environmental affairs
Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

18 October 2018 Meeting Notes: Free State EIA Sector Seminar: Working Towards Improved Relations Bloemfontein: African Lodge (219 President Paul Kruger Avenue, Universitas, Bloemfontein).		
A. EIA Competent Authorities Presentations		**Way forward**
1.	The National Department of Environmental Affairs (DEA) provided feedback to EAPs, Applicants and NGOs on the quality of their contributions in the EIA process. This included the following presentations: a. IEA Admin b. EIAs c. Integrated Permitting System d. Section 24Gs e. Waste Management Licensing	As per the presentations e-mailed to all attendees on the afternoon of 18th of October 2018. Contacts to whom queries should be emailed: • For copies of the presentations or specific queries, contact Mr. Franz Scheepers at e-mail: fscheepers@environment.gov.za or cellular phone: 082 332 3367. • For EIA process related queries, contact EIA Admin: EIAadmin@environment.gov.za • For interpretation queries of EIA Regulations and the Listing Notices 1, 2, and 3, contact the IQ help desk – iq@environment.gov.za
2.	Ms. Nozi Nkoe of the Free State Department of Economic; Small Business Development; Tourism and Environmental Affairs (DESTEA), provided feedback to the EAPs and Applicants and thanked them for the quality of their contributions in the EIA process. She highlighted the following: - Significant improvement in officials adhering to time frames and targets. - A number of new officials have been appointed. - Capacity of officials increased through training. - The DESTEA is where required approachable for ad-hoc in-process meetings. - Improvement in the quality of reports received from the EAPs. E.g. there is a reduction in the 'cutting and pasting' in reports from certain EAPs. - Improved relationships between EAPs and DESTEA.	

B. Comments and Issue raised by Applicants, Regulated Community, EAPs, Specialist, NGOs, I&APs and other	Competent authority Response / Way forward / Clarification provided
1. What is the National DEA stance on pre-application meetings? Is a formal record i.e. minutes and attendance register compulsory? In the absence of a formal record, challenges may arise where listed / specified activities are suggested at the pre-application meeting, and there is a difference in view once the application is submitted. A written record is therefore critical.	National DEA expect the EAPs to take minutes and for such to get signed off as a formal record of the pre-application meeting. The DEA official who attended the pre-application meeting may not necessarily be the same official who will deal with the application once submitted. For the FSDESTEA, a signed attendance register is required as record of the meeting. With regard to the minutes, the record of the discussion is usually obtained from the minutes of the FSDESTEA monthly meetings where projects are presented and discussed with the relevant EAP. The secretariat of these meetings capture the minutes. **Suggestion:** EAP to draft minutes of pre-app meeting and confirm with CA by email that the minutes are a true reflection of the discussion.
2. Is there a need to have a pre application meeting even when the site is not sensitive and there are no major project issues? There are challenges with getting dates on which all relevant officials are available for pre-application meetings.	Pre-application meetings are not compulsory, unless there are major issues of concern. EAPs are asked to desist from requesting pre-application meetings just to confirm the listed / specified activities. Confirmation of listed / specified activities can be done telephonically or via email, if necessary.
3. The BAR template is limiting to some extent. Why are other competent authorities not like DEA withdrawing the BAR template and need to comply with such?	The provincial Competent Authorities have concurrent competence and therefore do not have to follow everything that National DEA does. The issue of the BAR template (possibility of the updating thereof and consistent use by all competent authorities) will be raised for discussion at the next national competent authority implementation workshop.
4. Clarity is required on how to correctly reference the EIA Regulations and Listing Notices as per the 07 April 2017 amendment.	The easiest and best way to refer to the EIA Regulations, 2014 (including the relevant Listing Notices) is as follows: – EIA Regulations 2014. – EIA Regulations Listing Notice 1 of 2014. – EIA Regulations Listing Notice 2 of 2014. – EIA Regulations Listing Notice 3 of 2014. Such reference by implication includes any amendments effected. This is similar to the way competent authorities refer to e.g. NEMA (although NEMA has been amended on several occasions

