

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES

NO. R. 1554

28 NOVEMBER 2019

PUBLICATION OF DRAFT AMENDMENTS TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT REGULATIONS, 2019 FOR PUBLIC COMMENT

I, **SAMSON GWEDE MANTASHE, MP**, Minister of Mineral Resources and Energy, hereby publish the Draft Amendments to the Mineral and Petroleum Resources Development Regulations, 2019 (draft Amendment Regulations) for public comments.

Interested and affected parties are hereby invited to submit written representations on the draft Amendment Regulations. The aforesaid representations must be marked for the attention of **Ms Sibongile Malie** and hand delivered, emailed or sent by post, within 30 days of publication of this notice to the following addresses;

70 Mentjies street
Sunnyside
0001.

or

Private Bag x59
Arcadia
0007.

Email address: Sibongile.Malie@dmr.gov.za

A copy of the draft Amendment Regulations, 2019 is attached hereto.



MR S G MANTASHE, MP

MINISTER OF MINERAL RESOURCES AND ENERGY

DATE: 8/11/2019

GOVERNMENT NOTICE

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO: 2019

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT NO 28 OF 2002):

AMENDMENT OF REGULATIONS

The Minister of Mineral Resources and Energy, under section 107 of the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002), read with the provisions of section 14 of the Interpretation Act, 1957 (Act No. 33 of 1957) made the regulations in the Schedule.

The Setswana, Sepedi and IsiZulu translations of the draft Amendment Regulations are enclosed herein.

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

ARRANGEMENT

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Short title

1. Definitions

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MINERAL AND PETROLEUM , SOCIAL AND ENVIRONMENTAL REGULATIONS

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PART II: SOCIAL AND LABOUR PLAN

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PART III: ENVIRONMENTAL REGULATIONS FOR MINERAL DEVELOPMENT, PETROLEUM EXPLORATION AND PRODUCTION

47. Regulation repealed
48. Regulation Repealed
49. Regulation repealed
50. Regulation repealed
51. Regulation repealed
52. Regulation repealed
53. Regulation repealed
54. Regulation repealed
55. Regulation repealed
56. Principles of mine closure (Retained)
57. Application for mine closure (Retained)

58. Regulation repealed

59. Regulation repealed

60. Regulation repealed

61. Closure objectives (Retained)

62. Contents of closure plan (Retained)

PART IV: POLLUTION CONTROL AND WASTE MANAGEMENT REGULATION

63. Regulation repealed

64. Regulation repealed

65. Regulation repealed

66. Regulation repealed

67. Regulation repealed

68. Regulation repealed

69. Regulation repealed

70. Regulation repealed

71. Regulation repealed

72. Regulation repealed

73. Regulation repealed

PART V: REGULATION ON NOTICE OF PROFITABILITY AND CURTAILMENT OF MINING OPERATIONS AFFECTING EMPLOYMENT

73A. Notice of profitability and curtailment of mining operations

PART VI: REGULATION ON APPLICATION FOR USE OF SURFACE OF LAND CONTRARY TO THE OBJECTS OF THE ACT

73B. Application for use of surface of land contrary to the objects of the Act.

PART VII: REGULATION ON COMPENSATION PAYABLE UNDER CERTAIN CIRCUMSTANCES IN TERMS OF SECTION 54 OF THE ACT

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CHAPTER 1

SHORT TITLE

These Regulations shall be called the Amended Mineral and Petroleum Resources Development Regulations, 2019.

DEFINITIONS

Amendment of regulation 1

Regulation 1 of the regulations is amended

(a) *by the deletion of the following definition-*

[“environmental impact assessment” means an assessment as contemplated in section 39(1) of the Act;]

(b) *by the substitution of the definition of “interested and affected persons” for the following definition-*

“Interested and affected persons” means a natural or juristic person or an association of persons with a direct interest in the proposed or existing operation or who may be affected by the proposed or existing operation. These include, but are not limited to: –

- (i) Host Communities
- (ii) Landowners (Traditional and Title Deed owners)
- (iii) Traditional Authority
- (iv) Land Claimants
- (v) Lawful land occupier
- (vi) Holders of informal rights
- (vii) The Department of Agriculture, Land Reform and Rural Development.

- (viii) Any other person (including on adjacent and non-adjacent properties) whose socio-economic conditions may be directly affected by the proposed prospecting or mining operation
- (ix) The Local Municipality
- (x) The relevant Government Departments, agencies and institutions responsible for the various aspects of the environment and for infrastructure which may be affected by the proposed project.

