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GENERAL NOTICE

NOTICE 162 OF 2010

DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

NATIONAL GUIDELINES ON ENVIRONMENTAL IMPACT ASSESSMENTS

I, Buyelwa Patience Sonjica, Minister of Water and Environmental Affairs, hereby give notice of my intention to publish under section 24J of the National Environmental Management Act, 1998 (Act No. 107 of 1998), draft national guidelines on environmental impact assessments for facilities to be included in the electricity plan as well as for the strategically important developments of state owned enterprises in the schedule attached hereto.

Members of the public are invited to submit to the Minister, within 30 days of the publication of the notice in the Gazette, written representations or comments to the draft national guidelines on environmental impact assessments to the following addresses:

By post to: The Director-General: Environmental Affairs and Tourism
Attention: Ms. Lene Grobbe laar
Private Bag X447
Pretoria, 0001

Delivered to: The Department of Environmental Affairs and Tourism
Attention: Ms. Lene Grobbe laar
Fedsure Forum
South Tower (Room 401)
315 Pretorius Street
PRETORIA

By fax to: (012) 320-7539, and e-mail to LGrobbe laar@deat.gov.za

Comments received after the closing date may not be considered.

BUYELWA SONJICA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

SCHEDULE

Guideline on Environmental Impact Assessments for Facilities to be Included in the Electricity Response Plan

25 November 2008

CONTENTS

1.0 Introduction

The supply of electricity in the Republic of South Africa (RSA) has recently become constrained, primarily because of insufficient generation capacity but also due to constraints on the transmission and distribution of electricity. This threatens economic development in the country, and the Government has recognised the need to address the problem as a matter of urgency. On 25 January 2008, a formal National Electricity Response Plan was released by the Department of Minerals (DM), the Department of Public Enterprises (DPE) and Eskom.

The National Electricity Response Plan (NERP) requires the programme for constructing facilities relating to the generation, transmission and distribution of electricity to be accelerated in the short term, i.e. between mid-2008 and mid-2013. The NERP is intended to re-establish an acceptable level of electricity generation, transmission and distribution, coupled to an appropriate reserve margin.

As one element of this effort as a whole, the Department of Environmental Affairs (DEA), the DPE and Eskom have recognised the need for a specific process for addressing the Environmental Impact Assessment procedures relating to the facilities to be included in the NERP. Most of the facilities to be included in the NERP will require an Environmental Authorisation issued in response to a completed Environmental Impact Assessment (EIA) prior to their construction. The demands involved in this respect are laid down by the National Environmental Management Act and by supporting Regulations under Chapter 5 of that Act, both of these having recently been amended.

Most of the facilities in the NERP will be under the ownership or operation of Eskom, but Independent Power Producers and parties proposing co-generation facilities will be the EIA applicant for the remainder of the developments to be included in the NERP. It is intended that the EIA process addressed here and relevant to the NERP shall be of pertinence to all of the facilities involved in the NERP, and not only those owned or operated by Eskom.

This Guideline has been produced by the DEA to provide a framework for the procedures to be used in response to EIA applications for facilities to be included in the National Electricity Response Plan. The procedures as described here are restricted to the NERP-related facilities, through an Agreement between the DEA, the DPE, and Eskom.[1] They reflect to some degree the intended procedures for EIAs on Strategically Important Developments (SIDs) in South Africa[2], because most or all of the facilities to be included in the NERP will also be designated as SIDs. However, this Guideline has been produced as a stand-alone document because there are particular issues to be addressed in relation to the NERP-related facilities.

The subsequent sections of this document are as follows:

- Section 2.0 sets out the legislative basis for the publication of this Guideline by the DEA.

- The need for the National Electricity Response Plan and the types of facilities to be included in the NERP are addressed in Section 3.0.

- Section 4.0 discusses key issues of relevance to the EIA process for NERP-related facilities.

- Mechanisms to streamline the EIA procedures are addressed in Section 5.0

- The Authorisation process for EIAs of these facilities is laid out in Section 6.0.

Additional information on the EIA procedures as described in this Guideline is available from the Department of Environmental Affairs (Tel. 086 111 2468; Fax 012 322 2476; E-mail callcentre@deat.gov.za; web site www.deat.gov.za).

[1] Memorandum of Agreement between Department of Environmental Affairs; Department of Public Enterprises; and Eskom Holdings Limited on Environmental Impact Assessments for Facilities Included in the Electricity Response Plan. [date].

[2] See *Guideline on Environmental Impact Assessments for Strategically Important Developments of the State Owned Enterprises under the Department of Public Enterprises.* Department of Environmental Affairs. [date].

2.0 The Legal Basis for this Guideline

This section sets out the legal basis for the present Guideline.

The basis in legislation for this Guideline is provided by Regulation 731). (*"Regulations in Terms of Chapter 5 of the National Environmental Management Act, 1998"*).

Regulation 73(1) is entitled *"National Guidelines"* and reads as follows:

> *73 (1) The Minister may by notice in the Government Gazette issue national guidelines, as contemplated in Section 24J of the Act, on the implementation of these Regulations with regard to –*
>
> *(a) any particular environmentally sensitive area or kind of environmentally sensitive areas, or environmentally sensitive areas in general;*
> *(b) any particular environmental impact or kind of environmental impact, or environmental impacts in general;*
> *(c) any particular activity or kind of activities, or activities in general;*
> *(d) the process and criteria for the development of new or adoption of existing norms and standards; and*
> *(e) any particular process contemplated in these Regulations.*

Regulation 73(1)(c) provides a clear mandate for the Minister of the DEA to issue national guidelines for the implementation of the EIA Regulations as they relate to facilities to be included in the Electricity Response Plan, these being particular kind of activities addressed by the EIA procedures. As noted in Regulation 758, Guidelines issued in terms of Regulation 76 are not binding but must be taken into account when preparing, submitting, processing or considering any EIA application.

3.0 The National Electricity Response Plan

This section provides a brief initial discussion of the need for the National Electricity Response Plan in South Africa. Thereafter, details are provided on the types of facilities which have been identified as part of the NERP.

3.1 The Need for the NERP

Historically, South Africa has enjoyed an excess of electricity capacity that has driven a national strategy to make electricity accessible to its citizens in an affordable manner, and to stimulate growth by accommodating an array of users, including energy-intensive industries. As a result, South Africa ranks as one of the highest energy-intensive users in the world.

However, the country has experienced visible erosion in its security of supply over the last ten years, created by above-average demand growth whilst there was no capital investment in generating capacity since the 1980s. Eskom was only given the go-ahead to start building new plant in October 2004. Taking into account the long lead times to build new power stations, there was not sufficient time to ensure adequate generation capacity in the short-term. As a result, Eskom's reserve margin has decreased to about 8%, well below the internationally accepted norm of 15%. Various other problems which occurred in late 2007 created the need for load shedding.

After an extended period of emergency load shedding in late 2007 and early 2008, and in view of the nature of the supply constraints, a National Electricity Emergency was declared, and the National Electricity Response Plan was prepared. On the demand side, Eskom's key industrial customers were requested to implement a 10% load reduction, and certain other initiatives were also introduced. On the short-term supply side, a number of initiatives have been implemented, such as the construction of two open-cycle gas turbine power stations, and the re-commissioning of three mothballed coal-fired power stations. The additional supply side options include:

- the entry to the market of Independent Power Producers (IPPs);

- non-Eskom electricity generation, including additional municipal generation; and
- co-generation by industrial entities.

Eskom has indicated that a five-year programme of works is necessary to re-establish reliable electricity services nationally. The NERP therefore extends from mid-2008 to mid-2013, and that is the period of relevance to the EIA procedures addressed by the present Guideline.

3.2 The Types of Facilities to be Included in the NERP

As noted above, the NERP includes electricity generating facilities; high-voltage transmission power lines and related infrastructure (sub-stations); and particular elements of the electricity distribution network. The majority of the specific developments to be included in the NERP will be under the ownership of Eskom, who will remain responsible in the future for the bulk of the power generation, transmission and distribution in South Africa.

The Government has decided that Independent Power Producers (IPPs) will also enter the market in the future, and some of the facilities to be operated by IPPs will be included in the NERP. The latter may represent stand-alone electricity generating plants, and will also include co-generation facilities, where electricity is produced as one element of an industrial operation which is not focused upon electricity generation, but the latter is nevertheless achievable.

Within its Pilot National Co-generation Programme (PNCP), Eskom has classified co-generation projects into three categories, as follows:

- 'waste energy': projects where energy is produced by an existing process but is not presently utilized;

- 'secondary process energy': generation projects based on primary fuels which produce energy that can be utilized in addition to electricity (e.g. Combined Heat and Power); and

- 'renewable energy': projects based on renewable fuels which are a co-product or a by-product of an existing industrial process (e.g. bagasse in sugar mills).

Not all of the developments to be included in the entire five-year period of the NERP are known specifically, at this time. The process of defining the projects for inclusion in the NERP will continue through the coming period, and the overall portfolio of projects within the NERP will expand accordingly.

4.0 Key Issues of Relevance

This section addresses key issues of relevance to the EIA process for the NERP-related activities.

4.1 The Competent Authority

The legislation presently in force in South Africa states that the Competent Authority for EIAs is the DEA or its Provincial environmental counterparts, or the Department for Minerals, depending on the circumstances (see Section 24Cof the National Environmental Management Act 1998 (Act No. 107 of 1998) [NEMA], as amended). The DEA is the Competent Authority for EIA applications from Eskom, as the legislation states that EIAs pertaining to State Owned Enterprises should be dealt with by the DEA. All of the Provincial environmental authorities have agreed that the DEA shall also be the Competent Authority for EIA applications from IPPs or those involving co-generation, where these are included in the NERP.

4.2 Guidelines Available Concerning the EIA Procedures

This Guideline is focused upon the EIA process as it relates specifically to facilities to be included in the NERP. It is notable that several other Guidelines have also been generated by the DEA, or are being drafted currently:

- A Guideline on EIAs for Strategically Important Developments (SIDs) of the State Owned Enterprises under the DPE. This is closely related to the present Guideline, especially as most or all facilities to be included in the NERP are (or will be) classified as SIDs.

