

A User-Friendly Guide to the EIA Regulations

2015

COMPANY CONTACT DETAILS:

Chand Environmental Consultants

Chand Environmental Consultants (Chand) is an all-female, affirmative business enterprise offering a full range of environmental services, sustainability and risk management services. **We offer practical, solution oriented, environmental advice for the design, construction and operational phases.** Chand also specialises in public participation processes which effectively engage stakeholders in statutory environmental processes as well as offering conflict resolution services required for controversial development proposals.

The company was established in 1998 by Sadia Chand who has extensive working experience in southern Africa, with an international training background. She has her Masters in Environmental Science from the University of Cape Town, and her Bachelor of Science (Honours) from the University of Toronto. Chand is based in Cape Town and over the years, has worked around southern and central Africa thereby establishing strong working relationships with specialist sub-consultants and associates in the fields of social, biophysical, planning and legal expertise around the continent. This allows for the specialists of each assignment to be chosen to fit the nature of the site, and the services required.

The company is fully knowledgeable on the application of the Integrated Environmental Management principles, international best practice and the interpretation of environmental legislation, as it affects development and conservation.

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SECTION 1: SOME USEFUL EIA INFORMATION

1.1 So what is the Environmental Impact Assessment (EIA) Process all about?

- It is a legal requirement which entails a process of investigation which culminates in the environmental authorities issuing an **Environmental Authorisation** and/or **Waste Management License** either approving your development (with conditions) or refusing it.
- There are two different kinds of EIA processes:
 - **Basic Assessment:** The majority of EIAs seem to fall into this category. The process takes approximately 6 months. Refer to **Flow Diagram A** in this handbook for an outline of the process.
 - **Full Scoping and EIA:** Generally projects of a large scale fall into this category. This process can take approximately 12-18 months. Refer to **Flow Diagram B** in this handbook for an outline of this process.

The process involves the identification and assessment of the impacts and implications of various activities on the biophysical and social environment that could result from the development proposal being implemented.

- Both the Basic Assessment and Full Scoping and EIA processes require public participation and could also receive input from specialist investigations. Through the process, a platform is created for the public (Interested and Affected Parties) to have a meaningful opportunity to understand and comment with respect to the proposed activities.
- Alternative development proposals are required to be considered, thereby ensuring that the most environmentally appropriate proposal is achieved.
- The EIA can enhance project outcomes by highlighting mitigation measures to avoid or reduce impacts.
- It can add value to your project by optimizing your opportunities through investigating the baseline environment conditions upfront – **if** you consult an environmental expert early in the planning of your project. It can also promote constructive relationships with society and stakeholders, in general through the promotion of responsible and sustainable development in the natural and built environments.

1.2 EIA Legislative Context

The legislation directly pertaining to an EIA process is as follows:

- National Environmental Management Act No. 107 of 1998 (NEMA)
- The EIA Regulations (GN No. 982, R983, R984 and R985 of 04 December 2014)
- The National Appeal Regulations (GN No. R993 of 08 December 2014)
- National Environmental Management: Waste Amendment Act No. 26 of 2014
- List of Waste Management Activities that have, or are likely to have a detrimental effect on the Environment (GN No. 921 of 29 November 2013), as amended
- National Norms and Standards for the Storage of Waste (GN No. 926 of 29 November 2013)

1.3 Implications of Ignoring the Law

Is it really worth the risk?

Commencing with a development that triggers an EIA process without the necessary **Environmental Authorisation** or **Waste Management License** can have the following legal implications:

- The provincial Director General of Environmental Affairs or the Head of Department of the provincial authority responsible for environmental matters could be informed of the case and may direct the offender to take the necessary measures to comply with legislation. This would normally involve a rectification process under Section 24G of NEMA. An administrative fee would be levied in the case of a Section 24G application, which is effectively a fine. The maximum fine that could be levied is R5 million.
- Should the person fail to comply with a Directive or instruction issued by the environmental authority, the Department may decide to take the matter to court. NEMA provides for a fine and/or a prison sentence to be imposed in the event of a guilty verdict, as is shown in the table below.
- Should the relevant authority fail to take action, application may be made to the High Court by the public, any entity or organ of state, thereby forcing the offender to comply. Furthermore, a charge can be laid with the South African Police, who will then decide whether to proceed with prosecution.