	we do not reference each amendment thereto). However, if you deem it appropriate you may add "as amended". Depending on the need, one can refer to a specific notice (e.g. activities 12 and 19 of GNR 983 or to refer to an unlawful activity commenced with between 08 December 2014 and prior to the 7th of April 2017). This would be if you wish to specifically refer to the wording used in that particular notice (e.g. enforcement or section 24G matters). This may at times be necessary in order to distinguish between old wording (e.g. used in the 2014 activity) versus the new and current wording – where e.g. a threshold has been changed or an exclusion was included. An email was circulated to all attendees on the afternoon of 18 October 2018 explaining the above.
5. The WULA Regulations have prescribed time frames. Does the NEMA and EIA Regulations have time-frames?	The 300 time frame as provided for in the WULA Regulations came from the One Environmental System (OES) and is in fact an alignment with the EIA Regulations, 2014. Further discussions between DEA and DWS is required to ensure improved alignment. Coordination required among the relevant government departments e.g. if water resources are potentially impacted upon, then DWS need to be involved and comment timeously.
6. The fact that the section 24G application process does not have legislated time frames is a challenge.	Comment noted. Time-frames are only provided for in the EIA Regulations. At this stage there are no amendments to NEMA proposed for the inclusion of time-frames. Proponents are discouraged to unlawfully commence with listed or specified activities.
7. Some Environmental Authorisations (EA) do not have a condition requiring an Environmental Control Officer (ECO). Other EAs indicate that an ECO must be appointed whilst other requires the appointment of an independent ECO. What is an independent ECO?	Neither the NEMA nor the EIA Regulations mentions the word ECO and never intended to do so. The appointment of an ECO or independent ECO is further not regulated by the NEMA or EIA Regulations. The CA usually look at the scale of the project e.g. if it is a rebuild or a small impacting development then an ECO may not be required. Conditions to an EA must be clear and specify exactly what is required. E.g. where an ECO is required the CA may specify the skills set required. If the EA conditions do not explicitly state the need for an ECO, then an ECO is not required. In the event where an EA specifies that an 'independent ECO' needs to be appointed the CA must be contacted to advice on what exactly what is meant by 'independent'. The issue of an independent ECO and what exactly this entails will be raised at the November 2018 national competent authority implementation workshop.

8. How long is a specialist study valid for?	The validity period for a specialist study is not regulated and would vary on a case to case basis. DEA usually suggest five years depending on the type of study and whether the receiving environment has changed. The at times requires studies to be re-done. Where relevant EAPs are required to motivate why old specialist assessments are still deemed to be adequate. In addition the specialist who conducted the study may be required to in writing and under oath indicate the relevance of the assessment.
9. There is a challenge in circulating draft reports to CAs and other stakeholders. Many departments do not respond within the regulated time frames. E g SAHRA require 60 days and yet the BAR timeframe of 30 days needs to be complied with.	The EIA Regulations is clear that competent authorities and state departments must comment on draft reports and have 30 days to do so. Regulation 3(8) of the EIA Regulations is clear in this regard in that should comments not be received within the 30 day period the EAP can assume that there is none and the final report can be submitted to the competent authority for decision-making (either refuse or authorise). If the EAP deems the impact 'of no comment' to be critical and significant, he or she EAP should attempt to arrange a meeting or obtain comments from the relevant competent authority or department. EAPs are advised to still send on the late comments to the competent authority. However these comments will not be considered in the decision making process as it has not been included in the report submitted for decision-making (final report), and where relevant, not subjected to public participation.
10. **Waste matter:** If DWS take longer than 30 days to provide an ROD, should the EAP apply to the CA for extension to the timeframe?	No. The DEA must deal with this as there is a MoA between DEA and DWS that DWS will provide an ROD within 90 days.
11. What happens in the event where the 107 day timeframe is not complied with and a decision is not provided from the CA within the stipulated timeframes?	EAPs are advised to contact the relevant competent authority in this regard. Should a competent authority fail to make a decision, the court of law can be approached to instruct the competent authority to reach a decision.
12. If an appeal decision is overturned does Public Participation (PP) need to be undertaken?	This will depend on the instruction from the Appeal Authority. DEA to include contact details of Appeal Officials in future presentation.
13. Is the 30 days' timeframe only for the draft reports and amendments?	The 30 days is for all draft reports including Part 2 amendments.

14. Who is supposed to audit the qualification of specialists?	Since the EAP and applicant enter into a contract with the specialist, they therefore have a responsibility to ensure that the specialist complies with Regulation 13. 'Specialist' is defined in the EIA Regulations: *'..means a person that is generally recognised within the scientific community as having the capability of undertaking, in conformance with generally recognised scientific principles, specialist studies or preparing specialist reports, including due diligence studies and socio-economic studies'* . In line with and after following the prescribed process in Regulation 14 of the EIA Regulations, a specialist can be disqualified for a specific application for environmental authorisation (if there is reason for the competent authority to believe that there is non-compliance with regulation 13). The CA can in terms of Regulations 14(5): – refuse to accept further reports from the specialist in respect of the application in question; – request the applicant to commission an external review by another specialist; – request the applicant to appoint another specialist; or – take such action as the competent authority requires to remedy the defects; **or** – a combination of the interventions above. All stakeholders referred to Regulations 13 and 14 of the EIA Regulations.
15. Is it practical to conduct a site visit for every application? CAs schedule the site visit at varied time periods e.g. some CAs only visit the site after the final report is received. Is there a limit to when the CA can ask for additional information?	The date of competent authority site visits are not regulated in the EIA Regulations and is an implementation matter. The CA needs to be reasonable e.g. the CA should not request a wetland delineation study at the final report stage. DEA normally conducts site visits at the draft report stage. The site visit is undertaken only if required and if the information presented is unclear.
16. If the EAP misses the stipulated timeframes they are penalized e.g. double payment of application fee, the application lapses and needs to be redone. However if the CA misses the timeframe there does not seem to be any penalty or recourse.	EAPs and applicants are advised to contact the relevant competent authority in this regard. Should a competent authority fail to make a decision, the court of law can be approached to instruct the competent authority to reach a decision. If a case officer misses a legislated timeframe, the CA will hold the case officer liable through internal processes.
17. How does one deal with a scenario where e.g. a State Waste Water Treatment Works (WWTW) is approved on a wetland? This puts the DWS in a situation where they have no choice but to issue a WUL that with unenforceable conditions. .	There is need for continuous coordination between DEA and DWS. The fact that a NEMA CA has issued an environmental authorisation for a development, does not mean that the DWS must issue a WUL as DWS has their own specific mandate and can still refuse the WUL application. In the absence of a WUL such a development cannot continue.