- Sector Guidelines on EIAs for specific forms of developments. These include electricity generation and other major infrastructure development projects; linear developments; and port-related developments. The Sector Guidelines provide more detailed information on the types of issues to be addressed by EIAs relating to these various forms of developments.

It is notable here that linear developments for the transmission and distribution of electricity pose specific problems in the EIA procedures, due mainly to the securing of rights over land for the power line corridors. The great majority of the developments of this type to be included in the NERP will be under the ownership of Eskom. It has been agreed that the use of corridors for such developments should be planned through an interface between Eskom and the national and provincial planning authorities. This process should take account of Environmental Management Frameworks in either draft or adopted form, as described in Regulations 69 to 72 of the EIA Regulations, as amended. The EIA applications for such transmission and distribution systems should then reflect the corridor reserves and Environmental Management Frameworks, as may be agreed. Further detail on this matter will be provided in the Sector Guideline on EIAs for linear developments.

It is intended that all of these Guidelines should complement one another, and should be considered by applicants and Environmental Assessment Practitioners (EAPs) in concert, such that the EIA process may be as streamlined and effective as possible. However, the present Guideline is intended to be sufficiently comprehensive that it provides the information required by applicants to address the EIA procedures as a whole, for facilities to be included in the ERP.

4.3 Thresholds for Basic Assessment/EIA

The recently amended EIA legislation provides in the Schedule concerning the list of activities (prescribed under Section 24[2][a] of the NEMA) for a threshold of 20MW electrical output or more, to determine whether a Basic Assessment will be required in relation to power generation, or Scoping and a full EIA will be needed. This threshold is carried through without change into the present Guideline. This is important, as many of the co-generation facilities will not surpass the 20MW threshold, and will therefore be subject to the Basic Assessment procedures only.

The current EIA legislation also cites a threshold of 220 kilovolts relating to facilities or infrastructure for the transmission and distribution of electricity, outside urban, mining

or industrial areas. All such facilities or infrastructure involving 220 kilovolts or more will require a full EIA.

Certain other thresholds included in the EIA legislation may also be of relevance to the matters addressed by this Guideline. Thus, for example, the Schedule as noted above extends the demand for EIAs to *"facilities or infrastructure for nuclear reaction including energy generation, the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and nuclear and radioactive waste"*. Facilities which require various forms of environmentally-related licences are also cited in the Schedule, and these may be of relevance to the need for an EIA. The DEA will take account of all such thresholds, in their decisions on the requirements for Basic Assessment or Scoping and EIA, for all future developments.

4.4 Preferred Timelines for Specific Steps in the EIA Process

The Guideline on Environmental Impact Assessments for Strategically Important Developments of the State Owned Enterprises under the Department of Public Enterprises has laid down preferred timelines for the various procedural steps in EIAs pertaining to SIDs of the State Owned Enterprises under the DPE. It has been agreed that the preferred timelines for the steps in the EIA process for NERP-related facilities will be the same as those for EIAs on SIDs. This reflects the fact that the timelines cannot be condensed further, without infringing the demands of the parent legislation (the NEMA and the EIA regulations, as amended; also the Promotion of Administrative Justice Act), or otherwise becoming unattainable due to the need for parties to address all key elements of environmental protection requirements in a robust fashion. The timelines involved are presented and discussed in Section 6.0 of this Guideline.

4.5 The Relevance of this Guideline to Forthcoming Developments

As noted previously in this Guideline, the NERP has been developed to solve the electricity shortfall within a 5-year period, i.e. between mid-2008 and mid-2013. Once the EIA process as laid out in this Guideline is in place, it will apply to any facilities included in the NERP, encompassing all those developments which are the subject of a new or ongoing application for Environmental Authorisation, during that five-year time period. Thereafter, the provisions of the *Guideline on Environmental Impact Assessments for Strategically Important Developments of the State Owned Enterprises under the Department of Public Enterprises* will continue to be relevant for SIDs under the SOEs of the DPE, and this includes Eskom. If IPPs entering the market after 2013 consider that their facilities should be designated as Strategically Important Developments, they will need to make the case for such a classification.

5.0 Mechanisms to Streamline the EIA Procedures

Matters pertaining to the streamlining of the EIA procedures are discussed here in the general order of the overall chronology of the EIA process.

5.1 The Pre-application Stage

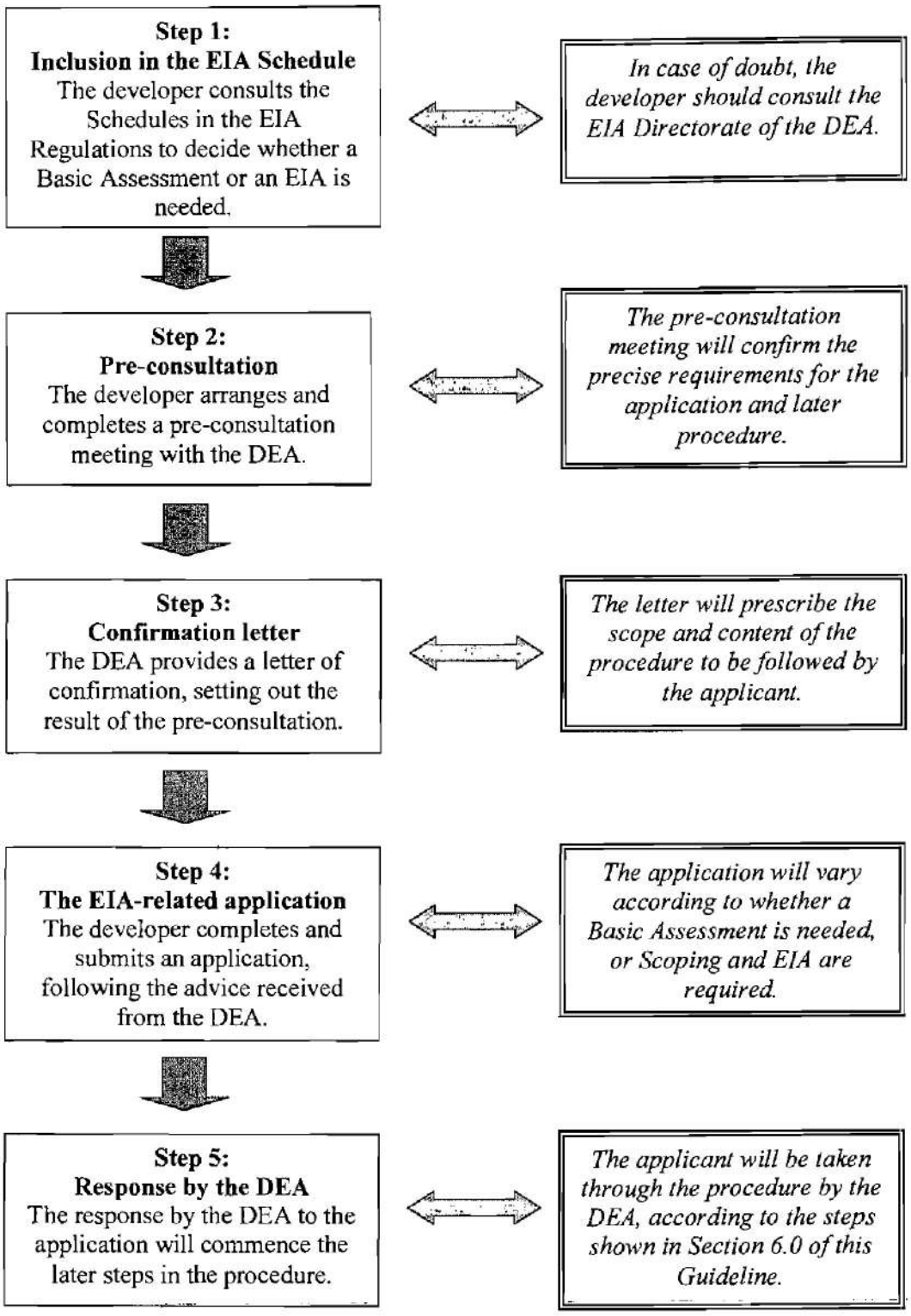
An entity intending to make an application under the EIA procedures will need initially to determine whether the development involved is covered by the procedures as discussed in this Guideline, or otherwise. The key to this decision involves the thresholds included in the EIA Regulations, as amended (see Annex 1 to this Guideline). The initial process to be completed is as shown in Figure 1.

The Schedules to the EIA Regulations is relatively simple to interpret, and this is the key to whether an activity: [a] lies outside the EIA legislation, and therefore does not need approval on environmental grounds; or [b] needs to be addressed by a Basic Assessment under Regulations 22 to 26; or [c] requires the completion of Scoping and an EIA, as covered by Regulations 27 to 36. As noted in Section 4.3 above, at Step 1 in Figure 1, developers should be aware that their proposed activity may trigger the need for either Basic Assessment or Scoping and EIA for one of several reasons, and the entire Schedule (Annex 1 to this Guideline) should be checked to ascertain the appropriate category. Where a developer is uncertain of the legal requirements, the EIA Directorate at the DEA should be consulted.

The pre-consultation meeting (Step 2 in Figure 1) will be a most useful step for the developer, as the DEA will provide detailed advice on the legal requirements, and on the overall procedure to follow. The developer should be prepared to respond to a range of questions from the DEA during this meeting, and may wish to request the attendance of his/her relevant Environmental Assessment Practitioner (EAP), such that all parties commence with the same understanding of the impending process.

In addition to assisting the DEA in planning its resource needs, the pre-consultation process will allow for two particular types of issues to be addressed:

Figure 1. A flow chart of activities in the early stage of the EIA process.



- the possibility of class or cluster applications relating to specific types of developments (see Regulation 15 of the EIA Regulations); and

- the particular requirements of the DEA (in terms of Basic Assessment; or Scoping and EIA; potential exemptions) pertaining to upcoming applications.

