

FRACKING: WHAT'S NEEDED?

For fracking applicants, as matters currently stand¹

For those in the Mining and Petrochemical industries, the regulatory environment for Fracking can be a challenging one to navigate. We have drawn up a list of what we think are the most likely licensing requirements for projects of this nature.

- Water use license (exploration and/or production of onshore naturally occurring hydrocarbons requiring stimulation is a controlled activity in terms of section 38(2) of the National Water Act)
- Environmental authorisations for listed activities associated with exploration and petroleum production – this will include obligations to submit environmental management programmes and financial provision
- Exploration or production right in terms of the Mineral and Petroleum Resources Development Act
- Town-planning consents as may be required by the Spatial and Land Use Management Act and any other related land use legislation or ordinances
- Approved pollution prevention plan in terms of the Pollution Prevention Plan Regulations published in terms of the National Environmental Management: Air Quality Act
- Waste management license in terms of the National Environmental Management: Waste Act, 2008*
- A license in terms of the Hazardous Chemical Substances Act, 1973*
- Heritage permits in terms of the National Heritage Resources Act, 1999*
- Biodiversity and conservation related approvals*
- Local bylaw certificates and registrations*

WHAT SUPPORT AND REGULATORY DEVELOPMENTS SHOULD BE CONSIDERED

- Publication of a sub-category for shale gas production in terms of the listed activities published in terms of the National Environmental Management: Air Quality Act, 2004 (currently category 2 regulates the petroleum industry, the production of gaseous liquid fuels and petrochemicals from crude oil, coal, gas or biomass but there is no activity which would be appropriate to a shale gas extraction facility)
- Possible extension of the Regulations regarding the Use of Water for Mining and Related Activities aimed at the Protection of Water Resources (GN704) published in terms of the National Water Act, 1998
- Guidelines/regulations to inform applications for and the minimum information required for environmental authorisation to be published in terms of section 24(5)(bA) or section 24J of the National Environmental Management Act, 1998
- Guidelines/regulations to inform applications for water use licenses to be published in terms of section 26(1)(o) of the National Water Act
- Co-operation agreement/s between likely affected tiers of government in order to give effect to existing obligations in terms of the National Environmental Management Act, 1998
- Possible declaration of additional hazardous substances in terms of the Hazardous Substances Act, 1973
- Possible strategic Environmental Assessment as was conducted for the Karoo Basin for applications which fall outside of that area

*1. This list is not exhaustive and does not replace the need for a full regulatory analysis by a project applicant. There may be particular requirements under energy legislation as well as requirements which are specific to a particular project design. Those items marked with * are aspects which are dependent on the location and activities relating to the particular project.*