

ANNEXURE A

OUR ENVIRONMENTAL RIGHTS

THE ENVIRONMENT

Section 24 Of the Constitution Enshrines The Right To – The Environment

Everyone has the right —

1. to an environment that is not harmful to their health or well-being; and
2. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that —
 1. prevent pollution and ecological degradation;
 2. promote conservation; and
 3. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

National Environmental Management Act, 107 Of 1998 (NEMA)

Chapter 2 of NEMA provides a number of principles that decision makers have to consider when making decisions that may affect the environment. Therefore, when a Competent Authority considers granting or refusing environmental authorisation based on an Environmental Impact Assessment, these principles must be taken into account. The NEMA principles are the following —

1. The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and —
 1. shall apply alongside all other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination;
 2. serve as the general framework within which environmental management and implementation plans must be formulated;
 3. serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;
 4. serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and

5. guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.
2. Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
3. Development must be socially, environmentally and economically sustainable.
4.
 1. Sustainable development requires the consideration of all relevant factors including the following:
 1. That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
 2. that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
 3. that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
 4. that waste is avoided, or where it cannot be altogether avoided, minimised and reused or recycled where possible and otherwise disposed of in a responsible manner;
 5. that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
 6. that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
 7. that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
 8. that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.
 2. Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment

and all people in the environment by pursuing the selection of the best practicable environmental option.

3. Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.
4. Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human wellbeing must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.
5. Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.
6. The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
7. Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.
8. Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
9. The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
10. The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.
11. Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
12. There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment.
13. Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.
14. Global and international responsibilities relating to the environment must be discharged in the national interest.

15. The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.
16. The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.
17. The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.
18. Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

In terms of NEMA, you have the following Rights —

1. You have the right to be consulted on impact assessments.
2. You have the right to participate in dispute resolution.
3. You have the right to report an environmental risk.
4. You have the right to information and for decisions to be taken in an open and transparent manner.
5. You have the right to access to information held by the State and organs of state which relates to the implementation of the Act and any other law affecting the environment, the state of the environment and actual and future threats to the environment.
6. You have the right to demand that the environment is taken care of.
7. You have the right to legal standing to enforce environmental laws.

ACCESS TO INFORMATION

In Accordance With Section 32 Of The Constitution, The Promotion Of Access To Information Act, 2 Of 2000 Gives You The Right To:

1. request any information held by the government if you properly request access to that record;
2. request information held by a person that is required for you to be able to exercise your rights if you properly request access to that record; and

3. request any record that contains information about the results of any product or environmental testing and the disclosure of this information would reveal a serious public safety or environmental risk.

Should you wish to submit an Application for a request for information in terms of the Promotion of Access to Information Act, you will have to complete an Application form. It is always best to contact the body you wish to obtain the information from in order to request the relevant Application form.

If you want to request information from a public body, for example your provincial department of the environment, complete **Form A**. If you want to request information from a private body, complete **Form C**.

[This document](#) is a generic example of the type of Application form you will have to complete and may be used, should you fail to obtain an Application form from the relevant body itself.

If The COMPETENT AUTHORITY Initiates The Amendment:

1. Process

The [Competent Authority](#) may under its own initiative seek an amendment of the Environmental Authorisation:

- to prevent deterioration or further deterioration of the environment;
- to achieve prescribed environmental standards; or
- to accommodate demands brought about by impacts on socio-economic circumstances, if it is in the public interest to meet those demands.

4. The Competent Authority **must** first:

- Notify the holder of the Authorisation of the proposed amendment, in writing;
- Provide the holder with opportunity to submit written comments to the proposed amendment.
- If necessary, conduct an appropriate public participation process.

5. Depending on the significance of the proposed amendment, the following processes must be followed:

- If the **proposed amendment is non-substantive**, the Competent Authority **may** issue the amendment.
- If the **proposed amendment is substantive**, the Competent Authority **must**:

- If necessary, conduct the [public participation](#) process to bring the proposed amendment to the attention of potential Interested and Affected Parties, including organs of state with jurisdiction over any aspect of the activity.
- Provide Interested and Affected Parties an opportunity to submit written representations on the proposed amendment.
- Provide the holder an opportunity to comment on any representations received from Interested and Affected Parties.

2. Decision

- The Competent Authority **must** notify the Authorisation holder of its decision to amend or not amend the Environmental Authorisation.
- If the Competent Authority decides to amend the Environmental Authorisation, the Competent Authority **must** –
 - give to the holder of the authorisation the reasons for the decision;
 - draw the attention of the holder to the fact that an Appeal may be lodged against the decision; and
 - issue an amended Environmental Authorisation.

<https://www.eia.org.za/legislation/your-environmental-rights/>