As noted in Regulation 15 of the recently amended EIA Regulations, class and cluster applications for EIAs may be contemplated in situations where similar types of developments are planned, or where developments with generally similar environmental impacts are grouped in specific geographical areas. The intention of this approach is to further streamline the EIA process. Given the range of potential types of such applications, it is not possible to provide detailed advice on this matter in the present Guideline, and the DEA will make decisions on class and cluster applications on a case-by-case basis. This *ad hoc* approach will be improved in the future once norms and standards become better developed (see Section 5.3 below).

The DEA will confirm its requirements in writing with respect to the application, following the pre-consultation meeting (Step 3 in Figure 1).

Assuming that the EIA legislation is of pertinence to the proposed activity, the developer and the relevant EAP should then prepare and submit the EIA application (Step 4 in Figure 1), following the advice provided by the DEA subsequent to the pre-consultation meeting. The application will differ according to whether a Basic Assessment is required, or Scoping and EIA are to be undertaken.

Once the application has been submitted, the process as a whole will follow the steps discussed in Section 6.0 below.

5.2 Exemptions from EIA Procedural Steps

Section 24M of the recently amended version of the NEMA addresses exemptions, and requires that these may only be granted in particular circumstances, i.e. if:

"(a) the granting of the exemption is unlikely to result in significant detrimental consequences for or impacts on the environment;

(b) the provision cannot be implemented in practice in the case of the application in question; or

(c) the exemption is unlikely to adversely affect the rights of interested or affected parties."

This implies that exemptions are unlikely to be granted for EIAs on at least the larger developments to be included in the NERP. The primary focus of the present Guideline is therefore on the streamlining of the EIA process as required by the current legislation, rather than any attempt to introduce exemptions into the EIA procedures. It is noted, however, that the construction of co-generation facilities at existing operational developments which have already received an Environmental Authorisation may attract exemptions from specific provisions of the EIA legislation, as the requirements as cited above could be met under some such circumstances.

5.3 The Development of Norms and Standards

The recently amended legislation concerning EIAs makes reference to the development of norms and standards which may guide EIA applications and Environmental Authorisations in the future [see in particular, Section 24(10) of the recently amended version of the NEMA].

The production of appropriate norms and standards for specific forms of developments is ongoing, in a parallel process to that covered by the present Guideline. It is anticipated that this will eventually provide the opportunity to further streamline the EIA procedures in relation to particular forms of developments. This Guideline does not therefore address the issue of norms and standards in any detail.

5.4 Integrated Environmental Authorisation

For NERP-related facilities, the various licences and permits lying within the policy remit of the DEA will be addressed alongside the EIA process, providing a streamlined approach to the DEA-related authorisation procedures as a whole. This includes Waste

Permits under the National Environmental Management: Waste Act, 2008); and Air Emission Licences under the National Environmental Management: Air Quality Act, 2004. In certain circumstances, this will require close coordination between the DEA, the Provincial environmental entities and the local authorities, especially as the last of these parties represent key players in such issues as licences for emissions to the atmosphere. The coordination in this regard will be generated and facilitated by the DEA, in order to ensure that the requirements placed upon the applicants for Environmental Authorisations for NERP-related facilities are not extreme and that the provisions of more general legislation [such as the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)] are respected.

Where licences/permits are required under legislation administered by Government Departments other than the DEA, Section 24L of the recent amendments to the National Environmental Management Act lays down the circumstances in which an Integrated Environmental Authorisation will be possible.

6.0 The Authorisation Process for the NERP-related Facilities

This section discusses the overall procedures for use in relation to Environmental Impact Assessments for the NERP-related facilities, and also provides comments on the amendment, withdrawal or suspension of an Environmental Authorisation pertaining to such facilities.

6.1 The Pre-consultation Step

As noted in Section 5.1 above, a pre-consultation step has been added for the NERP-related facilities, by comparison to the EIA procedure as envisaged for Strategically Important Developments. This will allow the DEA, the applicant and the EAP to generate an early consensus on the preferred overall form of an upcoming EIA application pertaining to an NERP-related facility. The possibility of class or cluster applications will be addressed at this stage, with decisions also being made on the need for either Basic Assessment or Scoping and EIA, and on potential exemptions.

It will be especially important for the applicant to provide all the required information to the DEA at the pre-consultation stage in an efficient manner, such that the decisions made at this time are robust and may be respected throughout the following process as a whole. Eskom representatives will assist Independent Power Producers seeking to introduce co-generation facilities. It is also possible that Eskom may wish to commence an EIA application on behalf of an IPP, and to hand over the responsibility for completing the procedures to the IPP, at some later point. This possibility will be addressed during the pre-consultation discussions, with an agreed methodology being determined.

6.2 The EIA Application Process and the Overall Procedure

As stated in Section 4.4 above, it has been agreed that the future EIA procedure for applications for the NERP-related facilities will follow the same preferred timelines as those to be utilized for EIAs on Strategically Important Developments. The latter are laid out in the Guideline on Environmental Impact Assessments for Strategically

Important Developments of the State Owned Enterprises under the Department of Public Enterprises, and the details are repeated here.

The future EIA procedure for applications for the NERP-related facilities will ensure compliance with the recently amended EIA legislation, but the DEA will endeavour to address certain of the various stages in the process in shorter time periods, compared to the maximum times shown in the EIA Regulations. The purpose of this is to ensure that the EIA procedures do not delay the commencement of the construction of critically needed developments for the generation, transmission or distribution of electricity.

It is known that certain of the facilities to be included in the NERP will not surpass the thresholds in the existing legislation, and will therefore require only a Basic Assessment. The Basic Assessment process is already reasonably rapid, and has not proven to be problematic in the past, in terms of delaying developments. It has therefore been agreed that the Basic Assessment procedure for NERP-related facilities will not vary from the process as laid down by the existing legislation. For the sake of completeness, the timelines as included in the present legislation are shown in Figure 2. It is notable that the time periods as shown in Figure 2 (and as cited elsewhere in this Guideline) are defined by the most recent version of the EIA Regulations, and refer to elapsed days, excepting public holidays and the period between 15 December and 02 January.

By contrast to the Basic Assessment process, it has been agreed that certain of the steps in the Scoping and EIA procedure should be subject to shorter 'preferred timelines' where NERP-related facilities are concerned, this reflecting the urgent requirement for the construction of additional facilities of this type. Figure 3 shows the Scoping and EIA process as laid down by the existing legislation, while Figure 4 presents the agreed procedure for future applications relating to the NERP-related facilities. The following points are noted, with respect to the preferred timelines as shown in Figure 4:

Figure 2. Timelines for the steps in the Basic Assessment process. BAR: Basic Assessment Report. EMP: Environmental Management Plan.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
	0. Compile/submit notification	→	1. Notification received	
		←		
60	2. Compile/submit application, BAR, EMP	→	3. DEA requests comments from State Departments	5
		←		
}	4a. State Departments comment [40 days]			
60}	4b. Public participation [60 days]	→	5. DEA sends comments to Applicant/EAP	5
		←		
60	6. Compile/submit Final BAR and EMP	→	7. DEA accepts or rejects Final BAR and EMP	44
180 days				**54 days**

Figure 3. Normal timelines for the steps in the Scoping and EIA process. SR: Scoping Report. POS: Plan of Study. EIR: Environmental Impact Report. EMP: Environmental Management Plan.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
	0. Compile/submit EIA application	→	1. DEA reviews application; accepts or rejects	14
		←		
90	2. Compile/submit Draft SR and POS	→	3. DEA requests comments from State Departments	5
		←		
}	4a. State Departments comment [40 days]			
60}	4b. Public participation [60 days]	→	5. DEA sends comments to Applicant/EAP	5
		←		
30	6. Compile/submit Final SR and POS	→	7. DEA accepts or rejects Final SR and POS	30
		←		
180	8. Compile/submit Draft EIR and EMP	→	9. DEA requests comments from State Departments	5
		←		
}	10a. State Departments comment [40 days]			
60}	10b. Public participation [60 days]	→	11. DEA sends comments to Applicant/EAP	5
		←		
90	12. Compile/submit Final EIR and EMP	→	13a. DEA considers completeness of reports	30
			13b. DEA issues decision	105
510 days				**199 days**

Figure 4. Timelines for the steps in the Scoping and EIA process for NERP-related facilities. SR: Scoping Report. POS: Plan of Study. EIR: Environmental Impact Report. EMP: Environmental Management Plan.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
	0. Compile/submit EIA application	→	1. DEA reviews application; accepts or rejects	10
		←		
}	2a. Compile/submit Draft SR, POS [45 days]			
45}	2b. Start public participation [30 days]	→	3. DEA requests comments from State Departments	3
		←		
}	4a. State Departments comment [40 days]			
40}	4b. Public participation [30 days]	→	5. DEA sends comments to Applicant/EAP	3
		←		
30	6. Compile/submit Final SR and POS	→	7. DEA accepts or rejects Final SR and POS	21
		←		
}	8a. Compile/submit Draft EIR, EMP [150 days]			
150}	8b. Start public participation [20 days]	→	9. DEA requests comments from State Departments	3
		←		
40	10a. State Departments comment [40 days]			
	10b. Public participation [40 days]	→	11. DEA sends comments to Applicant/EAP	3
		←		
45	12. Compile/submit Final EIR and EMP	→	13a. DEA considers completeness of reports	15
			13b. DEA issues decision	75
350 days				**133 days**

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- The preferred timelines as shown in Figure 4 are objectives for the DEA, and do not replace the maximum times made available for the various steps as laid out in the recently amended EIA-related legislation. The DEA will attempt to meet the preferred timelines shown in Figure 4, but cannot guarantee that this will occur for all of the EIAs pertaining to the NERP-related facilities.

- The heart of the EIA process is bilateral, and requires not only timely responses from the DEA, but also the efficient production and submission of high-quality documentation by the applicants/their EAPs. To streamline the procedure as a whole, it has been agreed that the steps under the control of the applicant and the EAPs should also be subject to preferred timelines. Figure 4 therefore shows (non-statutory) preferred timelines for steps where the applicant has control over the pace of the procedures, and it is clear that the attainment of these will also be important in determining the overall time taken to generate an Environmental Authorisation for a NERP-related facility. As noted previously, Eskom has indicated a willingness to assist IPPs and co-generators in the application process, and this will extend to advice on the effort needed to generate and submit the high-quality documentation required by the DEA.