(c) *by addition of the following definitions-*

“Labour sending area” means areas from which a majority of mineworkers both historical and current, are or have been sourced;

“meaningful consultation” means that the applicant, has in good faith engaged the landowner, lawful occupier or interested and affected party in respect of the land subject to the application about the impact the prospecting or mining activities would have to his right of use of the land by availing all the information pertaining to the proposed activities enabling these parties to make an informed decision regarding the impact of the proposed activities.

“Regional Office” refers to the offices designated by the Minister in terms of section 7 of the Act and managed by Regional Managers designated by the Director General in terms of section 8.

“relevant structures” refers to a local municipality, district municipality and metropolitan municipality as defined by the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

CHAPTER 2

MINERAL AND PETROLEUM , SOCIAL AND ENVIRONMENTAL REGULATION

PART I: MINERAL AND PETROLEUM REGULATION

Consultation with interested and affected persons

Amendment of regulation 3 of the Regulations

3. *Regulation 3 of the Regulations is hereby amended -*

(a) *by the insertion of words in sub-regulation (2) as follows;*

(2) The notice referred to in sub-regulation (1) must be placed on a notice board at the office of the Regional Manager or the designated agency, as the case may be, that is accessible to the public or the website of the Department or the designated agency.

(b) the insertion in regulation 3(3) of paragraph (d) as follows

(a) Publication in the applicable *Provincial Gazette*;

(b) notice in the Magistrate's Court in the magisterial district applicable to the land in question;

[or]

(c) Advertisement in a local or national newspaper circulating in the area where the land or offshore area to which the application relates, is situated; or

(d) place notice in community halls, municipal offices, or traditional offices in English and one other official language that is dominantly used in the relevant area.

(c) by the insertion after regulation of sub-regulation (5) as follows:

(5) The Regional Manager shall obtain and keep confirmation of placement of the notice from:

(a) the relevant Provincial Gazette, if the notice was published in terms of regulation 3(3) (a);

(b) Clerk of the Court or photographs taken by the responsible official, if the notice was advertised in terms of regulation 3(3) (b);

(c) the relevant local or national newspaper, if the notice was advertised in terms of regulation 3(3) (c); and

(d) photographs of the notice taken by the responsible official, if the notice was placed in terms of regulation 3(3) (d).

(d) by addition of regulations 3A and 3B as follows;

Obligation on the part of the applicant to consult

3A. The consultation with landowners, lawful occupiers and interested and affected persons contemplated in section 16(4) (b), 22(4) (b), 27(5) (a) shall be conducted in terms of the public participation process prescribed in Chapter 6 of the Environmental Impact Assessment Regulations, 2014, Regulations 39, 40, 41, 42, 43 and 44 respectively.

Notification by the right/permit holder before commencement of operations

3B. A holder of a reconnaissance permission, reconnaissance permit, mining permit, prospecting right, exploration right, mining right and production right must give the landowner or lawful occupier of the land and the Regional Manager at least 21 days written notice of his or her intention to commence with the operations.

(2) The notice must:

- (a) be in writing
- (b) state the date and time of entry to the land in question;
- (c) be accompanied by certified copies of the right or permit, as the case may be; and
- (d) Certified copies of the environmental authorisation and any relevant authorisations.
- (e) The holder referred to in sub-regulation (1) must submit proof of service of the notice to the office of Regional Manager in whose region the right relates.

PART II: SOCIAL AND LABOUR PLAN

Amendment of regulation 41

Regulation 41 is amended

(a) by insertion of words in paragraph (c) as follows;

- (c) ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating as well as labour sending areas.

Amendment of regulation 42

Regulation 42 is hereby amended

(a) by insertion of words in sub-regulation (2) (b) as follows;

- (b) The Regional Manager may refer the said Social and Labour plan back to the applicant with proposals for amendments and the revised Social and Labour plan must then be re-lodged within a period specified by the Regional Manager which period may not exceed 30 days.

(b) by addition of sub-regulations (3) and (4) as follows;

- (3) The applicant must within 180 days from the date of receiving notification of acceptance of his or her application for a mining right from the Regional Manager, consult with communities and the relevant structures on the contents of the Social and Labour Plan to ensure that it addresses the relevant needs of such communities and is aligned to the updated Integrated Development Plans of such structures.