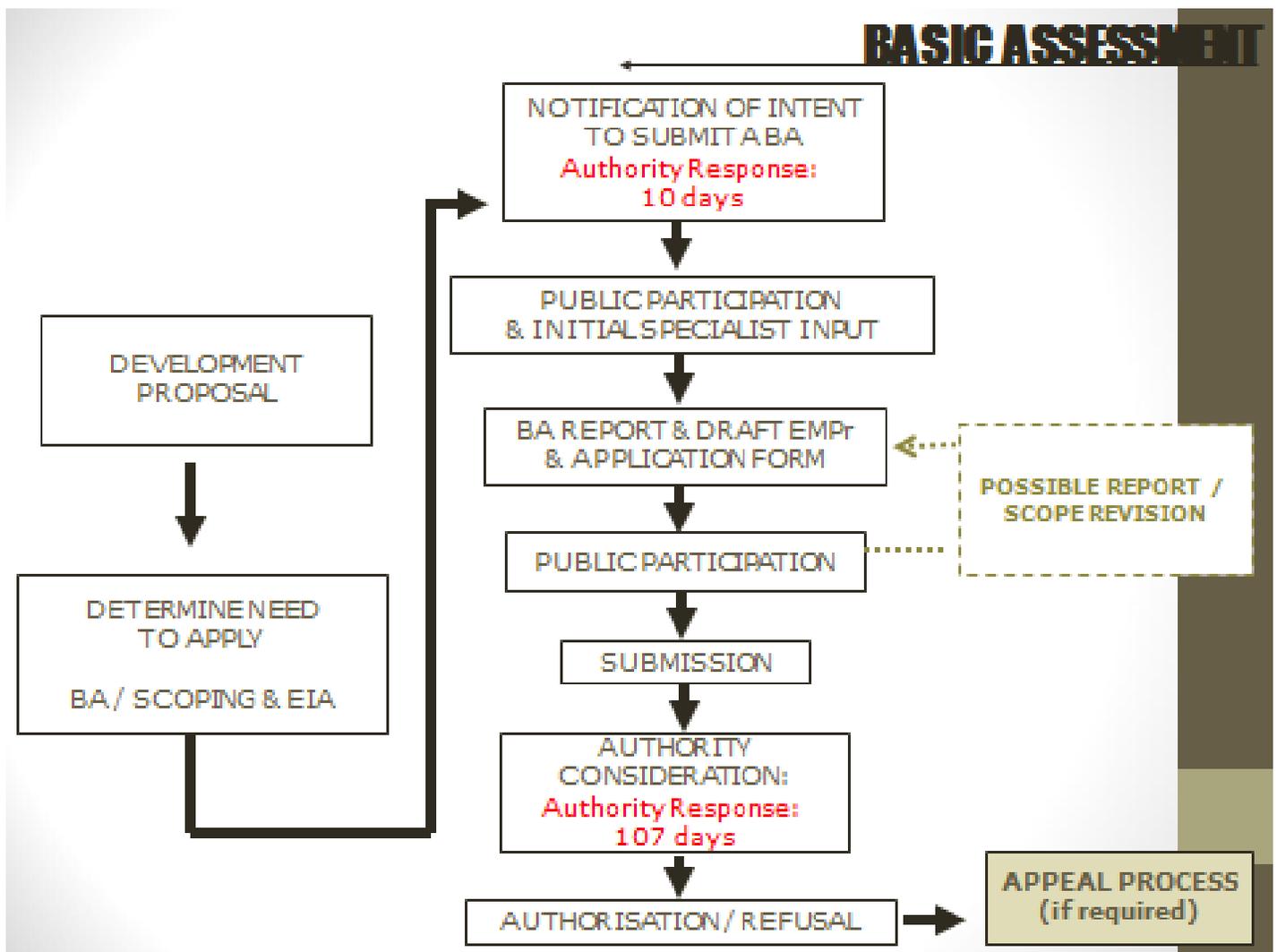
Possible penalties could include costly fines and / or imprisonment, as tabled below. Thereafter, the legislated authorisation would still be required. As such, this would result in unnecessary cost and programme delays, which could have been prevented.

OFFENSE	LAW	PENALTY
Commencement of a listed EIA activity without the requisite authorisation	Section 24F of the National Environmental Management Act, 1998	Up to R5 million and / or 10 years imprisonment

1.3.1 Basic Assessment

- The listed activities that would trigger the need for a Basic Assessment EIA process are listed in Government Notices No. R983 and R985 of 04 December 2014.
- Category A of Government Notice No. 921 of 29 November 2013, as amended contains the listed activities that would trigger a Basic Assessment EIA process in order to obtain a Waste Management License.