- Importantly, a third party is also involved in the EIA process – the public (known as 'Interested & Affected Parties'). The EIA legislation (Regulations 56 to 59) requires public participation at both the Scoping phase and the later EIA stage. The importance of this aspect of the process is acknowledged, and this Guideline does not therefore alter the timeframes as established by the legislation for public consultation.

- To assist in streamlining the procedures as a whole, it is intended that comments from State Departments (other than the DEA) will be sought during the process of public participation and review, with both the DEA and EAPs being involved. This implies that the DEA and the EAPs must coordinate their activities closely during these periods, to optimize the efficiency of the process as a whole.

It is considered that the process as shown in Figure 4 will streamline the EIA process for the NERP-related facilities, as far as this is possible. The preferred timelines as shown are believed to be appropriate for the majority of the development projects to be included in the NERP, but their attainment cannot be guaranteed by either the DEA or the applicant/their EAP. The submission by the EAP of high-quality documentation will be especially important, to ensure that iterative steps do not eventuate.

6.3 Appeals against an Environmental Authorisation

A further potential source of delays exists following the issue of an Environmental Authorisation for an activity, this relating to the appeal process. Two possibilities exist here, these involving an appeal by the applicant against one or more of the conditions in an Environmental Authorisation, and appeals by Interested & Affected Parties against some facet of such an Authorisation. The first of these types of appeals lies in the hands of the applicant, and is not addressed by the present Guideline, except to note that the DEA will address such appeals as rapidly as may be possible. However, appeals by Interested & Affected Parties against Environmental Authorisations have been a source of major delays in the past, often for developments of strategic importance to the country. Whilst it is acknowledged that the Interested & Affected Parties must retain the right to appeal against such Authorisations (and this Guideline does not add constraints in relation to this), it is most important that any appeals are settled rapidly and efficiently.

Figure 5 shows the existing appeals procedure as laid down by the current legislation, while Figure 6 shows preferred timelines for any appeals pertaining to the NERP-related facilities. The following points are noted:

- The time available for steps involving the Interested & Affected Party acting as an appellant has not been altered in any fashion, and remains as shown in the existing legislation.

Figure 5. Normal timelines for the steps in the EIA appeals process. I&APs: Interested and Affected Parties.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
		←	0. DEA issues decision to applicant	
10	1. Applicant notifies I&APs			
20	2. Intent to appeal is submitted	→	3. Receipt acknowledged/applicant informed	10
		←		
30	4. Appeal is compiled/submitted	→	5. Receipt acknowledged; applicant/I&APs informed	10
		←		
30	6. Responding statement submitted	→	7. Receipt acknowledged	5
		←		
10	8. Access provided to relevant parties	↘		
	↓		9. DEA/Appeal Panel review statements	90
	New information		↓ ↓	
	↓			
30	9. Answering statement submitted	→	10a. New information 10b. No new information	15
		↘ ←		
30	11. Appellant/applicants respond	↘	←	
			12. Minister issues decision	90
160 days				**220 days**

Figure 6. Timelines for the steps in the EIA appeals process for NERP-related facilities. I&APs: Interested and Affected Parties.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
		←	0. DEA issues decision to applicant	
10	1. Applicant notifies I&APs			
20	2. Intent to appeal is submitted	→	3. Receipt acknowledged/applicant informed	7
		←		
30	4. Appeal is compiled/submitted	→	5. Receipt acknowledged; applicant/I&APs informed	7
		←		
30	6. Responding statement submitted	→	7. Receipt acknowledged	
		←		
10	8. Access provided to relevant parties	↘		
	↓ New information		9. DEA/Appeal Panel review statements	45
			↓ ↓	
30	9. Answering statement submitted	→	10a. New information 10b. No new information	5
		↘ ←		
30	11. Appellant/applicants respond	↘		
			12. Minister issues decision	45
160 days				**109 days**

- Streamlining of the procedure pertaining to the NERP-related facilities (Figure 6) has essentially been made possible by the shortening of the periods available for the deliberations of an Appeals Panel (if such is used), and for the Minister of the DEA to reach a decision on appeals from Interested and Affected Parties. This will require particular focus on the part of both these entities, along with efficient assistance from the DEA in relation to the provision of relevant documents and background information.

- The Minister of the DEA is empowered to decide whether an Environmental Authorisation should be suspended or not, in the event of an appeal by an Interested & Affected Party. This will be decided on a case-by-case basis, according to the circumstances.

6.4 Amending, Withdrawing or Suspending Environmental Authorisations for NERP-related Facilities

The procedures to be followed in amending, withdrawing or suspending Environmental Authorisations are covered by Chapter 4 of the EIA Regulations of April 2006, encompassing Regulations 39-55. These allow either the holder of an Authorisation or the Competent Authority to trigger an amendment of an Authorisation, and the Competent Authority may also withdraw or suspend an Authorisation under specific circumstances.

In relation to the preferred timelines and the statutory maximum times for procedures relating to amendments of Environmental Authorisations:

- Regulation 42(2) of the EIA Regulations mandates that the Competent Authority must decide 'promptly' on an application received from the applicant, when the change is non-substantive or when no adverse impact on the environment is anticipated, due to the change. The DEA will decide on such issues within 15 days, in the case of applications pertaining to the NERP-related facilities.

- Where a new round of public participation and/or a new EIA is required to address an amendment requested by the holder of an Authorisation (see Regulation 42[3]), any

required public consultation will be completed within 60 days of the receipt of an application, and the timelines as established in previous sections of this Guideline for other EIA procedures will be relevant.

- Where the DEA initiate an amendment to an Environmental Authorisation pertaining to a NERP-related facility, any public participation process will be completed within 60 days of the publication of such a decision, and other aspects of the procedure as a whole will again comply with the timelines as established in previous sections of this Guideline.

The provisions of the EIA Regulations in connection with the withdrawal or suspension of Environmental Authorisations (see Regulations 47-50) are unchanged for the NERP-related facilities addressed by this Guideline.

ANNEX 1

ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2)(a) AND (d) OF THE ACT, WHICH MAY NOT COMMENCE WITHOUT ENVIRONMENTAL AUTHORISATION FROM THE COMPETENT AUTHORITY AND IN RESPECT OF WHICH THE INVESTIGATION, ASSESSMENT AND COMMUNICATION OF POTENTIAL IMPACT OF ACTIVITIES MUST FOLLOW THE PROCEDURE AS DESCRIBED IN REGULATIONS 27 TO 36 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2006, PROMULGATED IN TERMS OF SECTION 24(5) OF THE ACT -

Activity number	**Activity description**	**Identification of competent authority**
1	The construction of facilities or infrastructure, including associated structures or infrastructure, for - (a) the generation of electricity where – (i) the electricity output is 20 megawatts or more; or (ii) the elements of the facility cover a combined area in excess of 1 hectare; (b) nuclear reaction including the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste; (c) the above ground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of 1 000 cubic metres or more at any one	The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with

	location or site including the storage of one or more dangerous goods, in a tank farm; (d) the refining of gas, oil and petroleum products; (e) any process or activity which requires a permit or license in terms of legislation governing the generation or release of emissions, pollution, effluent or waste and which is not identified in Government Notice No. R. 386 of 2006**[, unless the facility for the process or activity is included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act. No 59 of 2008), in which case the activity is regarded to be excluded from this list]**; ~~(f) the recycling, re-use, handling, temporary storage or treatment of general waste with a throughput capacity of 50 tons or more daily average measured over a period of 30 days;~~ ~~(g) the use, recycling, handling, treatment, storage or final disposal of hazardous waste;~~ (h) the manufacturing, storage or testing of explosives, including ammunition, but excluding licensed retail outlets and the legal end use of such explosives; (i) the extraction or processing of natural gas including gas from landfill sites; (j) the bulk transportation of dangerous goods using pipelines, funiculars or conveyors with a throughput capacity of 50 tons or 50 cubic metres or more per day;	delegated powers in terms of section 42(1) of the Act, as amended.

	(k) the landing, parking and maintenance of aircraft, excluding unpaved landing strips shorter than 1,4 kilometres in length, but including - (i) airports; (ii) runways; (iii)waterways; or (iv)structures for engine testing; (l) the transmission and distribution of above ground electricity with a capacity of 120 kilovolts or more; (m)marine telecommunications; (n) the transfer of 20 000 cubic metres or more water between water catchments or impoundments per day; ~~(o) the final disposal of general waste covering an area of 100 square metres or more or 200 cubic metres or more of airspace;~~ ~~(p) the treatment of effluent, wastewater or sewage with an annual throughput capacity of 15 000 cubic metres or more;~~ ~~(q) the incineration, burning, evaporation, thermal treatment, roasting or heat sterilisation of waste or effluent, including the cremation of human or animal tissue;~~ ~~(r) the microbial deactivation, chemical sterilisation or non-thermal treatment of waste or effluent;~~ (s) rail transportation, excluding railway lines and sidings in industrial areas and underground railway lines in mines, but including - (i) railway lines;	

	(ii) stations; or (iii) shunting yards; (t) any purpose where lawns, playing fields or sports tracks covering an area of 10 hectares or more, will be established.	
2	Any development activity, including associated structures and infrastructure, where the total area of the developed area is, or is intended to be, 20 hectares or more.	
3	The construction of filling stations, including associated structures and infrastructure, or any other facility for the underground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin.	
4	The extraction of peat.	
5	The route determination of roads and design of associated physical infrastructure, including roads that have not yet been built for which routes have been determined before the publication of this notice and which has not been authorised by a competent authority in terms of the Environmental Impact Assessment Regulations, 2006 made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, where – (a) it is a national road as defined in section 40 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998); (b) it is a road administered by a provincial authority; (c) the road reserve is wider than 30 metres; or (d) the road will cater for more than one lane of traffic in both directions.	

6	The construction of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.	
7	Reconnaissance, exploration, production and mining as provided for in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended in respect of such permits and rights.	The competent authority for this part of the schedule is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.
8	In relation to permits and rights granted in terms of 7 above, or any other right granted in terms of previous mineral legislation, the undertaking of any reconnaissance exploration, production or mining related activity or operation within a exploration, production or mining area, as defined in terms of section of 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).	