18. When it comes to calculating the administrative fine for section 24G applications, there are huge differences from CA to CA even for similar activities e.g. a difference of R20,000. This is a huge difference especially when considering the ability of a private person to pay compared to a company's ability to pay. Can the S24G fine calculator be made available?	DEA has a section 24G Fine Committee. The difference in fine amount likely comes as a result of considerations such as whether the entity is a first contravener or a repeat contravener, the sensitivity of the site, political heads, etc. All CAs are required to have a Fine Committee that makes recommendations on the quantum of the fine to be imposed on the applicant. The Minister or MEC then takes the final decision. Strictly speaking a fine of R5million can be issued for each listed / specified activity unlawfully commenced with. Criteria considered and the need for consistent implementation will be discussed at the next National Section 24G task team meeting. The S24G fine calculator is an internal tool and therefore the calculator will not be shared externally.
19. Is agro waste (utilized in the production of biogas) classified as hazardous waste?	Applicants / EAPs / Proponents responsible to classify the waste and provide proof thereof to the CA. Applicants / EAPs / Proponents are also welcome to consult with DEA waste officials: – Lucas Mahlangu LMahlangu@environment.gov.za; and – Hlamarissa Mavodze HMavodze@environment.gov.za
20. Explain the interaction between the Department of Mineral Resources (DMR) and DEA e.g. when an application for prospecting right is lodged and a NEMA activity is triggered. What are the time frames?	In terms of S24C of the NEMA, the DMR is the competent authority where the listed and / or specified activities requiring an environmental authorisation is directly related to: – prospecting or exploration of a mineral or petroleum resource; or – extraction and primary processing of a mineral or petroleum resource. Even a non- mining activity could fall under the mandate of the DMR e.g. for the development of a road to be utilized for mining purposes only the CA will be DMR. The DEA and / or the provincial environmental department may be the commenting authority. If there is confusion in identifying who the competent authority is, an email can be sent to the IQ helpdesk on iq@environment.gov.za. In the event where a provincial environmental department and / or the DEA participates in the EIA process (where the application has been submitted to the DMR as the competent authority) the time-frames as per Regulation 3(8) of the EIA regulations applies.
21. If a development was approved in terms of the 2010 EIA Regulations, and yet construction only started after 2014, will there be a need to apply for newly2014 listed or specified activities?	It is / was unlawful to commence with any listed or specified activity on or after 08 December 2014, unless such has been authorised. DEA has developed a similar listing document that identifies activities that were similarly listed across the previous listing notices. If uncertain, the EAP or the IQ helpdesk can be consulted.

	The following example of a similar listing was provided: The current clearance of indigenous vegetation activities are deemed to be similar listings to the transformation of undeveloped, vacant and derelict land activities. For such a scenario there will be no need to apply afresh for the 'newly' listed clearance of indigenous vegetation activities. If there was an activity that is now listed that was not previously listed an application for environmental authorisation would be required.
22. There have been hundreds to thousands of EAs issued under the ECA EIA regulations and previous sets of NEMA EIA regulations. Some proponents have been informed that some facilities with environmental authorisations that no longer have environmental impacts do not need to be audited. On the other hand Regulation 54A (3) stipulates that audit reports would be required for valid environmental authorisations from December 2019. What is the way forward?	Regulation 54A(3) stipulates that *'where an environmental authorisation issued in terms of the ECA regulations or the previous NEMA regulations is still in effect by 8 December 2014, the EMPr associated with such environmental authorisation is subject to the requirements contained in Part 3 of Chapter 5 of these Regulations and the first environmental audit report must be submitted to the competent authority no later than 7 December 2019 and at least every 5 years thereafter for the period during which such environmental authorisation is still in effect'.* In line with the Interpretation Act, strictly speaking all environmental authorisations, including its associated EMPR and specific conditions need to be complied with no matter the age thereof. Strictly speaking it would be an offence to be in non-compliance with any condition of the environmental authorisation, EMPr and Regulation 54A(3) An option is to apply for amendment to lapse the ECA EA (e.g. for a RoD authorising the attachment of a cellular antenna to a building). Upon lapsing the EA, EMPr and any conditions thereto will become null and void and of no force and effect. Compliance with Regulations 54A (3) will then also not be required.
C. EAPASA	**Way forward**
EAPASA presented the item.	As per the presentation. The presentation was e-mailed to all attendees on 21 September 2018. For any specific queries visit www.eapasa.org or e-mail chairperson@eapasa.org or registrar@eapasa.org