



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

GUIDELINE ON THE ADMINISTRATION OF APPEALS

Please note: This guideline must be read together with the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), and the National Appeal Regulations, 2014.

Enquiries and Comments: All enquiries and comments should be addressed to –

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APPEAL AND RESPONSE FORM

1. DEFINITIONS

“Appeal Administrator” is a holder of an office in the Department or Provincial Department responsible for environmental affairs who administers the appeal on behalf of the appeal authority;

“Appeal Authority” is the Minister, the MEC or person delegated the power to decide on appeals by the Minister or MEC, as the case may be.

“Appellant” means any person who is entitled to submit an appeal in terms of the laws referred to in regulation 3(1) of these Regulations;

“Decision-maker” means an official who has been delegated the authority to make a decision in terms of the laws referred to in regulation 3(1) of these Regulations;

“Applicant” means a person to whom a decision has been issued in terms of the Act or specific environmental management Act;

“Independent”, in relation to a person appointed as a member of an appeal panel or a person providing an appeal authority with expert advice as contemplated in regulation 6, means—

- (a) that such a person has no business, financial, personal or other interest in the appeal in respect of which that person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that appeal; and
- (b) that there are no circumstances that may compromise the objectivity of that person in performing such work;

“Person” has the meaning assigned to it in section 1 of NEMA;

“Days” means calendar days.

Note: When a period of days must be reckoned in terms of these regulations, the 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, and the period of 15 December to 1 January must be excluded from the reckoning of days.

"Department", means the Department of Environmental Affairs.

"EIA" means Environmental Impact Assessment.

"EIA Regulations", means the Environmental Impact Assessment Regulations promulgated in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

"Environmental authorisation" means the authorisation by a competent authority of a listed or specified activity in terms of NEMA, and includes a similar authorisation contemplated in a specific environmental management Act.

"I&AP" means Interested and Affected Party.

"NEMA" means National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended.

"NEMBA" means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).

"NEM: AQA" means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).

"NEM: WA" means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

"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.

"SEMA" means Specific Environmental Management Act.

2. INTRODUCTION

- 2.1 The National Appeals Regulations, 2014 has repealed the various appeal regulations currently in effect in terms of NEMA and the SEMAs, and provides for a single appeal process under section 43 of the National Environmental Management Act, 1998 against a decision taken by any person acting under a power delegated by the Minister or MEC.
- 2.2 Section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("*NEMA*") designates the Minister of Environmental Affairs as the appeal authority for a decision made by a delegated official of the Department of Environmental Affairs (the Department) under NEMA or a specific environmental management Act.
- 2.3 The Directorate: Appeals and Legal Review is responsible for administering appeals and making recommendations on appeals to the Minister of Environmental Affairs.
- 2.4 In this respect, the purpose of this guide is to provide information and guidance for applicants, authorities and interested and affected parties ("I&APs") on appeals submitted to the Minister in terms of NEMA and the SEMAs.

3. APPEAL SUBMISSIONS

- 3.1 Chapter 2 of the 2014 Appeal Regulations prescribe that an appellant must submit the appeal to the appeal administrator and to any known interested and affected party within 20 days from the date that the decision for an application for an environmental authorisation in terms of NEMA or a waste management licence in terms of the Waste Act was sent to the registered interested and affected parties, or in the case of decisions where this does not apply, the date that the decision was sent to the applicant.
- 3.2 No appeal is available if the Minister or MEC took the decision himself or herself in his or her capacity as the competent authority, issuing authority or licensing authority. An appeal may, however, be lodged with the Minister or MEC responsible for Environmental Affairs against a delegated decision taken by the Department on an application.
- 3.3 An appeal submission must be submitted in writing in the form obtainable from the Minister or MEC, and must be accompanied by –

- a statement setting out the grounds of appeal;
- additional supporting documentation that is referred to (which did not form part of the original application);
- a statement that the applicant complied with the prescription in regulation 4(1) with relation to the submission period of 20 days, as set out above.

3.4 Appeals may be lodged with the Minister or MEC responsible for Environmental Affairs against a delegated decision taken by the Department on an application, which may include:

3.5 Any new information must be submitted when submitting the appeal.

4. NOTIFICATION OF A DECISION MADE BY THE DEPARTMENT

4.1 On having reached a decision 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.

4.2 The applicant must, in writing, within 12 days after the date the decision was made by the Department:

- notify the registered I&APs of the outcome of the decision,
- provide the Department's reasons for the decision,
- draw the attention of all registered I&APs to the manner in which they can access a copy of the decision (note: it is recommended that a copy of the Department's decision be attached to the notice), 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.