(4) The consultation process on the contents of the Social and Labour Plan shall be conducted in terms of the public participation process prescribed in Chapter 6 of the Environmental Impact Assessment Regulations, 2014, Regulations 39, 40, 41, 42, 43 and 44 respectively.

Amendment of regulation 43

Regulation 43 is hereby amended

(a) by substitution for the following regulation;

43. **[A] An approved Social and Labour Plan [lodged with the Regional Manager]** is valid until a closure certificate has been issued in terms of section 43 of the Act.

Amendment of regulation 44

Regulation 44 is hereby amended

(a) By substitution for the following regulation;

44. **[A] An approved Social and Labour plan may not be amended or varied without the consent of the Minister in terms of section 102 of the Act. [after the granting of the mining right to which such social and labour plan pertains.]**

Amendment of regulation 45

Regulation 45 is hereby amended

(a) By the insertion of wording as follows;

45. The holder of a mining right must submit an annual report on the compliance with the approved social and labour plan to the relevant Regional Manager.

Amendment of regulation 46

Regulation 46 is hereby amended

(a) by deletion of words in sub-regulation (b) (v) as follows;

(v) The employment equity statistics which must be completed in the form of form S contained in Annexure II. **[and the mine plan to achieve the 10%women participation in mining and 40% Historically Disadvantaged South Africans (HDSA) participation in management within 5 years from the granting of the right or the conversion of the old order right.]**

Addition of Regulations 46A, 46B and 46C

The Regulations are hereby amended

(a) by addition of regulations 46A, 46B and 46C as follows;

46A Publication of an approved Social and Labour Plan

- (a) A mining right holder must publish the approved Social and Labour Plan in English and one other dominant official language commonly used within the mine community.
- (b) The responsibility to publish this information as outlined herein rests with the mining right holder.
- (c) A consulted and approved SLP must be published within 30 days of approval using the following avenues:
 - (i) Company website/s, local newspaper/s;
 - (ii) Hard copies of the approved Social and Labour Plan to be placed in local libraries, municipal offices, traditional authority offices, company /mine offices; and
 - (iii) Announcements may be made, where feasible, in local radio stations and relevant news outlets about the availability and content of the approved Social and Labour Plan.

46B. Review of a Social and Labour Plan

- (a) A Social and Labour Plan lodged with the Regional Manager and approved by the Minister on granting the right must be reviewed after every five years from the date of such approval. When reviewing a Social and Labour Plan, the Minister must take into account:
 - (i) the extent of the holder's compliance with the approved Social and Labour Plan.
 - (ii) assessment of annual reports submitted in terms of sub-regulation 6.5.
 - (iii) input, comment and reports from the affected communities and relevant structures.
 - (iv) the changing nature of the relevant needs of the affected communities as per the IDP's of the relevant structures.
- (b) The review process may be initiated from the fourth year of the SLP and shall be done in consultation with affected mine communities, adjacent communities, labour sending areas, local or district municipality.

46C Collaboration on Social and Labour Plan

- (a)Collaboration on approved SLP projects must be transparent, inclusive and based on consultation with all stakeholders.
- (b)Amendment of an approved Social and Labour Plan pursuant to the collaboration shall be done in terms of Regulation 44 of the Act.

**PART III: ENVIRONEMNTAL REGULATIONS FOR MINERAL DEVELOPMENT,
PETROLEUM EXPLORATION AND PRODUCTION**

- 47. Regulation 47 is hereby repealed.
- 48. Regulation 48 is hereby repealed.
- 49. Regulation 49 is hereby repealed.
- 50. Regulation 50 is hereby repealed.
- 51. Regulation 51 is hereby repealed.
- 52. Regulation 52 is hereby repealed.
- 53. Regulation 53 is hereby repealed.
- 54. Regulation 54 is hereby repealed.
- 55. Regulation 55 is hereby repealed.
- 56. Principles of mine closure (retained).
- 57. Application for mine closure (retained).
- 58. Regulation 58 is hereby repealed.
- 59. Regulation 59 is hereby repealed.
- 60. Regulation 60 is hereby repealed.
- 61. Closure objectives (retained).
- 62. Contents of closure plan (retained).

PART IV: POLLUTION CONTROL AND WASTE MANAGEMENT REGULATION

- 63. Regulation 63 is hereby repealed.