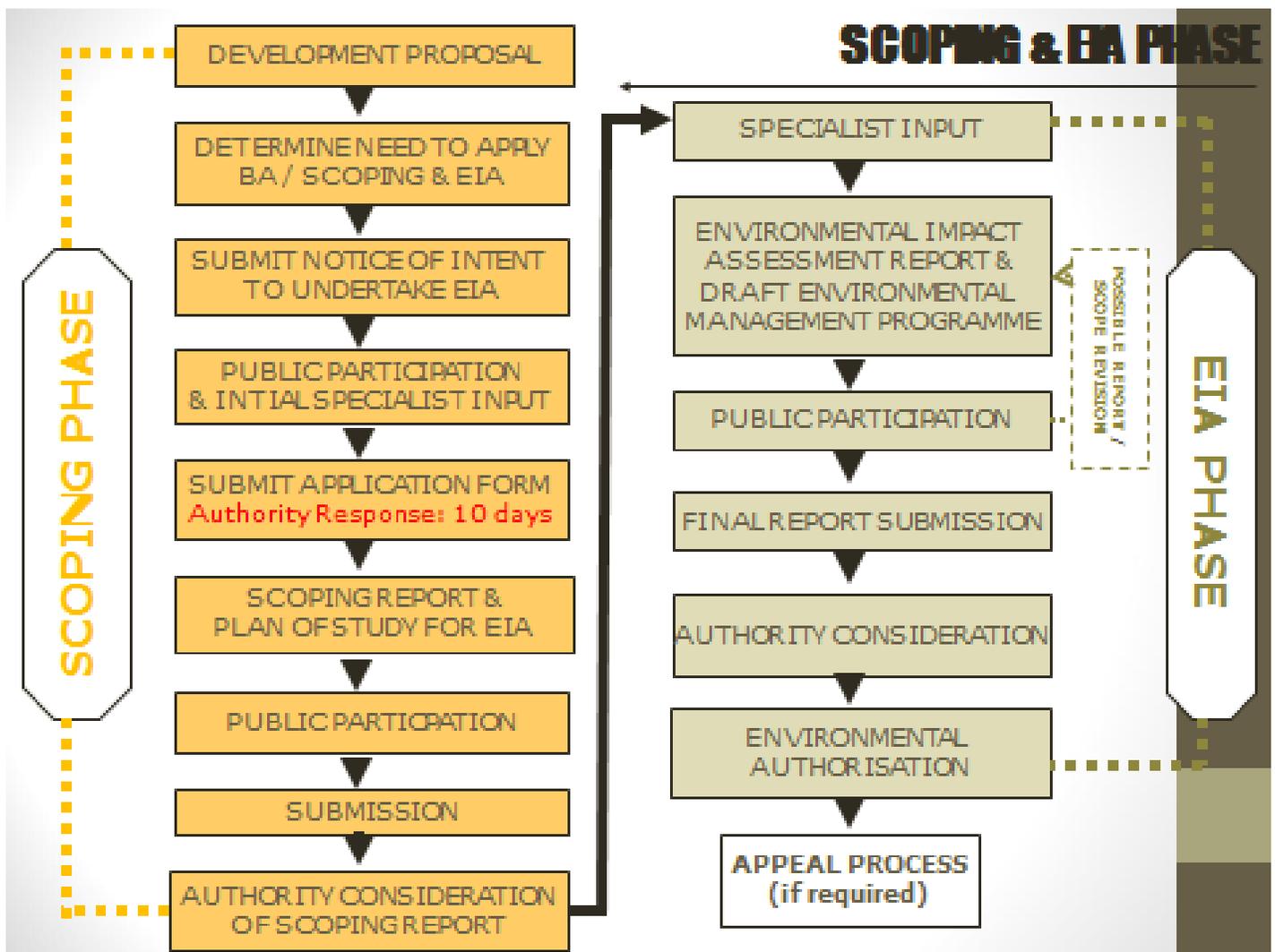
FLOW DIAGRAM A: BASIC ASSESSMENT EIA PROCESS