5. LODGING OF AN APPEAL

5.1 An appellant must submit the appeal submission (the Appeal Questionnaire and Appeal and Response Form) to the appeal administrator, the applicant, and known interested and affected parties within twenty (20) days from:

- the date that the decision for an application for an environmental authorisation or a waste management licence was sent to the registered interested and affected parties, or
- the date that the decision was sent to the applicant, in the case of decisions other than those referred to above.

5.2 An appeal submission must be submitted in writing in the form of the appeal questionnaire annexed to this guideline as “Annexure A” and accompanied by:

- a completed Appeal and Response Form setting out the grounds of the appeal,
- supporting documentation that is referred to in the appeal which did not form part of the documentation considered when the original decision was made, and
- a statement by the appellant to confirm compliance with regulation 4(1).

6. **SUSPENSION OF AUTHORISATION**

In terms of section 47 (7) of NEMA, an appeal will automatically suspend an environmental authorisation, directive, exemption or other decision taken in terms of NEMA, pending the outcome of the appeal.

7. **HINTS ON DRAFTING OF APPEALS**

- 7.1 The appeal questionnaire must be submitted together with the grounds of appeal. The grounds of appeal must also be captured in the Appeal and Response Form, annexed hereto as Annexure “B”;
- 7.2 The appellant must provide their full contact details, i.e. postal address, telephone and cell numbers, fax number and email address;
- 7.3 If the appellant is representing a company or other body of persons, proof of mandate to lodge the appeal on behalf of the company or other entity must be provided;
- 7.4 The identity of the project which is the subject of the appeal, and the departmental reference number, if known, must be provided;
- 7.5 The issues to be considered by the Minister must be clearly identified;

- 7.6 The grounds of appeal and the facts upon which they rest must be clearly set out. The grounds of appeal must be formulated as averments and not as questions about the project (refrain from material or remarks which do not contribute towards the merits of the appeal);
- 7.7 Make a particular issue the subject of a separate ground of appeal, avoiding overlaps as far as possible. Issues should be grouped logically and in a chronological order to provide the Minister with clear timelines of the events or facts in dispute;
- 7.8 A recommended way of arranging issues is to divide the grounds of appeal into procedural grounds, (for example inadequate public participation) and substantive grounds (why the decision is seen as wrong);
- 7.9 Before submitting the appeal, it is recommended that appellants familiarise themselves with the mandate of the department to avoid raising matters falling outside the competence of the Minister on appeal; and
- 7.10 Sign and date the appeal submission.

8. RESPONDING STATEMENT

- 8.1 The responding statement must also be captured in the Appeal and Response Form, which will be provided by the appeal administrator and will have captured the summarised grounds of appeal. The Responding Statement will need to address each ground of appeal as reflected in the Appeal and Response Form.
- 8.2 No new information submitted in the responding statement will be considered by the appeal authority.

9. APPEAL PANEL

- 9.1 If the appeal authority is of the view that expert advice must be sought or that an appeal panel must be appointed, the appeal administrator must source the expert advice or constitute the appeal panel within 10 days from the date of receipt of such an instruction from the appeal authority. The expert or appeal panel must provide advice to the appeal administrator within 10 days from the receipt of the instruction from the appeal administrator.

9.2 A panel of experts must provide their recommendations on the appeal, to the appeal administrator within 10 days of their appointment.

10. DECISION ON APPEAL

Communication in terms of the Regulation 8 of the National Appeal Regulations provides that a document may be issued by the following methods –

- by delivering it by hand
- by faxing it to the person;
- by e-mailing it to a person;

11. TRANSITIONAL ARRANGEMENTS

11.1 Any application or appeal lodged prior to the commencement of the Regulations, and which is still pending when the Regulations takes effect, must be finalised in terms of the legislation that applied at the time when the application or appeal was lodged, and not according to the 2014 National Appeal Regulations.

11.2 Regulation 56(4) of the 2014 EIA Regulations echoes this provision by determining that an appeal lodged in terms of the 2010 EIA Regulations, and which is pending when the 2014 EIA Regulations take effect, must, despite the repeal of the 2010 EIA Regulations, be dispensed of as if those Regulations were not repealed.