64. Regulation 64 is hereby repealed.

65. Regulation 65 is hereby repealed.

66. Regulation 66 is hereby repealed.

67. Regulation 67 is hereby repealed.

68. Regulation 68 is hereby repealed.

69. Regulation 69 is hereby repealed.

70 Regulation 70 is hereby repealed.

71. Regulation 71 is hereby repealed.

72. Regulation 72 is hereby repealed.

73. Regulation 73 is hereby repealed.

PART V: REGULATION ON NOTICE OF PROFITABILITY AND CURTAILMENT OF MINING OPERATIONS AFFECTING EMPLOYMENT

The Regulations are hereby amended

(a) By addition, after regulation 73 of regulation 73A as follows;

73A. Notice of profitability and curtailment of mining operations

73A (1) A holder of a mining right must submit the notice contemplated in section 52(1) of the Act to the Minister:

- (a) Within 7 days from the date after consultations with registered trade union/s, affected employees or their nominated beneficiaries, are concluded.**
- (b) In submitting the notice, a holder of a mining right must use the notice template in *figure (XX)* of these Regulations.**
- (c) The notice must contain details of prior consultations with registered trade union/s, affected employees or their nominated representatives as contemplated in section 52 (1) of the Act.**
- (d) The details of prior consultations must include dates, times, attendance registers, minutes, considerations, proposals, resolutions, agreements, recommendations, reports and records relating to consultations held with registered trade unions, affected**

employees or their nominated representatives before the notice is submitted to the Minister.

(e) The notice must be accompanied by the following supporting documents and information:

- (i) Competent persons report;
- (ii) Due diligence report;
- (iii) Alternatives considered (if not addressed in future forum minutes);
- (iv) Future forum meetings and minutes (If not already submitted);
- (v) Avoidance measures;
- (vi) Section 189 consultation records and or status of consultation;
- (vii) Audited financial statements;
- (viii) List and details of all positions affected by the retrenchment process;
- (ix) Social and Labour plan progress report;
- (x) Update on commitments with respect to a holder's environmental authorization;
- (xi) Social and Labour Plan Annual report submission;
- (xii) Annual Mining Charter report submission;
- (xiii) Retrenchment agreements;
- (xiv) Detailed list of contractors working in the mining right area;
- (xv) Company structure including ownership; and
- (xvi) Employee communication.

73A (2) The notice required to be submitted to the Minister in terms of this regulation shall be forwarded to the following addresses:

(a) Postal Address:

The Minister / The Director-General

Department of Mineral Resources and Energy

Private Bag X 59

Arcadia

0007

FOR ATTENTION: THE CHIEF DIRECTOR: LEGAL SERVICES

(b) Domicilium citandi et executandi:

Department of Mineral Resources and Energy

2nd Floor, Block 2 B

Trevenna Campus

c/o Meintjes & Francis Baard Streets

Sunnyside

FOR ATTENTION: THE CHIEF DIRECTOR: LEGAL SERVICES.

73A (3) The Minister must, within 7 days of receipt of the notice and all information contemplated in sub-regulation (1), refer the matter to the Mining and Minerals Development Board for consideration and recommendations.

73A (4) The Mining and Minerals Development Board must, as contemplated in section 52 (2) consult with the relevant holder of a mining right, investigations and make recommendations to the Minister within 60 days of the referral by the Minister.

PART VI: REGULATION ON APPLICATION FOR USE OF SURFACE OF LAND CONTRARY TO THE OBJECTS OF THE ACT

The Regulations are hereby amended

(a) By the addition, after regulation 73 of regulation 73B as follows;

73B An applicant who applies for the approval of the Minister to use the surface of land in a way which may be contrary to the objects of the Act, or is likely to impede any such object must submit an application for approval to the relevant Regional Manager, which application must provide the specific information in the format required in this regulation as follows.

1. DETAILS OF THE APPLICATION.

The Regional Manager

<u>REGION</u>	
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APPLICANT'S CONTACT DETAILS

<u>NAME</u>	<u>OF</u>
<u>APPLICANT</u>	
<u>POSTAL ADDRESS</u>	

<u>TELEPHONE NUMBER</u>	
<u>FAXCIMILE</u>	
<u>E-MAIL ADDRESS</u>	

1.1 Nature of the application:**(Mark with an X the type of approval applied for)**

<u>Establishment of a township</u>	
<u>Re-zoning of a township</u>	
<u>Proclamation of a nature reserve</u>	
<u>Establishment of a road or rail reserve</u>	
<u>Registration of servitudes</u>	
<u>Other non-agricultural land uses</u>	