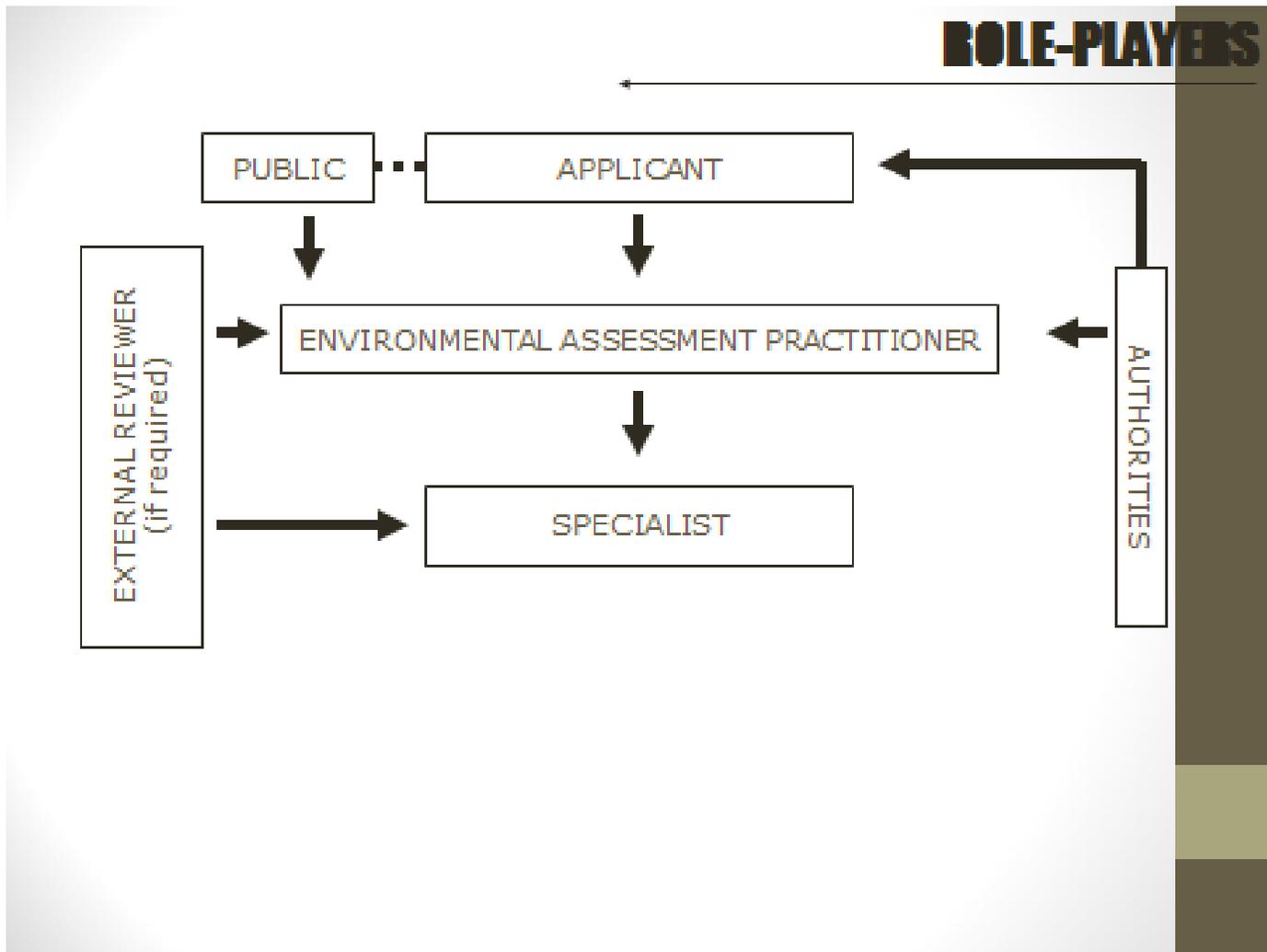
1.3.2 Full Scoping and EIA

- The listed activities that would trigger the need for a Scoping and EIA process are listed in Government Notice No. R984 of 04 December 2014.
- Category B of Government Notice No. 921 of 29 November 2013, as amended contains the listed activities that would trigger a Full Scoping and EIA process in order to obtain a Waste Management License.

FLOW DIAGRAM B: FULL SCOPING AND EIA PROCESS



1.4 Role-players



1.5 Some tips

- Ensure that your environmental specialist has the ability to work in a multi-disciplinary team, and that they communicate regularly to that team to promote a synergy in the design.
- Ensure that "red flags" raised either through the specialist investigations or via the public participation process are immediately communicated to the team.
- For controversial developments, consider having an external reviewer to add credibility to the process. The external reviewer must have a sound reputation in the industry.
- A comprehensive, strategic public participation process which goes beyond minimum legislative requirements can assist in resolving issues arising and possibly avoid appeals once the Environmental Authorisation is issued.

- Specialists (such as botanists, freshwater ecologists, etc.) where possible, should be chosen locally as they understand the baseline environment and have likely been mapping trends in the area thereby contributing to the accuracy of findings.
- Other acts that may be relevant to the environmental process include:
 - The Air Quality Act (Act No. 39 of 2004)
 - The National Biodiversity Act (Act No. 10 of 2004)
 - The Water Act (Act No. 36 of 1998)
 - Conservation of Agricultural Resources Act (Act No. 45 of 1983)
 - Mineral and Petroleum Resources Development Act (Act No. 28 of 2002)
 - National Environmental Management: Protected Areas Act (57 of 2003), known as the NEM:PAA
 - National Environmental Management: Biodiversity Act (10 of 2004), known as the NEM:BA
 - National Environmental Management: Air Quality Act (39 of 2004), known as the NEM:AQA
 - National Environmental Management: Integrated Coastal Management Act (24 of 2008), known as the NEM:ICM
 - National Environmental Management: Waste Act (59 of 2008), known as the NEM:WA