12. REQUESTS FOR CONDONATION OR EXTENSION OF TIME PERIODS

12.1 In terms of section 47C of NEMA, the Minister or the MEC has the legal authority to grant an extension or condonation for the submission of an appeal or responding statement which is out of time.

12.2 Applications in terms of Section 47C of NEMA must be in writing, and must afford the other party/parties will be provided with an opportunity to comment on the request;

12.3 When deciding on requests for condonation or extension of time periods, the Minister will consider the following:

- whether good cause is shown to extend a time period,
- the extent of the period requested, or the degree of lateness,
- the factual basis of the motivation for the request and the explanation thereof,
- whether factors outside of the control of the requesting party have played a role,
- potential prejudice in granting or refusing the request to any of the parties.
- whether it is in the interest of justice to grant or refuse the request, and
- prospects of success on the merits.

12.4 The adjudication of a request for condonation or extension of time periods will, as far as practically possible, be communicated together with the appeal decision.

ANNEXURE A

APPEAL QUESTIONNAIRE

An electronic copy of this questionnaire may be obtained from:

Mr Z Hassam at telephone: 012 399 9356 or e-mail:

AppealsDirectorate@environment.gov.za

Once completed, this document must be forwarded to:

E-mail: AppealsDirectorate@environment.gov.za

Physical Address: Department of Environmental Affairs, 473 Steve Biko Road,
Environment House, Arcadia, Pretoria, 0002

Appellant's contact information:

Name: _____

Address: _____

Phone: _____

Cell: _____

Email: _____

Project information:

Project name: _____

Authorisation register number as on environmental authorisation:

Authorisation date as on environmental authorisation:

IMPORTANT! Please note:

- *The decision of the department is reflected in the letter of authorisation or rejection. The conditions of approval are contained in the environmental authorisation document, attached to the authorisation letter.*
- *The appeal must be accompanied by all relevant supporting documents or copies of these that are certified as true by a commissioner of oaths.*
- *The grounds of your appeal and the facts upon which they rest must be set out. You should formulate your objections or concerns as averments and not as questions about the project. Please therefore refrain from material or remarks that do not contribute to the merits of your appeal.*
- *To assist in this regard, the following questions are listed as a guideline only – more space may be used if necessary:*

1. Are you lodging this appeal as an individual or on behalf of a community/organisation?

Individual	Community/ organisation
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If on behalf of a community or organisation, please provide proof of mandate to do so.

2. Is your appeal based on factors associated with the process that was followed by the applicant in obtaining authorisation?

Yes	No
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Please provide reasons:

3. Is your appeal based on factors associated with environmental impacts not taken into account by the department in refusing or authorising the application?

Yes	No
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Please provide reasons:

4. Would you agree to the activity proceeding if your concerns can be addressed by rectifying the process or mitigating or eliminating the impacts of the activity?

Yes	No
-----	----

Please provide reasons:

5. Are you fundamentally opposed to any development activity on the site?

Yes	No
-----	----

Please provide reasons:

6. Do you have an objection in principle against the development?

Yes	No
-----	----

Please provide reasons:

7. Does your appeal contain any new information that was not submitted to the environmental consultant or department prior to the department's consideration of the application?

Yes	No
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If the answer above is yes, please explain why it should be considered by the Minister and why it was not made available to the environmental consultant or department during the application process.

8. **DECLARATION:**

I declare that the contents of this submission are to the best of my knowledge the truth and I regard this declaration as binding on my conscience.

APPELLANT

DATE:

ANNEXURE B



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

Email: Appealsdirector@environment.gov.za

APPEAL RESPONSE REPORT

PROJECT NAME/TITLE:

PROJECT LOCATION:

PROJECT REFERENCE NUMBER:

DATE PROJECT/ACTIVITY AUTHORISED:

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
Name of appellant:	Name of applicant:
Appellant's representative (if applicable):	Applicant's representative (if applicable):
Postal address:	Postal Address:
Email Address:	Email Address:
Telephone number:	Telephone number:
Fax Number:	Fax number:

GROUNDS OF APPEAL	RESPONDING STATEMENT	COMMENT BY THE DEPARTMENT / DMR
1.		
2.		
3.		
4.		
5.		