2 Description of the proposed land use in respect of which the application is made

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2.1 The proposed land use**(Provide a detailed description of the proposed land use)**

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2.2 The locality of the proposed land use

(Provide a plan drawn to a suitable scale of the area applied for, which plan must include the co-ordinates according to the WGS 84; Hartbeeshoek system, co-ordinate gridlines with values, a north point, the scale, a locality plan at a scale of 1: 50 000 and the name of the local municipality)

2.3 The current land uses in the surrounding area

(Provide a description of and a plan depicting the current land uses in the surrounding area)

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2.4 **Motivation for the proposed land use**

(Provide a motivation for the proposed land use, which motivation must include information on its relevance to the spatial development framework of the local municipality, the area background information and the background information document, and confirm that these documents are attached as appendices)

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3 **Confirmation of information submitted**

(The following information must be **submitted electronically** with the application)

<u>INFORMATION SUBMITTED</u>	<u>Mark with an X where applicable</u>	
	<u>YES</u>	<u>NO</u>
<u>Signed copy of a resolution by the applicant, authorising the person whose name and identification number is stated in paragraph 5 below to submit the application electronically on the applicants behalf.</u>		
<u>Background information document</u>		
<u>Plan of the area under application</u>		
<u>Copy of the applicable title deed</u>		
<u>Copy of the approved spatial development framework from the relevant Municipality</u>		
<u>Report on consultation with interested and affected parties in the mining industry</u>		
<u>Report on consultation with the Council for Geoscience regarding both the mineral potential of the land concerned, and the possible presence of dolomitic formations thereon.</u>		
<u>Electronic folder of copies of comments and concerns raised by parties with interests in prospecting or mining in the area and surrounding area.</u>		
<u>The environmental Impact assessment</u>		
<u>Geological map of the area applied for</u>		

3.1 Identification of geological issues in the area

(Please access the spatial viewer of the Departments on line application system and provide the following information)

<u>MINING AND PROSPECTING INTERESTS AND GEOLOGICAL ISSUES</u>	<u>Mark with an X where applicable</u>	
	<u>YES</u>	<u>NO</u>
<u>Have the holders of prospecting , mining, exploration or production rights within a 2 kilometre radius of the application area been identified?</u>		
<u>Have the holders of the aforesaid rights been consulted?</u>		
<u>Is the land concerned underlain by dolomitic formations?</u>		
<u>Have any prospecting or mining right holders objected to the proposed land development on the basis of its incompatibility with their interests?</u>		

3.1.1 Geological description of the land

(Provide a geological description of the area applied for, and the surrounding area, supported by a geological map. The geological map must be attached as an appendix).

3.1.2 Discussion on prospecting or exploration interests in the area**3.1.2.1 Complete the information required below**

<u>PROSPECTING INTERESTS</u>	<u>Mark with an X where applicable</u>		
	<u>YES</u>	<u>NO</u>	<u>N/A</u>
<u>Are prospecting or exploration rights held over the land concerned or within 2 kilometres thereof?</u>			
<u>Are there applications for prospecting rights within 2 kilometres of the land concerned?</u>			
<u>Have the interested and affected parties identified above been consulted?</u>			
<u>Have the interested and affected parties been requested to specifically comment on the possibility that future occupiers of the proposed development</u>			

<u>may object to their prospecting or future mining activities?</u>			
<u>Have the interested parties identified been requested to indicate how their current operations, including their environmental management obligations, will be affected by the proposed land development?</u>			
<u>Have the aforesaid interested and affected parties been requested to indicate how potential future mining operations will be impacted on by the proposed land development?</u>			
<u>Which minerals are being prospected for on the land concerned?</u>			
<u>Which minerals are being prospected for within 2 Kilometres of the area applied for?</u>			

3.1.2.2 Complete the information required below

<u>DESCRIBE BELOW HOW THE PROPOSED LAND USE WILL BE AFFECTED BY CURRENT PROSPECTING OPERATIONS</u>
<u>DESCRIBE BELOW HOW THE PROPOSED LAND USE WILL BE AFFECTED BY POTENTIAL FUTURE MINING ON THE LAND AND SURROUNDING AREA</u>
<u>PROVIDE A SUMMARY BELOW OF HOW HOLDERS OF PROSPECTING RIGHTS IN THE AREA HAVE DESCRIBED THE MANNER IN WHICH THEIR CURRENT OR FUTURE INTERESTS IN THE AREA WILL BE IMPACTED UPON BY THE PROPOSED DEVELOPMENT, INCLUDING ANY IMPEDIMENTS TO PROSPECTING OR MINING THAT ARE FORSEEN, IMPACTS ON THEIR ENVIRONMENTAL OBLIGATIONS, AND</u>

THE POTENTIAL FOR OBJECTIONS TO THEIR ACTIVITIES BY FUTURE OCCUPIERS OF THE PROPOSED DEVELOPMENT.