9	Construction or earth moving activities in the sea or within 100 metres inland of the high-water mark of the sea, excluding an activity listed in item 2 of Government Notice No. R. 386 of 2006 but including construction or earth moving activities in respect of – (a) facilities associated with the arrival and departure of vessels and the handling of cargo; (b) piers; (c) inter- and sub-tidal structures for entrapment of sand; (d) breakwater structures; (e) rock revetments and other stabilising structures; (f) coastal marinas; (g) coastal harbours; (h) structures for draining parts of the sea; (i) tunnels; or (j) underwater channels.	The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.
10	Any process or activity identified in terms of section 53(1) of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).	

ACTIVITIES IDENTIFIED IN TERMS OF SECTION 24(2)(a) AND (d) OF THE ACT, WHICH MAY NOT COMMENCE WITHOUT ENVIRONMENTAL AUTHORISATION FROM THE COMPETENT AUTHORITY AND IN RESPECT OF WHICH THE INVESTIGATION, ASSESSMENT AND COMMUNICATION OF POTENTIAL IMPACT OF ACTIVITIES MUST FOLLOW THE PROCEDURE AS DESCRIBED IN REGULATIONS 22 TO 26 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2006, PROMULGATED IN TERMS OF SECTION 24(5) OF THE ACT -

Activity number	**Activity description**	**Identification of competent authority**
1	The construction of facilities or infrastructure, including associated structures or infrastructure, for – (a) the generation of electricity where the electricity output is more than 10 megawatts but less than 20 megawatts; (b) the above ground storage of 1 000 tons or more but less than 100 000 tons of ore; (c) the storage of 250 tons or more but less than 100 000 tons of coal; (d) resorts, lodges, hotels or other tourism and hospitality facilities in a protected area contemplated in the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);	The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the Minister or an organ of state with delegated powers in

	(e) any purpose where lawns, playing fields or sports tracks covering an area of more than three hectares, but less than 10 hectares, will be established; (f) sport spectator facilities with the capacity to hold 8 000 spectators or more; (g) the slaughter of animals with a product throughput of 10 000 kilograms or more per year; (h) the concentration of animals for the purpose of commercial production in densities that exceed - (i) 20 square metres per head of cattle and more than 500 head of cattle per facility per year; (ii) eight square meters per sheep and more than 1 000 sheep per facility per year; (iii) eight square metres per pig and more than 250 pigs per facility per year excluding piglets that are not yet weaned; (iv) 30 square metres per crocodile at any level of production, excluding crocodiles younger than 6 months; (v) three square metres per head of poultry and more than 250 poultry per facility at any time, excluding chicks younger than 20 days; (vi) three square metre per rabbit at and more than 250 rabbits per facility at any time; or (vii) 100 square metres per ostrich and	terms of section 42(1) of the Act, as amended.

	more than 50 ostriches per facility per year or 2500 square metres per breeding pair; (i) aquaculture production, including mariculture and algae farms, with a product throughput of 10 000 kilograms or more per year; (j) agri-industrial purposes, outside areas with an existing land use zoning for industrial purposes, that cover an area of 1 000 square metres or more; (k) the bulk transportation of sewage and water, including storm water, in pipelines with - (i) an internal diameter of 0,36 metres or more; or (ii) a peak throughput of 120 litres per second or more; (l) the transmission and distribution of electricity above ground with a capacity of more than 33 kilovolts and less than 120 kilovolts; (m) any purpose in the one in ten year flood line of a river or stream, or within 32 metres from the bank of a river or stream where the flood line is unknown, excluding purposes associated with existing residential use, but including - (i) canals; (ii) channels; (iii) bridges; (iv) dams; and (v) weirs;	

	(n) the off-stream storage of water, including dams and reservoirs, with a capacity of 50 000 cubic metres or more, unless such storage falls within the ambit of the activity listed in item 6 of Government Notice No. R. 387 of 2006; ~~(o) the recycling, re-use, handling, temporary storage or treatment of general waste with a throughput capacity of 20 cubic metres or more daily average measured over a period of 30 days, but less than 50 tons daily average measured over a period of 30 days;~~ ~~(p) the temporary storage of hazardous waste;~~ (q) the landing, parking and maintenance of aircraft including - (i) helicopter landing pads, excluding helicopter landing facilities and stops used exclusively by emergency services; (ii) unpaved aircraft landing strips shorter than 1,4km; (iii) structures for equipment and aircraft storage; (iv) structures for maintenance and repair; (v) structures for fuelling and fuel storage; and (vi) structures for air cargo handling; (r) the outdoor racing of motor powered vehicles including -	

	(i) motorcars; (ii) trucks; (iii) motorcycles; (iv) quad bikes; (v) boats; and (vi) jet skis; ~~(s) the treatment of effluent, wastewater or sewage with an annual throughput capacity of more than 2 000 cubic metres but less than 15 000 cubic metres;~~ (t) marinas and the launching of watercraft on inland fresh water systems; (u) above ground cableways and funiculars; (v) advertisements as defined in classes 1(a), 1(b), 1(c), 3(a), 3(b), 3(l) of the South African Manual for Outdoor Advertising Control.	
2	Construction or earth moving activities in the sea or within 100 metres inland of the high-water mark of the sea, in respect of – (k) facilities for the storage of material and the maintenance of vessels; (l) fixed or floating jetties and slipways; (m) tidal pools; (n) embankments; (o) stabilising walls; (p) buildings; or (q) infrastructure.	

3	The prevention of the free movement of sand, including erosion and accretion, by means of planting vegetation, placing synthetic material on dunes and exposed sand surfaces within a distance of 100 metres inland of the high-water mark of the sea.	
4	The dredging, excavation, infilling, removal or moving of soil, sand or rock exceeding 5 cubic metres from a river, tidal lagoon, tidal river, lake, in-stream dam, floodplain or wetland.	
5	The removal or damaging of indigenous vegetation of more than 10 square metres within a distance of 100 metres inland of the high-water mark of the sea.	
6	The excavation, moving, removal, depositing or compacting of soil, sand, rock or rubble covering an area exceeding 10 square metres in the sea or within a distance of 100 metres inland of the high-water mark of the sea.	
7	The above ground storage of a dangerous good, including petrol, diesel, liquid petroleum gas or paraffin, in containers with a combined capacity of more than 30 cubic metres but less than 1 000 cubic metres at any one location or site.	
8	Reconnaissance, prospecting, mining or retention operations as provided for in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in respect of such permissions, rights, permits and renewals thereof.	The competent authority for this part of the schedule is the Minister or an organ of state with

9	In relation to permissions, rights, permits and renewals granted in terms of 8 above, or any other similar right granted in terms of previous mineral or mining legislation, the undertaking of any prospecting or mining related activity or operation within a prospecting, retention or mining area, as defined in terms of section of 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).	delegated powers in terms of section 42(1) of the Act, as amended.
10	The establishment of cemeteries.	The competent authority in respect of the activities listed in this part of the schedule is the environmental authority in the province in which the activity is to be undertaken unless it is an application for an activity contemplated in section 24C(2) of the Act, in which case the competent authority is the
11	The decommissioning of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of more than 10 hectares.	
12	The transformation or removal of indigenous vegetation of 3 hectares or more or of any size where the transformation or removal would occur within a critically endangered or an endangered ecosystem listed in terms of section 52 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).	
13	The abstraction of groundwater at a volume where any general authorisation issued in terms of the National Water Act, 1998 (Act No. 36 of 1998) will be exceeded.	

14	The construction of masts of any material or type and of any height, including those used for telecommunication broadcasting and radio transmission, but excluding - (a) masts of 15 metres and lower exclusively used (i) by radio amateurs; or (ii) for lighting purposes (b) flag poles; and (c) lightning conductor poles.	Minister or an organ of state with delegated powers in terms of section 42(1) of the Act, as amended.
15	The construction of a road that is wider than 4 metres or that has a reserve wider than 6 metres, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 metres long.	
16	The transformation of undeveloped, vacant or derelict land to – (a) establish infill development covering an area of 5 hectares or more, but less than 20 hectares; or (b) residential, mixed, retail, commercial, industrial or institutional use where such development does not constitute infill and where the total area to be transformed is bigger than 1 hectare.	
17	Phased activities where any one phase of the activity may be below a threshold specified in this Schedule but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.	
18	The subdivision of portions of land 9 hectares or larger into portions of 5 hectares or less.	

19	The development of a new facility or the transformation of an existing facility for the conducting of manufacturing processes, warehousing, bottling, packaging, or storage, which, including associated structures or infrastructure, occupies an area of 1 000 square metres or more outside an existing area zoned for industrial purposes.	
20	The transformation of an area zoned for use as public open space or for a conservation purpose to another use.	
21	The release of genetically modified organisms into the environment in instances where assessment is required by the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997) or the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).	
22	The release of any organism outside its natural area of distribution that is to be used for biological pest control.	

23	The decommissioning of existing facilities or infrastructure, other than facilities or infrastructure that commenced under an environmental authorisation issued in terms of the Environmental Impact Assessment Regulations, 2006 made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, for - (a) electricity generation; (b) nuclear reactors and storage of nuclear fuel; (c) industrial activities where the facility or the land on which it is located is contaminated or has the potential to be contaminated by any material which may place a restriction on the potential to re-use the site for a different purpose; ~~(d) the disposal of waste;~~ ~~(e) the treatment of effluent, wastewater and sewage with an annual throughput capacity of 15 000 cubic metres or more;~~ ~~(f) the recycling, handling, temporary storage or treatment of general waste with a daily throughput capacity of 20 cubic metres or more; or~~ (g) ~~the recycling, handling, temporary storage or treatment of hazardous waste~~.	

