

Regulations Pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations

Presentation to IAIA Gauteng – 30 November 2015



Environmental Advisory Services



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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- Motivation for amendments
 - One Environmental System
 - Report of the Auditor General's 'Performance audit of the rehabilitation of abandoned mines at the DME' - October 2008
 - Findings of the report 'Evaluation of the Environmental Governance Framework in the Mining Sector' – August 2015
- Principles for drafting
- Regulations
- Appendix's

Background

- Sections 41 and 43 of the MPRD Act required the owner to make financial provision for all environmental liabilities related to the mine.
- 23 April 2004 - Mineral and Petroleum Resources Development Regulations
 - Part III
 - 53 – Method of financial provisioning
 - 54 – Quantum of financial provision -
 - Guideline published by DMR including itemisation of actual costs for
 - Premature closure
 - Decommissioning and final closure
 - Post closure management of residual and latent environmental impacts
 - Annual update of the quantum
 - As identified in EMP or EMPR
 - As determined by the Minister
 - Inadequacies to be rectified in amendments to the EMP or EMPR
 - Or as determined by the Minister
- 5 906 abandoned mines, 1 730 were classified by the CGS as high-risk mines

Motivation for change

- One Environmental System – DEA
 - Prior to 8 December 2014 - environmental aspects of mining activities were regulated in terms of the MPRDA
 - In 2008 - agreement to align the environmental function of mining
 - Related to financial provision - the agreement entailed
 - ✓ Environmental function of mining to be regulated under NEMA
- Changes were made to NEMA
 - ✓ 24P – Financial provision for remediation of environmental damage
 - ✓ 24R - 24R was related to mine closure moved to NEMA

Evaluation of the Environmental Governance framework in the Mining sector

- Is the guideline for the determining financial provision for rehabilitation of mining adequate to ensure rehabilitation and to protect the State from liability
- Are the current institutional mechanisms effective in achieving and promoting good governance in the sector
- To what extent are mining-related environmental liabilities covered by the State? Could the costs reduced through efficient and effective environment governance

Study Findings

- Adequacy of the Guideline for the determining financial provision for rehabilitation of mining
 - considered insufficient for calculating the costs of rehabilitation
 - out-dated, too generic, does not include underground or surface water liabilities, which is a large percentage of mines total liability
- Effectiveness of institutional mechanisms to promote good governance
 - Currently limited closure certificates are issued – 2013/2014 (575 were under review of which 159 were issued)
 - Under MPRD DMR reluctant to close mines as liability transfers to State
 - Guideline for financial provision is insufficient – only 60% of operational mines in 2012-2013 had adequate financial provision

Study Recommendation

- Governance framework:
 - **The guideline for calculating costs of financial provision for rehabilitation and closure of mines should be updated**
 - **Where possible, concurrent rehabilitation should be encouraged or enforced –**
 - will limit State liability should the mine close unexpectedly
 - DMR should allow mines to reduce their financial provisions as and when their liabilities reduce due to concurrent rehabilitation
 - **Under NEMA mines retain liability on closure (polluter pays)**
 - Mines should be encouraged to close

Regulations

- Determination of financial provision
 - Makes it a requirement to make financial provision – its an offense not to
- Scope of the financial provision
 - rehabilitation and remediation;
 - decommissioning and closure activities at the end of operations
 - remediation & management of latent or residual impacts (specifically refers to water)
- Method for determining financial provision – detailed itemisation of activities and actual related costs
 - Annual rehabilitation – annual rehabilitation plan
 - Final rehabilitation, decommission and closure at end of life of operations – rehabilitation, decommissioning and closure plan
 - Remediation of latent defects – risk assessment report

Regulations

- Availability of funds
 - At **any time** funds must be available for the amount of **10 years** of the calculation of the **sum of the rehabilitation calculation**
 - Annual rehabilitation plan
 - Final rehabilitation, decommissioning and closure plans
 - Remediation of latent defects
- Vehicle for payment – one or a combination
 - financial guarantee from a bank or from an insurance company – registered
 - deposit into an account administered by the Minister of DMR
 - contribution to a trust fund – only for latent defect portion of the calculation and if it's a mine right holder

Regulations

- Requirement for the financial guarantee & trust fund
 - Must use prescribed format as per appendix 1 and 2
- Procedures In the event of the bank or insurer wanting to withdraw the financial guarantee
 - Where the insurer intends to withdrawn insurance – must notify DMR and DEA by registered mail at least 4 months in advance
 - The holder must also inform DMR at least 7 days of notification of the bank or insurer of the intention to withdraw
 - The Minister of DMR must in writing within 10 days of notification request the holder to provide alternative arrangements within 60 days of the Ministers request
 - Should the holder not provide alternative arrangements within the 60 days the Minister of DMR must call on the financial guarantee and deposit the funds in a bank account administered by the DMR until alternative arrangements can be made
 - Minister must release the financial guarantee to the bank or insurer within 7 days of receiving proof that the funds have been dispersed