3.1.3 Discussion on mining interests in the area

3.1.3.1 Complete the information required below

<u>MINING INTERESTS</u>	<u>Mark with an X where applicable</u>		
	<u>YES</u>	<u>NO</u>	<u>N/A</u>
<u>Are mining rights held over the land concerned or within 2 kilometres thereof?</u>			
<u>Are there prospecting rights or applications for mining rights within 2 kilometres of the land concerned?</u>			
<u>Have the interested and affected parties identified above been consulted?</u>			
<u>Have the interested parties identified above indicated how their current operations will be affected by the proposed land development?</u>			
<u>Have the aforesaid interested and affected parties indicated how potential future mining operations will be impacted on by the proposed land development?</u>			
<u>Which minerals are being mined on the land concerned?</u>			
<u>Which minerals are being mined within 2 Kilometres of the area applied for?</u>			
<u>State whether the mining on the land or within 2 kilometres of the proposed land development is opencast or underground in nature.</u>			
<u>State the depth below surface that mining is or will take place as informed by the interested and affected parties identified above.</u>			

3.1.3.2 Complete the information required below

DESCRIBE BELOW HOW THE PROPOSED LAND USE WILL BE AFFECTED BY CURRENT MINING OPERATIONS

DESCRIBE BELOW HOW THE PROPOSED LAND USE WILL BE AFFECTED BY POTENTIAL FUTURE MINING ON THE LAND AND SURROUNDING AREA

PROVIDE A SUMMARY BELOW OF HOW HOLDERS OF PROSPECTING AND MINING RIGHT HOLDERS IN THE AREA HAVE DESCRIBED THE MANNER IN WHICH THEIR CURRENT OR FUTURE INTERESTS IN THE AREA WILL BE IMPACTED UPON BY THE PROPOSED DEVELOPMENT, INCLUDING ANY IMPEDIMENTS TO MINING THAT ARE FORSEEN, IMPACTS ON THEIR ENVIRONMENTAL OBLIGATIONS, AND THE POTENTIAL FOR OBJECTIONS TO THEIR ACTIVITIES BY FUTURE OCCUPIERS OF THE PROPOSED DEVELOPMENT.

4 Deliberation as to why the objects of the Act will not be impeded by the proposed development

(Provide a deliberation explaining why, given the status of mining, prospecting and potential future mining in the area, given the potential impacts of the proposed land development on the mining potential of the land and vice versa, and the mitigatory measures to be formalised to avoid potential conflicts between mining and alternative land use interests, the objects of the Mineral and Petroleum resources Development Act will not be impeded by the proposed land use).

5 Undertaking by the applicant

Herewith I, the person whose name and identity number is stated below, confirm that I am the Applicant or the person authorised to act as representative of the Applicant

in terms of the resolution submitted with the application, that the information contained herein is true and correct, and undertake to ensure that should the Minister consent to the proposed land use, such consent will be lodged at the Mineral and Petroleum Titles Registration Office within 30 days of such consent for registration.

Full Names and Surname

Identity Number

PART VII: REGULATION ON COMPENSATION PAYABLE UNDER CERTAIN CIRCUMSTANCES IN TERMS OF SECTION 54 OF THE ACT

The Regulations are hereby amended

2. *By the addition, after regulation 73 of regulation 73C as follows;*

73C. Compensation payable under certain circumstances.

73C (1) If a resettlement or compensation related dispute cannot be resolved by agreement between the parties, the applicant or a holder of a prospecting right, mining right or a mining permit shall notify the Regional Manager about the dispute.

73C (2) The notice must be in writing as per notice form in **figure XYZ** and accompanied by a non-refundable fee of R1500.

