 days of the submission of the Responding Statement to the Provincial Minister (i.e. a list of the registered mail sent, or list of signatures of hand delivered copies received).

Only if the Responding Statement introduces any new information not dealt with in the appeal submission of the appellant, is the appellant entitled to submit an Answering Statement to such new information to the Provincial Minister, within 30 days of the submission of the Responding Statement to the Provincial Minister. The appellant must, within 10 days of having submitted the Answering Statement to the Provincial Minister, serve a copy of the Answering Statement on the respondent who submitted the new information. The Answering Statement must also clearly indicate what new information not dealt with in the appeal was introduced by the Responding Statement.

Note: **There is a difference between simply “to notify” or to “provide a copy”, and having to “serve on”. While someone can be notified or provided with a copy via registered mail, hand delivery with signature as proof of receipt, facsimile, or e-mail; a notice or copy can only be served on someone via registered mail, or hand delivery with signature as proof of receipt.**

Proof of the fact that a copy of the Answering Statement was also served on the respondent who submitted the new information must be submitted to the Provincial Minister on the same day that the Answering Statement is submitted to the Provincial Minister or within 10 days of the submission of the Answering Statement to the Provincial Minister (i.e. a list of the registered mail sent, or list of signatures of hand delivered copies received).

Note: With 30 days being available to submit a responding statement and another 30 days being available to submit answering statements (if new information not dealt with in the appeal is introduced by the responding statement), an applicant (who is not an appellant) may choose to shortly after consideration of the appeal submission(s), decide to send a short written letter to the Provincial Minister, and on the same day serve a copy on the appellants, confirming that the applicant will not be submitting a Responding Statement and that no opportunity to submit an Answering Statement will therefore exist, and that the Provincial Minister may therefore immediately proceed with the consideration of the appeal(s).

3.6 Processing of appeals

An appeal lodged in terms of the previous ECA EIA regulations or in terms of the 2006 NEMA EIA regulations, which was pending on 2 August 2010 when the 2010 NEMA EIA regulations took effect, must despite the repeal of the ECA EIA regulations or the 2006 NEMA EIA regulations be dispensed with in terms of the ECA EIA regulations or the 2006 NEMA EIA regulations respectively as if the ECA EIA regulations or 2006 NEMA EIA regulations were not repealed²⁴.

All appeals lodged after 2 August 2010 must be lodged and considered in terms of the 2010 NEMA EIA regulations, even if the decision to be appealed was issued in terms of the ECA EIA regulations or the 2006 NEMA EIA regulations.

The processing of appeals in terms of the 2010 NEMA EIA regulations will be as follows:

- Receipt of an appeal submission, Responding Statement, and Answering Statement will be acknowledged by the Provincial Minister within 10 days of receipt.
- The Provincial Minister may request the appellant or a respondent to submit such additional information in connection with the appeal as the Provincial Minister may require.
- The appellant and each respondent will be notified if –
 - a directive in terms of section 43(7) of NEMA was issued suspending the environmental authorisation and/or exemption;
 - an appeal panel has been or will be appointed in terms of section 43(5) of NEMA.

Note: If an appeal panel is appointed, the panel will be furnished with a written instruction concerning the issues in respect of which the panel must make recommendations and, the period within which the panels' recommendations must be submitted. If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, both the appellant and each respondent are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information. Recommendations made by the panel will be submitted to the Provincial Minister in writing.

- Only once the appeal submission, any responding and answering statements, any additional information requested and, if applicable, the appeal panel's recommendations are received will an appeal be finally processed and the appeal decided within 90 days of receipt of all the relevant information.
- Within 10 days of the decision on the appeal being reached, the appellant and any respondents will be notified, in writing, of the extent to which the decision appealed against is upheld or overturned, together with reasons for the appeal decision.

²⁴ Regulations 74(4) and 76(4) of GN No. R. 543 refer.

3.7 Validity of Appeals

An appeal may be considered invalid if:

- the Notice of Intention to Appeal is not lodged with the Provincial Minister within 20 days of the date of the decision that is to be appealed; or
- a copy of the Notice of Intention to Appeal was not provided to the I&APs/applicant as required; or
- the appeal submission is not submitted to the Department within 30 days of the lapsing of the 20-day period allocated for the submission of the Notice of Intention to Appeal; or
- the appeal submission was not made available to the I&APs/applicant as required.

