



# **EDTEA – IAIAsa KZN Workshop**

**EKZNW, QE Park, Pietermaritzburg**

**16 February 2017**  
**10h00**

*“To attain inclusive and sustainable economic growth”*

# Agenda

TIME		PRESENTER
10:00 – 10:15	1. Welcome, introduction and purpose of the Workshop	EDTEA/ IAIAsa
10:15 – 11:00	2. NEMA EIA Regulations and Listing Notices: a. Common misinterpretations	EDTEA/ IAIAsa
11:00 – 12:00	3. EIA process issues: a. Timeframes and general requirements b. Public participation	EDTEA/ IAIAsa
12:00 – 12:30	TEA	
12:30 – 13:45	4. EIA process issues (continued): a. EIA reports b. EIA review and decisions (EDTEA SOPs)	EDTEA/ IAIAsa
13:45 – 14:00	5. Closing remarks and way forward	EDTEA/ IAIAsa



# Purpose of the Workshop

To, with regard to EIA applications improve:

- a) the working relationship between the Department and EAPs;
- b) interpretation of responsibilities in terms of the EIA Regs and the standard of EIA reporting; and
- c) decision making that promotes (and fast-tracks) environmentally sustainable development

# NEMA EIA Regs & Listing Notices:

## Common misinterpretations

### 1. Definitions

#### a. Listing Notice definitions

- i. **Development:** construction -excludes operation-expansion
- ii. **Development setback:** setback line defined/ adopted by CA
- iii. **Indigenous vegetation:** indigenous plants occurring naturally in area – regardless of level of aliens
- iv. **Watercourse:** natural channel in which water flows regularly or intermittently
- v. **Wetland:** transitional between terrestrial and aquatic periodically covered with water –saturated soil –characteristic plants

### 2. Timeframes

- a. **Exclusion of 15 Dec-05 Jan:** (21 days) must be added to timeframe Sub-reg 3(2)
- b. **Public holidays:** prescribed timeframe is extended by the number of public holiday days (Sub-reg 3(5))



# NEMA EIA Regs & Listing Notices:

## Common misinterpretations (continued)

### **3. General requirements**

#### **a. Comments by the CA**

- i. CA must comment on reports within 30 days during public participation process (after application is submitted) -follow up if outstanding (Sub-reg 7(5) and 40 (1)(3))

#### **b. Independence of a specialist**

- i. Specialist must comply with Reg 13(1) (a) –be independent and not compromise the objectivity of the EAP (definition for independence)

### **4. Listing Notices**

- a. Identification of the CA (NEMA S24C)
- b. Development/ development and operation
- c. Maintenance Management Plan –projects associated with regular maintenance (LN 1: 18; 19; 27)
- d. LN 3 Geographical areas: confirm with EDTEA

**BA - 197  
Days**

**Part 1  
Amendment -  
30 days**

**Scoping and EIA  
- 300 Days**

**Part 2  
Amendment  
- 197 days**

**PPP - Minimum 30  
day comment  
period**



**The More I Think  
The More Confused I Get**



# EIA Process Issues: (a) Timeframes

- Increase in Lapsed Applications
- Increase in Refused Applications
- Increase in requests for the extension of timeframes
- EAPs Perspective: Unreasonable timeframes/requests from the CA;
- CA's perspective: Unreasonable timeframes and irresponsible responses from the EAP.



**NEED TO HAVE TIMEFRAMES WITHIN  
THE TIMEFRAMES – FOR THE CA & EAP**

# Breakdown of BA Timeframes

- Comment on Draft BAR within 30 days;
- Upon receipt of Final BAR – review and comment within 30 days – **DAY 30**;
- EAP to address issues within 30 days – **DAY 60**;
- CA to draft EA within 30 days – **DAY 90**;
- CA quality control and signing of decision within 17 days – **DAY 107**.



# Breakdown of Scoping and EIA timeframes

- Comment on Draft Scoping Report and Environmental Impact Assessment Report (EIAR) within 30 days;
- Upon receipt of Final Scoping Report (FSR) – review and comment within 30 days – **DAY 30**;
- EAP to address issues within 10 days – **DAY 40**;
- CA to accept the FSR or Refuse the Application - by **DAY 44**;
- Upon receipt of the Final EIAR– review and comment within 30 days – **DAY 30**;
- EAP to address issues within 30 days – **DAY 60**;
- CA to consider and draft EA within 30 days – **DAY 90**;
- CA quality control and signing of decision within 17 days – **DAY 107**.

# EIA Process Issues:

## (b) General Requirements

- Complying with ALL legislated requirements in preparing documents;
- Submission of documents in line with ALL legislated requirements;
- EMPr must be detailed and site/activity specific;
- Timeously and effectively deal with conflict situations.



# EIA Process Issues:

## (b) Public Participation

### **1. Landowner consent**

- a. If applicant is not owner – written consent required before EA application (Sub-reg 39(1)) (except linear activities)

### **2. Linear activities**

- a. Written notice as provided for in NEMA s 47D must be given to owners/ occupiers of adjacent land (Sub-reg 41 (2)(b)(ii))

### **3. Commenting period**

- a. CA and relevant State Depts must be provided 30 days to comment on draft reports (Sub-reg 40(1))
- b. Any reports provided to I&APs before an EA application is submitted must be redistributed after registration (Sub-reg 40(3)).