73C (3) The Regional Manager must acknowledge receipt of the notice within seven days and initiate a negotiation process as contemplated in section 54(3) of the MPRDA. In this regard the Regional Manager shall;

- (a) Constitute a negotiation team comprising representation from all affected parties (the applicant, the right holder, representatives of affected community/ies, traditional leadership etc).
- (b) Develop Terms of Reference for the negotiation team with clear parameters regarding the role of the team, scope of its work, meeting dates and times and timeframes to resolve the dispute.
- (c) Require all affected parties to submit all relevant information (documents, agreements etc) that pertains to the dispute.

- (d) Chair the meetings as per the terms of reference objectively with a view to facilitate a speedy resolution of the dispute.
- (e) Ensure that the meetings quorate and that every party is represented and mandated.
- (f) Refer complicated matters to the Deputy Director General, Director General or the Minister where warranted.

73C (4) The Regional Manager led process shall be concluded within a period of up to 90 days.

73C (5) If a resettlement or compensation related dispute cannot be resolved through Regional Manager led process, parties to the dispute may refer the matter to an arbitration or conciliation process in terms of applicable legislation (Arbitration Act and Conciliation Act).

73C (5) The referral must be made within 30 days of the decision by the Regional Manager.

73C (6) The conciliation or arbitration process shall be undertaken and concluded within a period of up to 90 days.

73C (7) If a resettlement or compensation dispute cannot be resolved by agreement between the parties, the Regional Manager led process or the conciliation or arbitration process, the aggrieved party may take the dispute to the competent court within 30 days of the arbitration or conciliation award.

CHAPTER 3

APPEALS

Regulation 74 is hereby amended

(a) *by substitution for the following regulation.*

Appeals against administrative decisions

74. (1) Any person who appeals in terms of section 96(1) (a) of the Act against an administrative decision, must **[within 30 days after he or she has become aware of the or should reasonably become aware of the administrative decision concerned, lodge a written notice of intention to appeal with the Director General or the Minister, as the case may be,]** submit a written notice of intention to appeal to the Minister, the Regional Office from which the decision emanates and any other person whose rights may, in the opinion of the appellant, be affected by the outcome of the appeal.

(2) The notice of intention to appeal referred to in sub-regulation (1) must be submitted within 30 days of the date of the decision.

(3) The Regional Manager must,

- (a) within 10 days of receiving a notice of intention to appeal, identify any other person whose rights may, in the opinion of the Regional Manager, be affected by the outcome of the appeal not already listed in the notice of intention to appeal received in terms of sub-regulation (1); and
 - (b) give written notice person contemplated in regulation 74 (1) of the identity and contact details of such further affected person; and
 - (c) submit a copy of such notice to the Minister; and
 - (d) the person who submitted a notice of intention to appeal must without delay, but before the expiry of the 30 day period provided for in sub-regulation (2) serve a notice of intention to appeal on such further identified person.
- (4) The person lodging the notice of intention to appeal in terms of sub-regulation (1) must,
 - (a) within 15 days after filing a notice of appeal submit the appeal to the Regional Office from which the decision emanates and all identified persons who may have an interest in the outcome of the appeal; and
 - (b) notify the Minister in writing that the appeal has been submitted as contemplated in sub-regulation 4 (a).
- (5) The Minister may, upon application and on good cause shown, condone and extend the time periods prescribed in this regulation.
- (6) The appeal must –
 - (a) be in writing
 - (b) clearly state the actions or decisions appealed against;
 - (c) be accompanied by a copy of the notice of intention to appeal, the notice received from the Regional Manager in terms of sub-regulation 3(b) containing acknowledgment of receipt by all affected persons;
 - (d) clearly set out the grounds on which the appeal is based; and
 - (e) be accompanied by supporting documentation referred to in the appeal document.
- (7) The appeal must be accompanied by the payment of a non-refundable appeal fee referred to in regulation 75(1) (f).

(8) Upon receipt of the notice of intention to appeal referred to in subsection (1), but no later than 10 days thereafter, the Regional Manager must make all records pertaining to the decision or decisions subject to the contemplated appeal available to the appellant for inspection and submit a copy to the Minister.

(9) A third party receiving an appeal referred to in sub-regulation (4) may submit to the Regional Manager and the appellant a responding statement within 30 days of receipt of the appeal setting out –

(a) the extent and nature of his/her rights;

(b) how the outcome of the appeal may affect his/ her rights; and

(c) any other information pertaining to the grounds of appeal set out in the appeal; and

(d) notify the Minister in writing that such responding statement was filed, together with proof of service thereof.