24	The recommissioning or use of any facility or infrastructure, excluding any facility or infrastructure that commenced under an environmental authorisation issued in terms of the Environmental Impact Assessment Regulations, 2006 made under section 24(5) of the Act and published in Government Notice No. R. 385 of 2006, after a period of two years from closure or temporary closure, for - (a) electricity generation; (b) nuclear reactors and nuclear fuel storage; or (c) facilities for any process or activity, which require permission, authorisation, or further authorisation, in terms of legislation governing the release of emissions, pollution, effluent or waste prior to the facility being recommissioned, **unless the facility for the process or activity is included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act. No 59 of 2008), in which case the activity is regarded to be excluded from this list;**	

25	The expansion of or changes to existing facilities for any process or activity, which requires an amendment of an existing permit or license or a new permit or license in terms of legislation governing the release of emissions, pollution, effluent**[, unless the facility for the process or activity is included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act. No 59 of 2008), in which case the activity is regarded to be excluded from this list.]**	

SCHEDULE

Guideline on Environmental Impact Assessments for Strategically Important Developments of the State Owned Enterprises under the Department of Public Enterprises

25 November 2008

CONTENTS

1.0 Introduction

This Guideline has been produced by the Department of Environmental Affairs (DEA) to provide a framework for the Environmental Impact Assessment (EIA) procedures to be used in response to specific applications made by State Owned Enterprises (SOE) under the Department of Public Enterprises (DPE) in South Africa. The procedures as described here are restricted at the present time to EIA applications from the DPE's State Owned Enterprises relating to Strategically Important Developments (SIDs), through an Agreement between the DEA and the DPE.[1]

The subsequent sections of this document are as follows:

- Section 2.0 sets out the legislative basis for the publication of this Guideline by the DEA.

- Strategically Important Developments are reviewed in general terms in Section 3.0, and the types of SIDs operated or planned by the SOEs under the DPE are discussed.

- The proposed authorisation procedure for these SIDs is laid out in Section 4.0, this concentrating primarily on the Environmental Impact Assessment process, but also providing brief comments on fees and on other forms of licensing and permitting.

Additional information on the EIA procedures as described in this Guideline is available from the Department of Environmental Affairs (Tel. 086 111 2468; Fax 012 322 2476; E-mail callcentre@deat.gov.za; web site www.deat.gov.za).

[1] Memorandum of Agreement between Department of Environmental Affairs and Department of Public Enterprises on Environmental Impact Assessments for Strategically Important Developments of State Owned Enterprises under the Department of Public Enterprises. [Date]

2.0 The Legal Basis for this Guideline

This section sets out the legal basis for the present Guideline.

The basis in legislation for this Guideline is provided by Regulation 73(1) . (*"Regulations in Terms of Chapter 5 of the National Environmental Management Act, 1998"*).

Regulation 73(1) is entitled *"National Guidelines"* and reads as follows:

> *73 (1) The Minister may by notice in the Government Gazette issue national guidelines, as contemplated in Section 24J of the Act, on the implementation of these Regulations with regard to –*
>
> *(a) any particular environmentally sensitive area or kind of environmentally sensitive areas, or environmentally sensitive areas in general;*
> *(b) any particular environmental impact or kind of environmental impact, or environmental impacts in general;*
> *(c) any particular activity or kind of activities, or activities in general;*
> *(d) the process and criteria for the development of new or adoption of existing norms and standards; and*
> *(e) any particular process contemplated in these Regulations.*

Regulation 73(1)(c) provides a clear mandate for the Minister of the DEA to issue national guidelines for the implementation of the EIA Regulations as they relate to Strategically Important Developments of the State Owned Enterprises under the DPE, these being a particular kind of activities addressed by the EIA procedures. As noted in Regulation 75, Guidelines issued in terms of Regulation 76 are not binding but must be taken into account when preparing, submitting, processing or considering any EIA application.

3.0 Strategically Important Developments

This section provides an overview of strategic planning in South Africa, which underpins the concept of Strategically Important Developments. The section commences with a brief review of economic growth in South Africa; notes the existence of Strategically Important Developments of various types; and ends with a discussion of the SIDs of the State Owned Enterprises under the DPE.

3.1 Economic Growth in South Africa

A consensus exists in South Africa for an attempt to attain annual economic growth rates averaging 4.5% between 2005 and 2009, and 6% from 2010 until 2014. If economic growth of this magnitude is to be attained and maintained through that period, it is clear that coherent strategic planning and the improvement of the previously impoverished national infrastructure are both critical. This has been recognized by the Government, and underpins the decisions made on the development of primary infrastructure in particular sectors. Certain of the ongoing programmes of this type are massive in terms of expenditure and effort, and these include the capital expenditure plans for both the energy and transport sectors.

3.2 Implications Relating to Strategically Important Developments

It is clear from the brief summary provided above, that certain types of developments are of particular importance in driving the future economic growth of the country. The DPE has embarked upon a major infrastructure development programme, to provide the basic framework for the future economic growth. That programme concentrates primarily on the energy and transport sectors, involving Eskom; the Pebble Bed Modular Reactor (PBMR); and Transnet – all of which are SOEs under the DPE.

The Government recognizes that various forms of Strategically Important Developments exist within South Africa, and only some of these are promoted under public sector ownership. The present Guideline focuses on SIDs which contributes markedly to the economic growth of the country, through the provision of strategically

important infrastructure. Clearly, many of the infrastructure development projects under certain of the DPE SOEs are included in this category. However, other public sector and some private sector developments might also be classified as SIDs of this type. In addition, it could be argued that certain forms of developments should be considered as SIDs because of their empowerment of particular sectors of the population.

At the present time, the DEA intends to introduce the specific EIA procedures as described in this Guideline only for applications relating to the future SIDs under the State Owned Enterprises of the DPE. This will allow the procedures to be tested in a comprehensive manner. Once the procedures have been in place for some time and have been subject to sufficient use and testing, the DEA will consult other interested Government Departments as to the possibility for broadening the procedures out to include further categories of SIDs.

3.3 The SIDs to be Included in the New Procedures

As discussed above, Strategically Important Developments as defined here represent the infrastructure developments that contribute (or will contribute) significantly to the national economic growth of South Africa.

It is clear that certain SIDs already exist, especially in the key infrastructure sectors. Attempts to identify these have been restricted to date to the electricity and transport sectors, and have designated the following types of developments as being both of a strategic nature and of significant economic importance:

- major electricity generating facilities and their related infrastructure, these being designated as SIDs because of the vital requirement for electrical power amongst many key industries and commercial operations;

- high-voltage transmission power lines and their related infrastructure, serving to transfer electrical power around the country;

- key elements of the electricity distribution system, running from high-voltage transmission power lines and sub-stations to end-users of electricity;

- the Pebble Bed Modular Reactor, due to its potential to contribute significantly to electricity generation and other industrial processes in the future;

- major port infrastructure, serving to ensure the free flow of raw materials and finished goods into and out of the country;

- key elements of the rail transport infrastructure, including the lines connecting the ports to the hinterland, and especially to the industrial heartland; and

- major pipelines, including the New Multi-Products Pipeline (NMPP) from Durban to Gauteng, and the inland network for the distribution of those products.

For the purposes of the present testing phase of the new procedures, the DEA, the DPE and the relevant State Owned Enterprise will classify selected new developments of the SOEs as SIDs by consensus. Broad criteria to be used in this process will include:

- the scale of investment required for the development;

- perceived (but not precisely quantified) knock-on effects of the development in relation to the future growth of the national economy; and

- whether national or regional constraints of significance exist in the sector relating to the proposed development.

Previous experience of the DPE and the DEA in classifying existing developments as SIDs (extending to some of the developments that are planned or under construction at present) suggests that this can be completed swiftly and simply in most instances. The existence of significant constraints is especially important in this regard (e.g. in electricity supply, transmission and/or distribution; also in port handling capacity and its associated rail and pipeline infrastructure). It is anticipated that the numbers of

applications for new SIDs amongst the DPE State Owned Enterprises will average about 50/year. This defines the general scale of the testing exercise addressed by the present Guideline.

4.0 The Authorisation Process for Strategically Important Developments

This section discusses the overall procedures for use in relation to Environmental Impact Assessments for the future SIDs of the State Owned Enterprises of the DPE. A note on the Competent Authority is provided initially, followed by an outline of the EIA procedures which will pertain in the future to the SIDs involved in this testing phase of the effort. Brief comments are also provided concerning fees for EIAs on the SIDs concerned; on other forms of licensing and permitting; and on other Guidelines.

4.1 The Competent Authority

In general terms, the responsibility for administering the EIA procedures is presently divided between the DEA, the environmental authorities at Provincial levels (the latter varying between Provinces, as to their precise nomenclature), and in some circumstances, the Department for Minerals. However, the current legislation provides that EIA applications from State Owned Enterprises are to be made to the DEA. It has been agreed that the DEA shall address all EIA applications from the SOEs of the DPE concerning Strategically Important Developments, keeping their Provincial counterparts informed as necessary.

4.2 The EIA Procedure for the SIDs Covered by this Guideline

It has been agreed that the future EIA procedure for applications for SIDs under the DPE SOEs will ensure compliance with the EIA legislation as enacted (including the amendments promulgated in the second half of 2008), but the DEA will endeavour to address certain of the various administrative stages in the process in shorter time periods, compared to the maximum times provided in the EIA legislation. The purpose of this is to ensure that the EIA procedures do not delay the commencement of the construction of critically needed developments that contribute significantly to the national economy.

It is known that most of the developments which will be classified in the future as SIDs under the DPE SOEs will require full Scoping and EIA, in order to obtain the required Environmental Authorisation. However, it is possible that certain of the future SIDs will be deemed to require only Basic Assessment, rather than the full Scoping and EIA procedure. The Basic Assessment process is already reasonably rapid, and has not proven to be problematic in the past, in terms of delaying developments. It has therefore been agreed that the Basic Assessment procedure for any future SID as addressed by the present Guideline will not vary from the process as laid down by the existing legislation. For the sake of completeness, the timelines as included in the present legislation are shown in Figure 1. It is notable that the time periods as shown in Figure 1 (and as cited elsewhere in this Guideline) are defined by the most recent version of the EIA Regulations, and refer to elapsed days, excepting public holidays and the period between 15 December and 02 January.