Note: The Provincial Minister may, in writing, on good cause extend the period within which a Notice of Intention to Appeal, an appeal submission, Responding Statement or Answering Statements must be submitted.



NOTICE OF INTENTION TO APPEAL FORM (September 2011)

(A digital copy of this form may be obtained from the Department's website at <http://www.capegateway.gov.za/eadp>).

(Note: Please consult the Department's **Guideline on Appeals**, September 2011, which is available on the Department's website)

A. DECISION BEING APPEALED

1. Departmental Reference Number of the Decision being appealed:

2. Brief Description of the Decision: _____

3. Date of the decision being appeal (i.e. date on which the decision was made): _____

4. Please indicate how and when you were notified of the decision and attach a copy of the notice you received.

B. APPELLANT'S INFORMATION (PLEASE PRINT)

Name: _____

Address: _____

Tel. _____ Cell. _____

Fax. _____ Email. _____

I, as the Appellant, am: (Please tick the appropriate box below)

| | | |
|---------------|--|------------------------|
| the applicant | a registered interested and affected party | other (please specify) |
|---------------|--|------------------------|

C. SUBMISSION DATE AND ADDRESS

This notice must reach the Provincial Minister at the address listed below within 20 days after the date of the decision being appealed (i.e. within 20 days of the date of the decision and not within 20 days of being notified of the decision):

By post: Attention: Jaap de Villiers
Western Cape Minister of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186
Cape Town
8000

OR

By facsimile: (021) 483 4174 (Attention: Jaap de Villiers)

OR

By hand: Attention: Jaap de Villiers (Tel: 021-483 3721)
3rd floor Leeusig Building (entered via the Utilitas Building)
1 Dorp Street
Cape Town
8001

Note: Appeal notices not submitted to the above address will not be regarded as valid.

D. COPIES OF THE NOTICE OF INTENT TO APPEAL TO THE OTHER PARTIES

If the appellant is the applicant, the appellant must provide each registered I&AP, within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, with a copy of the Notice of Intent to Appeal as well as a notice indicating that a copy of the appeal submission will be made available for inspection for a 30-day period starting on the day of lodging the appeal submission with the Provincial Minister.

If the appellant is a person other than the applicant, the appellant must provide the applicant, within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, with a copy of the Notice of Intent to Appeal as well as a notice indicating that a copy of the appeal submission will be made available for inspection for a 30-day period starting on the day of lodging the appeal submission with the Provincial Minister

Note: In other words, the notice to the registered I&APs/applicant must reach the registered I&APs/applicant within 10 days of having submitted the Notice of Intent to Appeal with the Provincial Minister, while notice of the lodging of the appeal submission must happen either prior to the lodging of the appeal submission or on the same day, with access to the appeal submission to be provided from the day of lodging of the appeal submission with the Provincial Minister.

Proof of the fact that a copy of the Notice of Intent to Appeal was given to the registered I&APs/applicant (e.g. a list of the registered mail sent or a copy of the facsimile report or a copy of the electronic mail sent) must accompany the appeal submission when lodged with the Provincial Minister.

Proof of the fact that notice of the lodging of the appeal submission and access to the appeal submission was given to the registered I&APs/applicant must either be submitted with the appeal submission or must be submitted within 10 days of the lodging of the appeal submission with the Provincial Minister.

E. SIGNATURE OF THE APPELLANT

Appellant signature

Date



APPEAL FORM (September 2011)

(A digital copy of this form may be obtained from the Department's website at <http://www.capegateway.gov.za/eadp>).