Regulations

- General requirements
 - Specialists must undertake the determination of the financial provision as well as the sum and the annual review – specialist is an independent person or persons who is qualified by virtue of his or her knowledge, qualifications, skills or expertise in the mining, environmental, resource, economy and financial fields
 - Financial provision may not be deferred against assets at mine closure or mine infrastructure salvage value
 - The proof of making or adjusting the financial provision must identify the manner in which the financial provision will be apportioned to each financial vehicle
 - Where a bank or insurer is used, verification of registration of the institution must accompany the proof of payment - making or adjusting the payment

Regulations

- General requirements continued
 - When using the DMR bank account for making payment - interest earned is first be used by DMR to pay bank charges and thereafter accumulate and form part of the financial provision of the holder
 - On the issuing of a closure certificate the portion of the financial provision for latent defects must be paid to the Minister of DMR by ceding the guarantee or authorising payment of the trust to DMR
- Determination of the financial provision by the applicant
 - The applicant must submit the plans and calculations of the financial provision to the Minister DMR as part of the application for EA information
 - The applicant must provide proof of payment or arrangements to provide the financial provision prior to commencing with any prospecting, exploration, mining or production operations.

Regulations

- Review, assessment & adjustment of the financial provision
 - Must review
 - Annual rehabilitation plan
 - Final rehabilitation, decommissioning and mine closure plan
 - Environmental risk assessment report
 - After reviewing need to ensure that the adequacy of the financial provision and must make any necessary adjustment
 - Must do this one year from commencement of operations and annually thereafter
 - Where commenced within the immediately after its financial year end and annually thereafter.
 - The review of the adequacy of the financial provision including the proof of payment must be:
 - Independently audited (annually)
 - included in the audit of the EMPR as required by the EIA regs (five years)
 - Auditors report and the revised plans and risk assessment must be submitted for approval of the Minister DMR
 - Within three months of the first year of commencement
 - Within three months of the mines financial year

Regulations

- If the review identifies a shortfall the financial provision must be increased to meet the new assessed amount within 90 days of the signature of the auditors report and must provide the DMR with proof of increasing
- Any excess amount is deferred against the next years assessment
- Preparation and submission of plans
 - Annual rehab plan – Appendix 3
 - Final rehabilitation, decommissioning and mine closure plan – Appendix 4
 - Environmental risk assessment report – Appendix 5
 - The sum including the manner in which the sum was calculated must appear in the EMPR required in terms of EIA regulations
 - The assessment of adequacy of the financial provision and proof of making the adjustment must submit a declaration signed by an independent auditor reconciling the financial provision submitted and any update thereof with the estimates of exposure and liability in the financial statements of the holder

Regulations

- The financial statement must include contingent liabilities and restricted cash associated with the financial provision liability
- If there are difficulties in submitting the assessment of findings and auditors report within the stipulated period can request an extension prior to the lapsing of the time period including the reasons
- Extension of time granted cannot exceed three months and no further extension can be given
- Responsibilities of right or permit holder
 - EMPR must be made available to the public
 - Website of holder
 - Site office of the mine
 - On request

Regulations

- The CEO is responsible for
 - Implementing the plans
 - Ensuring that a final rehabilitation, decommissioning and mine closure plan, including the financial provision for executing the plan is in place before submitting an application for a closure certificate in terms of Section 43 of the MPRD
 - All documentation submitted to the DMR must be signed off by the CEO including the independent auditor report
- Powers of the Minister of DMR
 - May only grant EA after arrangements have been made for financial provision and proof is provided
 - If the Minister is not satisfied with the calculations or the assessment
 - Can request the holder to revise at own cost
 - Have the calculations reviewed by external party at own costs
 - Appoint an independent assessor at the cost of the holder
 - Costs associated with any of the above are supplementary to the financial provision

Regulations

- Powers of the Minister of DMR continued
 - May retain a portion of the financial provision based on the environmental risk report on issuing of a closure certificate and must return the remaining financial provision
 - If a holder of a right or permit fails to undertake rehabilitation the Minister of DMR may use the financial provision or such portion as required to carry out the rehabilitant or claim the costs from the holder
- Timeframes for acknowledgement and consideration of plans and reports related to financial provision
 - Acknowledgment within 10 days
 - Assessment within 60 days
 - Where reports are rejected the Minister must provide reasons and plans, reports etc. must be submitted within 45 days
 - On receipt of revised documents the original timeframes apply

Regulations

- Care and Maintenance
 - Holder may apply at any time to the Minister to be put on Care and Maintenance
 - Application must contain
 - Explanation as to why the holder need to be on Care and Maintenance
 - Care and Maintenance plan
 - Plan must contain the contents as per Appendix 6
 - The Minister must consider the request and:
 - Approve that the holder is put on Care and Maintenance for a period of five years after which the approval must be reviewed
 - Ensure that the holder implements and conditions
 - During the period that the holder is on Care and Maintenance the
 - care and maintenance plan must be audited and updated annually, in relation to the audit findings
 - An updated plan must be submitted together with an update on the merits to remain under care and maintenance
 - Financial provision must be maintained, reviewed, assessed, adjusted and audited while the holder is under care and maintenance
 - It is an offence to be on Care and Maintenance without permission from the Minister of DMR

Regulations

- Transitional Arrangements
- Appendix 1 -6
- Questions

Thank you for your attention