By contrast, it has been agreed that certain of the steps in the Scoping and EIA procedure should be subject to shorter 'preferred timelines' where SIDs are concerned, this reflecting the problems for the economy which would eventuate if delays were to occur. Figure 2 shows the Scoping and EIA process as laid down by the current legislation, while Figure 3 presents the agreed procedure for future applications relating to the SIDs of the DPE State Owned Enterprises. The following points are noted, with respect to the preferred timelines as shown in Figure 3:

- The preferred timelines as shown in Figure 3 are objectives for the DEA, and do not replace the maximum times made available for the various steps as laid out in the recently amended EIA-related legislation. The DEA will attempt to meet the preferred timelines shown in Figure 3, but cannot guarantee that this will occur for all of the SIDs under the DPE State Owned Enterprises.

Figure 1. Timelines for the steps in the Basic Assessment process. BAR: Basic Assessment Report. EMP: Environmental Management Plan.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
	0. Compile/submit notification	→	1. Notification received	
60	2. Compile/submit application, BAR, EMP	→	3. DEA requests comments from State Departments	5
}	4a. State Departments comment [40 days]			
60}	4b. Public participation [60 days]	→	5. DEA sends comments to Applicant/EAP	5
60	6. Compile/submit Final BAR and EMP	→	7. DEA accepts or rejects Final BAR and EMP	44
180 days				**54 days**

Figure 2. Normal timelines for the steps in the Scoping and EIA process. SR: Scoping Report. POS: Plan of Study. EIR: Environmental Impact Report. EMP: Environmental Management Plan.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
	0. Compile/submit EIA application	→ ←	1. DEA reviews application; accepts or rejects	14
90	2. Compile/submit Draft SR and POS	→ ←	3. DEA requests comments from State Departments	5
}	4a. State Departments comment [40 days]			
60}	4b. Public participation [60 days]	→ ←	5. DEA sends comments to Applicant/EAP	5
30	6. Compile/submit Final SR and POS	→ ←	7. DEA accepts or rejects Final SR and POS	30
180	8. Compile/submit Draft EIR and EMP	→ ←	9. DEA requests comments from State Departments	5
}	10a. State Departments comment [40 days]			
60}	10b. Public participation [60 days]	→ ←	11. DEA sends comments to Applicant/EAP	5
90	12. Compile/submit Final EIR and EMP	→	13a. DEA considers completeness of reports	30
			13b. DEA issues decision	105
510 days				**199 days**

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Figure 3. Timelines for the steps in the Scoping and EIA process for Strategically Important Developments. SR: Scoping Report. POS: Plan of Study. EIR: Environmental Impact Report. EMP: Environmental Management Plan.

Days	*Tasks for the Applicant/EAP/Others*		*Tasks for the DEA*	*Days*
	0. Compile/submit EIA application	→	1. DEA reviews application; accepts or rejects	10
		←		
}	2a. Compile/submit Draft SR, POS [45 days]			
45}	2b. Start public participation [30 days]	→	3. DEA requests comments from State Departments	3
		←		
}	4a. State Departments comment [40 days]			
40}	4b. Public participation [30 days]	→	5. DEA sends comments to Applicant/EAP	3
		←		
30	6. Compile/submit Final SR and POS	→	7. DEA accepts or rejects Final SR and POS	21
		←		
}	8a. Compile/submit Draft EIR, EMP [150 days]			
150}	8b. Start public participation [20 days]	→	9. DEA requests comments from State Departments	3
		←		
40	10a. State Departments comment [40 days]			
	10b. Public participation [40 days]	→	11. DEA sends comments to Applicant/EAP	3
		←		
45	12. Compile/submit Final EIR and EMP	→	13a. DEA considers completeness of reports	15
			13b. DEA issues decision	75
350 days				**133 days**

- The heart of the EIA process is bilateral, and requires not only timely responses from the DEA, but also the efficient production and submission of high-quality documentation by the applicants/their Environmental Assessment Practitioners (EAPs). To streamline the procedure as a whole, it has been agreed that the steps under the control of the applicant and the EAPs should also be subject to preferred timelines. Figure 3 therefore shows (non-statutory) preferred timelines for steps where the applicant has control over the pace of the procedures, and it is clear that the attainment of these will also be important in determining the overall time taken to generate an Environmental Authorisation for a new SID.

- Importantly, a third party is also involved in the EIA process – the public (known as 'Interested & Affected Parties'). The EIA legislation (Regulations 56 to 59) requires public participation at both the Scoping phase and the later EIA stage. The importance of this aspect of the process is acknowledged, and this Guideline does not therefore alter the timeframes as established by the legislation for public consultation.

- To assist in streamlining the procedures as a whole, it is intended that comments from State Departments (other than the DEA) will be sought during the process of public participation and review, with both the DEA and EAPs being involved. This implies that the DEA and the EAPs must coordinate their activities closely during these periods, to optimize the efficiency of the process as a whole.

It is considered that the process as shown in Figure 3 will streamline the EIA process for the SIDs addressed by this Guideline, as far as this is possible. The preferred timelines as shown are believed to be appropriate for the majority of SIDs, but their attainment cannot be guaranteed by either the DEA or the applicant/their EAP. The submission by the EAP of high-quality documentation will be especially important, to ensure that iterative steps are not required.

4.3 Appeals against an Environmental Authorisation

A further potential source of delays exists following the issue of an Environmental Authorisation for an activity, this relating to the appeal process. Two possibilities exist here, these involving an appeal by the applicant against one or more of the conditions in an Environmental Authorisation, and appeals by Interested & Affected Parties against some facet of such an Authorisation. The first of these types of appeals lies in the hands of the applicant, and is not addressed by the present Guideline, except to note that the DEA will address such appeals as rapidly as may be possible. However, appeals by Interested & Affected Parties against Environmental Authorisations have been a source of major delays in the past, often for developments of strategic importance to the country. Whilst it is acknowledged that the Interested & Affected Parties must retain the right to appeal against such Authorisations (and this Guideline does not add constraints in relation to this), it is most important that any appeals are settled rapidly and efficiently.

Figure 4 shows the existing appeals procedure as laid down by the current legislation, while Figure 5 shows preferred timelines for any appeals relating to the SIDs addressed by the present Guideline. The following points are noted:

- The time available for steps involving the Interested & Affected Party acting as an appellant has not been altered in any fashion, and remains as shown in the existing legislation.

- Streamlining of the procedure has essentially been made possible by the shortening of the periods available for the deliberations of an Appeals Panel (if such is used), and for the Minister of the DEA to reach a decision on appeals from Interested and Affected Parties. This will require particular focus on the part of both these entities, along with efficient assistance from the DEA in relation to the provision of relevant documents and background information.

Figure 4. Normal timelines for the steps in the EIA appeals process. I&APs: Interested and Affected Parties.