### **4. Public participation process**

- a. Reasonable alternative methods to inform disadvantaged persons (Sub-reg 41(2)(e))

# EIA Process Issues: (c) EIA Reports

## 1. Contents of Reports

- a. Must agree with Appendices to EIA Regs

## 2. BA , Scoping & EIA Reports must include:

- a. **List of activities** being applied for (according to EA application) and component of project that triggers the activity (App 1: 3(d)) (App 2: 2(d)) (App 3: 3(d))
- b. **List of all legislation/** policies/spatial tools/municipal planning frameworks taken into account and how the activity complies or were considered (App 1: 3(e)(i-ii)) (App 2: 2(e)) (App 3: 3(e))
- c. **A motivation for the need and desirability** of the activity on the preferred location (App 1: 3(f)) (App 2: 2(f)) (App 3: 3(f))
- d. **Details of alternatives.** If no alternative, a motivation for such and a statement and motivation for the preferred alternative (App 1: 3(h; x-xi)) (App 2: 2(h; x-xi)) (App 3: 3(h; ix-x))



# EIA Process Issues: (c) EIA Reports (continued)

## 3. BA & EIA Report must include:

- a. A description of **uncertainties/ gaps related to assessment** and proposed mitigation (App 1: 3(o)) (App 3: 3(p))
- b. For **non operational activities**, the period for which authorization is required (App 1: 3(q)) (App 3: 3(r))

## 4. EMPr must include:

- a. Details of the **mechanism for monitoring compliance** with impact management actions and objectives including identification of impacts and their avoidance/ management/ mitigation/ rehabilitation (App 4: 1(k) and 1(f))

## 5. Specialist Reports must include:

- a. A description of **assumptions and gaps in knowledge**
- b. Any **conditions for including in EA** and monitoring requirements for EMPr
- c. An **opinion as to whether the proposed activity should be authorized** and any consultation that occurred during the preparation of the report

## EIA Process Issues: (d) EIA Review and Decisions

- Applications that went through a Pre-Application meeting often were finalized easier;
- BARs being submitted as “Final” – actually did not go through a minimum 30 day commenting period after lodging of application – therefore not a Final BAR;
- Specialist Studies: Some are blatantly required but not conducted....Some are requested but not required – Guideline Document?
- Linking of Project description to Listed Activity to impacts to mitigation;
- Carry through specialist findings through to assessment.
- Keep reflecting on the Impact Hierarchy.



# EDTEA Standard Operating Procedures

## **Pre-Application Meetings:**

- A Draft Application Form (with all necessary attachments – Locality maps/Layouts, Google images/Sensitive features Map) must be submitted to the Department within 05 days prior to the pre-application meeting;
- The Draft Application Form must be accompanied by a Screening Summary Report for the site once gazetted/available.
- The Draft Application Form must be reviewed by the EIA Team and a meeting date and venue confirmed. Prior to the meeting, the EIA Team must meet to discuss the proposed project and identify suitable/relevant questions for the meeting – Constructive ideas.
- Also can use this opportunity to screen the EAP.

# EDTEA Standard Operating Procedures (cont.)

## **At the Meeting:**

- All members (where possible) of the District EIA Team must be present;
- EAP and applicant must be in attendance. Where the applicant is not available a proxy can sit in or the applicant can confirm that the applicant is represented by the EAP;
- An Attendance Register and Agenda must be provided.

## **The EIA Team must:**

- Inform attendees of any decision support tools that can be used;
- Advise the applicant and EAP on any matter that may prejudice the application;
- The EIA Team should advise if the specialist studies are adequate or inform the EAP of other specialist requirements. You can also use this opportunity to screen the Specialist, to ensure they comply with Regulation 13 of the 2014 EIA Regulations.



## EDTEA Standard Operating Procedures (cont.)

- The need for a site visit will be at the discretion of the EIA Team. Irrespective if a site visit is undertaken at this stage, a separate site visit must be conducted once the application and BAR, Scoping and or Environmental Impact Assessment Report is with the Department. Minutes must be taken by either the EAP or the Department.

### **What must the EAP do?**

- Disclose all information available to the CA;
- Follow the Impact Hierarchy – If there are offsets, offset first then lodge the application;
- Be free to discuss potential issues/concerns or show stoppers.

# EDTEA Standard Operating Procedures (cont.)

Minutes must be taken by either the EAP or the CA.

## **POST MEETING:**

- Within 07 days of meeting, the CA must finalise and forward formal meeting minutes to attendees.
- Where minutes were compiled by the EAP, the EIA Team must read and adopt the minutes as final/accepted.



# Conclusions and Way Forward

- Pre-Applications a MUST for ALL Applications;
- Keep reflecting on the Impact Hierarchy;
- Ensure that the PPP is detailed and finalized;
- Use the Appendices relevant to the matter as a checklist. Example: BA - Check Appendix 1 of the EIA Regulations.
- Need for a guideline on specialist studies;
- Need to urgently resolve “urban areas” issue.

# Thank You!

## EDTEA Contact Details

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