(Note: Please consult the Department's **Guideline on Appeals**, May 2011, which is available on the Department's website)

A. DECISION BEING APPEALED

1. Departmental Reference Number of the Decision being appealed:

2. Type of Decision being appealed (please tick the appropriate box below):

| | | | | | | |
|--|--|---|---|------------------|--------------------------|------------------------------|
| Environmental Authorisation or refusal | Amendment of Environmental Authorisation | Amendment of Environmental Management Programme | Suspension of Environmental Authorisation | Exemption Notice | Waste Management Licence | Atmospheric Emission Licence |
|--|--|---|---|------------------|--------------------------|------------------------------|

3. Briefly Describe the Decision being appealed: _____

4. Date of the Decision being appealed (i.e. date on which the decision was made): _____

B. APPELLANT'S INFORMATION

5. Appellant's information (PLEASE PRINT):

Name: _____

Address: _____

Tel. _____ Cell. _____

Fax. _____ Email. _____

C. APPEAL NOTICE INFORMATION

- 6. On what date you were notified of the Department’s decision? _____
- 7. Did you lodge a Notice of Intention to Appeal within 20 days of the decision being appealed? **Yes** / **No** (If “Yes”, attach a copy herewith.)
- 8. On what date was your Notice of Intention to Appeal lodged? _____
- 9. Has a copy of the Notice of Intention to Appeal been served on the Applicant/all Registered I&AP’s? **Yes** / **No**
- 10. Please indicate the date on which a copy of the Notice of Intent to Appeal was served on the Applicant/all Registered I&APs. _____

Note: Proof of the fact that a copy of the Notice of Intent to Appeal was provided to the registered I&APs/applicant, must be attached to this appeal submission (e.g. a list of registered mail sent, or a copy of the facsimile report, or a copy of the electronic mail sent).

- 11. Did the Notice indicate where and for what period the appeal submission will be available for inspection? **Yes** / **No**
- 12. Please indicate where and for what period the appeal submission has been made available for inspection by the Applicant/all Registered Interested and Affected Parties.

Where is the appeal submission available for inspection? (NOT Ministry)

For what period will the appeal submission be available for inspection?

From: _____ To: _____

Note: Proof of the fact that notice of the lodging of the appeal submission and access to the appeal submission was given to the registered I&APs/applicant (e.g. a list of registered mail sent, or a copy of the facsimile report, or a copy of the electronic mail sent), together with copies of the relevant notices, must be submitted with this appeal submission or must be submitted within 10 days of the lodging of the appeal submission with the Provincial Minister.

D. GROUNDS FOR APPEAL

13. Provide a statement setting out the grounds of your appeal.

14. Is your appeal based on factors associated with the process that was followed by the applicant/Environmental Assessment Practitioner/the Department that culminated in the decision?

Yes / **No** (Circle the appropriate response). Please provide details.

15. Is your appeal based on factors associated with unacceptable environmental impacts/extenuating circumstances that were not taken into account by the competent authority?

Yes / **No** (Circle the appropriate response). Please provide details.

16. Have your appeal issues been raised previously in the public participation process?

Yes / **No** (Circle the appropriate response). Please provide details.

17. Are you fundamentally opposed to the decision or will you be in favour of the decision if your concerns will be addressed by rectifying the process or by mitigating or eliminating the impacts associated with the proposed activity?

Fundamentally opposed / **Will be in favour if issues addressed** / **Not applicable**

(Circle the appropriate response). Please provide details.

18. Please indicate what measures you propose to have your concerns remedied.

19. Does your appeal contain any new information that was not submitted to the Environmental Assessment Practitioner (EAP) / or registered I&AP's/ or the Department prior to its decision?

Yes / **No** (Circle the appropriate response). If the answer above is "Yes" please explain what this information is and why it should be considered by the Provincial Minister and why it was not made available to the EAP/ or I&AP/ or the Department prior to the decision. (Please ensure that the new information is attached hereto.)

20. Please clearly list your appeal issues.

21. Please provide an explanation of why you listed each issue in section 21 above.

22. Please provide details of how you will be or have been affected by each issue listed under 20 above.

E. SUBMISSION DATE AND ADDRESS

This appeal submission must reach the Provincial Minister at the address listed below within 30 days after the lapsing of the 20 days after the date of the decision being appealed (i.e. within 50 days after the date of the decision):

By post: Attention: Jaap de Villiers
Western Cape Minister of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186, Cape Town, 8000

OR

By facsimile: (021) 483 4174 (Attention: Jaap de Villiers)

OR

By hand: Attention: Jaap de Villiers (Tel: 021-483 3721)
3rd floor Leeusig Building (entered via the Utilitas Building)
1 Dorp Street, Cape Town, 8001

Note: Appeal notices not submitted to the above address will not be regarded as valid.

F. SIGNATURE OF THE APPELLANT

Appellant signature

Date