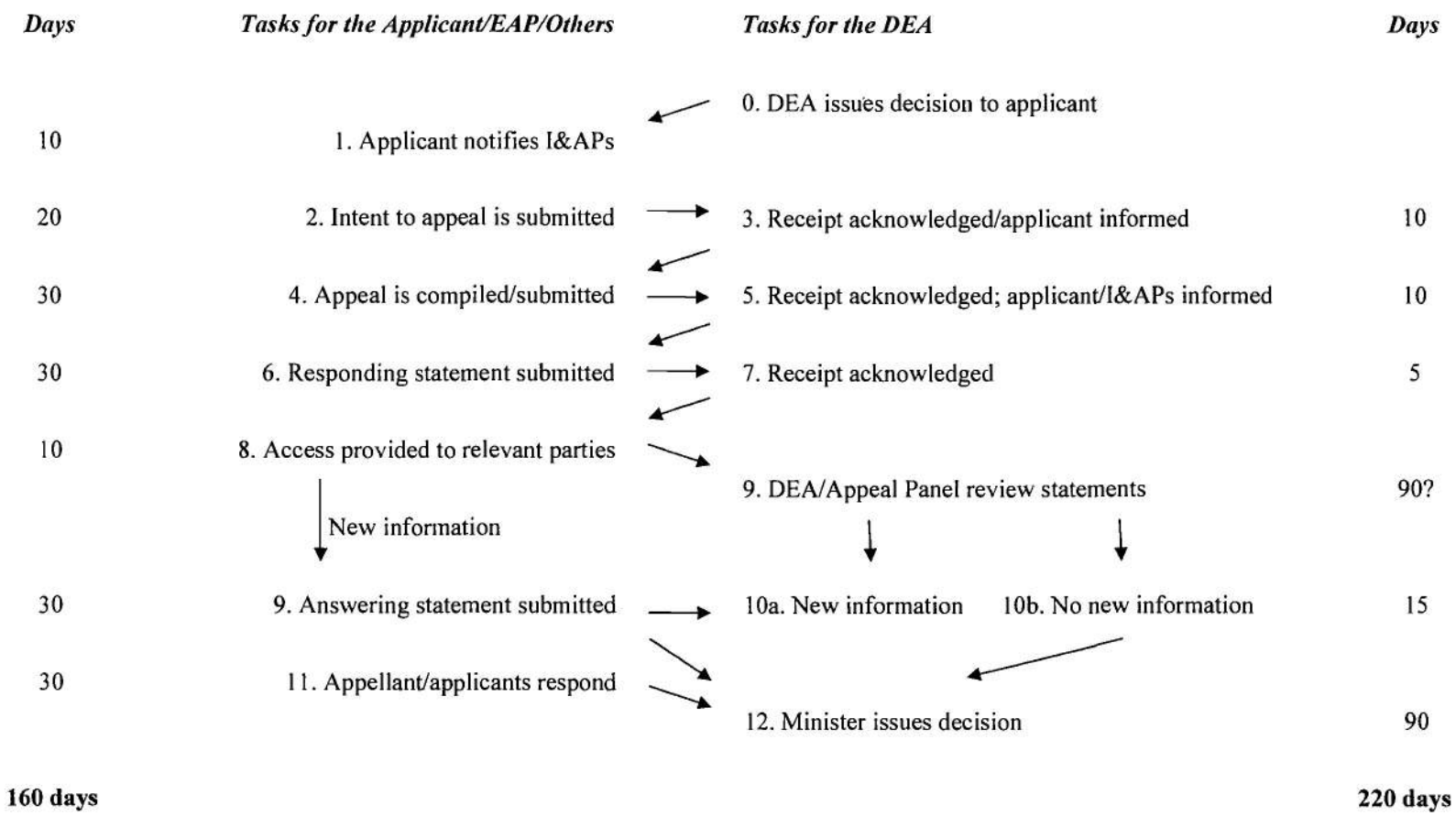
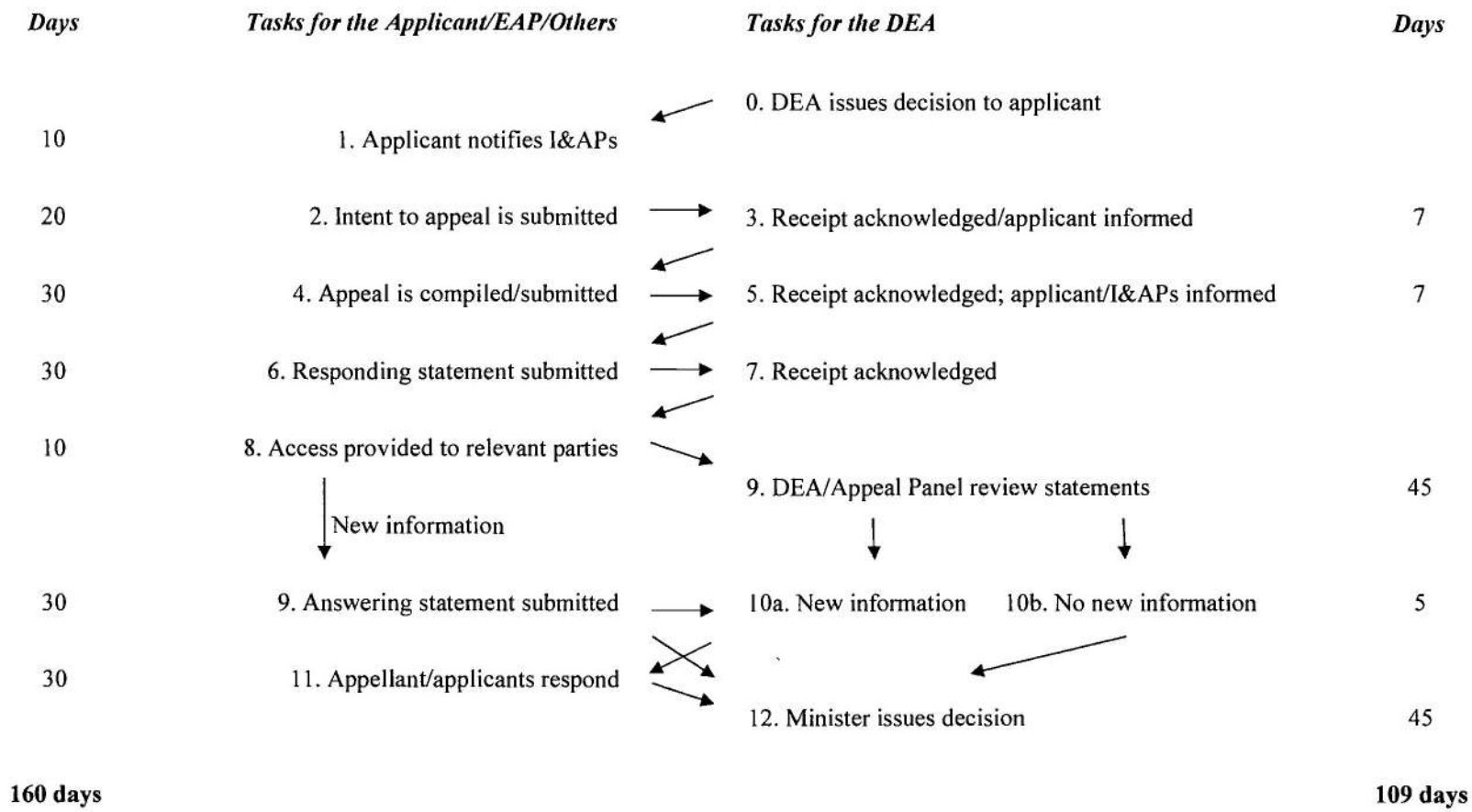


Figure 5. Timelines for the steps in the EIA appeals process for Strategically Important Developments. I&APs: Interested and Affected Parties.



- The Minister of the DEA is empowered to decide whether an Environmental Authorisation should be suspended or not, in the event of an appeal by an Interested & Affected Party. This will be decided on a case-by-case basis, according to the circumstances.

4.4 Amending, Withdrawing or Suspending Environmental Authorisations for SIDs

The procedures to be followed in amending, withdrawing or suspending Environmental Authorisations are covered by Chapter 4 of the EIA Regulations of April 2006 These allow either the holder of an Authorisation or the Competent Authority to initiate an amendment of an Authorisation, and the Competent Authority may also withdraw or suspend an Authorisation under specific circumstances.

In relation to the preferred timelines and the statutory maximum times for procedures relating to amendments of Environmental Authorisations:

- Regulation 42(2) of the EIA Regulations mandates that the Competent Authority must decide 'promptly' on an application received from the applicant, when the change is non-substantive or when no adverse impact on the environment is anticipated, due to the change. The DEA will decide on such issues within 15 days, in the case of applications relating to SIDs of the SOEs under the DPE.

- Where a new round of public participation and/or a new EIA is required to address an amendment requested by the holder of an Authorisation (see Regulation 42[3]), any required public participation will be completed within 60 days of the receipt of an application, and the timelines as established in previous sections of this Guideline for other EIA procedures will be relevant.

- Where the DEA triggers an amendment to an Environmental Authorisation relating to a SID of the SOEs under the DPE, any public participation process will be completed within 60 days of the publication of such a decision, and other aspects of the procedure as a whole will again comply with the timelines as established in previous sections of this Guideline.

The provisions of the EIA Regulations in connection with the withdrawal or suspension of Environmental Authorisations (see Regulations 47-50) are unchanged for the SIDs addressed by this Guideline.

4.5 Fees for EIA Applications Relating to SIDs

The regulatory authorities generally do not seek to recover their administrative costs from private sector parties, for services provided by Government entities – and this extends under normal circumstances to the EIA process.

In recent years, the very extensive infrastructure development programmes of Eskom and Transnet in particular have created significant strain on the capacity of the DEA to respond to large numbers of EIAs relating to major proposed infrastructure developments. This problem has been addressed through the introduction of a 'self-financing' system, whereby the regulatory activities of the DEA relating to EIAs for such developments are funded through contributions by the State Owned Enterprises. This system has been introduced to ensure that the DEA has the capacity to respond to EIA applications, in a timely fashion. There is no implication whatever that distinct standards will be employed to address the environmental aspects of the SIDs in the public sector. Rather, the self-financing system has been introduced simply in order to ensure that the development of critical infrastructure is not delayed, because of its key importance in underpinning the economic growth of the nation.

It is anticipated that this 'self-financing' system may be extended to other EIA applicants, at a later time. Any future changes to this effect will be introduced through amended primary legislation, which will be subject to the normal public consultation procedures.

4.6 Other Licences, Permits and Requirements

Applicants wishing to construct key infrastructure or other important developments face a range of administrative demands and licensing/permitting requirements. Whilst the EIA procedures represent one of the most important of these (and are a key tool in the protection of the environment nationally), several other demands also exist. These are not

discussed here in detail, in part because many are not within the policy or practical remit of the DEA, and hence cannot be materially affected by this Guideline. However, it is noted here that:

- A general supposition exists that a development may proceed to construction, once the EIA process has been completed and an Environmental Authorisation has been issued. This does not amount to a guarantee, however, and all applicants must also comply with the various other legislative requirements in force nationally, provincially and locally.

- In the future, the permits/licences lying within the policy remit of the DEA will be addressed alongside the EIA procedure, providing a streamlined approach to the DEA-related authorisations as a whole. This includes Waste Permits under the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)); and Air Emission Licences under the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004). In certain circumstances, this will require close coordination between the DEA, the Provincial environmental entities and the municipal authorities, especially as the last of these parties represent key players in such issues as licences for emissions to the atmosphere. Where SIDs as addressed by this Guideline are involved, the coordination in this regard will be generated and supervised by the DEA, in order to ensure that the requirements placed upon the DPE SOEs are not extreme and that the provisions of more general legislation such as the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) are respected.

- Where licences/permits are required under legislation administered by Government Departments other than the DEA, Section 24L of the recent amendments to the National Environmental Management Act lays down the circumstances in which an Integrated Environmental Authorisation will be possible.

- The interests of the nation will be best served by a partnership-style approach between the regulator and developers, rather than an adversarial approach. Both parties have an important role to play to achieve such an end-point. For its part, the DEA will attempt to provide a streamlined and efficient procedure for EIA applications pertaining to

SIDs of the State Owned Enterprises under the DPE. The SOEs (and the relevant Environmental Assessment Practitioners) will be expected to submit high-quality documentation in all phases of the process, or the applicant will face delays in situations where the DEA is unable to reach final decisions because of inadequate submissions by the applicant. It is important that a rolling dialogue is maintained between the EIA applicant and the DEA, such that all problems will be minimized.

4.7 Other Guidelines Concerning the EIA Procedures

As noted previously, this Guideline is focused upon the EIA procedures as they relate specifically to future Strategically Important Development of the State Owned Enterprises under the DPE. It is notable that several other Guidelines have also been generated by the DEA, or are being drafted currently:

- A Guideline on EIAs for facilities to be included in the Electricity Response Plan. This is quite closely related to the present Guideline concerning EIAs for Strategically Important Developments, especially as most or all facilities to be included in the Electricity Response Plan are (or will be) classified as SIDs.

- Sector Guidelines on EIAs for specific forms of developments. These include electricity generation and other major infrastructure development projects; linear developments; and port-related developments. The Sector Guidelines provide more detailed information on the types of issues to be addressed by EIAs relating to these various forms of developments.

It is intended that all of these Guidelines should complement one another, and should be considered by the applicant and EAPs in concert, such that the EIA process may be as streamlined and effective as possible.