(10) The Appellant after having inspected the record of decision as contemplated in sub-regulation (8) and after receiving the responding submissions from affected parties referred to in sub-regulation (9), may

(a) submit to the Regional Manager, together with proof of service to the affected party/ parties, an answering statement within 30 days after having being served with the affected party/ parties responding statement.

(b) give written notice to the Minister that an answering affidavit has been submitted, together with proof of service thereof.

(11) The appellant must within 10 days of filing of his or her answering statements or the expiry of the period referred to in sub-regulation (9), submit to the Minister and the Regional Manager–

(a) the appeal document with all required annexures;

(b) all documentation pertaining to the decision(s) subject to the appeal as contemplated in sub-regulation (8);

(c) all responding statements received from third parties who may be affected by the outcome of the appeal, if any; and

(d) the answering statement by the Appellant if any.

(12) All notices required to be given to the Minister in terms of this regulation shall be forwarded to the following addresses:

(i) Postal Address:

The Minister / The Director-General

Department of Mineral Resources and Energy

Private Bag X 59

Arcadia

0007

FOR ATTENTION: THE CHIEF DIRECTOR: LEGAL SERVICES

(ii) Domicilium citandi et executandi:

Department of Mineral Resources and Energy

2nd Floor, Block 2 B

Trevenna Campus

c/o Meintjes & Francis Baard Streets

Sunnyside

FOR ATTENTION: THE CHIEF DIRECTOR: LEGAL SERVICES

(13) The Minister must, within 90 days of receipt of all information contemplated in sub-regulation (10) either –

(a) confirm the administrative decision concerned;

(b) set aside the administrative decision concerned;

(c) amend the administrative decision concerned;

(d) substitute the administrative decision concerned for any other administrative decision; or

(e) refer the decision back to the delegated authority for re-consideration.

(14) The Minister must, within 14 days after the appeal decision has been made, notify the appellant, affected parties and the Regional Manager of the decision with reasons thereof.

(15) If an appeal is received by the Minister that covers both matters to be adjudicated upon in terms of section 96(1) (a) and (b) respectively.

(a) a copy of the appeal must be submitted upon receipt to the Minister of Environmental Affairs for processing of the appeal in relation to environmental matters in accordance with the procedure contemplated in section 96(1) (b).

(b) the Minister and the Minister of Environmental Affairs shall co-ordinate the finalization of simultaneous appeals in terms of 96(1) (a) and (b) respectively affecting the same administrative decision.

(16) These regulations shall not apply to appeals lodged prior to promulgation thereof.

75A Commencement of amendments

The amendments to the Mineral and Petroleum Resources Development Regulations shall come into operation on the date of publication in the Government gazette for implementation.

75B FORMS AND TEMPLATES

1. FIGURE (XX)

NOTICE IN TERMS OF SECTION 51 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002.

Enquiries:

Tel:

Email:

Company address

Xxxxxx

Xxxxxx

Dear Honourable Minister.

RE: SECTION 52 (1) NOTICE.

We, the undersigned,

Company **XXXX**,

(registration number **XXXX**)

(Mining right number: ...MR)

(herein represented by [REDACTED] in his/her capacity as the Chief Executive Officer of the company, he/she being duly authorised thereto by resolution of Directors of the Company).

Hereby, serve notice in terms of section 52 (1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).

We confirm that we have consulted extensively with registered trade union/s (XYX) and (TYU), affected employees and their representatives regarding possible downscaling and retrenchments at our operations in terms of section 52 (2) as can be gleaned from the attached supporting documents **(Annexures A to Z).**

The company undertakes that all the information provided in support of this notice is true and correct.

The company acknowledges that the Minister may invoke the provisions of sections 52 (3) (c) 93, 47, 99 and related provisions to ensure compliance with its requirements.

We await your response/guidance on this matter within the prescribed timeframe.

Signature of Company Representative.

Date:

2. FIGURE XYZ

SECTION 54 NOTICE FORM

DEPARTMENT: MINERAL RESOURCES AND ENERGY

REPUBLIC OF SOUTH AFRICA

NOTICE FORM

[in terms of section 54 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)]

FOR DEPARTMENTAL USE

Ref No.....

Prescribed Fee. R

Request received by.....

Full Name

Signature of the applicant

.....

PARTICULARS OF COMPLAINANT

NAME: _____

SURNAME: _____

ADDRESS:

TELEPHONE: _____ **CELLPHONE:** _____

EMAIL: _____

REASON(S) FOR DISPUTE:

SIGNATURE: _____ **DATE:** _____