

Meeting Notes: Eastern Cape EIA Sector Seminar: Working Towards Improved Relations
20 September 2018

Port Elizabeth: The Plantation (424A Sardinia Bay Road, Lovemore Park Port Elizabeth).

A. EIA Competent Authorities Presentations		Way forward
1.	DEA (National Department of Environmental Affairs) provided feedback to EAPs, Applicants and NGOs on the quality of their contributions in the EIA process. This included the following presentations: <ul style="list-style-type: none"> a. IEA Admin b. EIAs c. Integrated Permitting System d. Section 24Gs e. Waste Management Licensing 	<p>As per the presentations.</p> <p>Presentations were e-mailed to all attendees on 21 September 2018).</p> <p>For copies of the presentations or specific queries, contact Mr. Franz Scheepers at e-mail: fscsheepers@environment.gov.za or cellular phone: 082 332 3367.</p>
2.	Eastern Cape DEDEA (Provincial Department of Economic Development, Environmental Affairs and Tourism) provided feedback to EAPs, Applicants and NGOs on the quality of their contributions in the EIA process. This included the following presentation: <ul style="list-style-type: none"> a. Eastern Cape Perspective on EAPs contribution to EIAs. 	
B. Comments and Issue raised by Applicants, Regulated Community, EAPs, Specialist, NGOs, I&APs and other		Competent authority Response / Way forward / Clarification provided
1. DMR should not have been assigned the competency to deal with EIA Listed Activities		In terms of the NEMA the DMR is the competent authority where the specified and / or listed activities requiring an environmental authorisation are directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource. This was agreed to as part of the One Environmental System.

2. Why did DMR not become a licensing authority in terms of the National Water Act?	This was never the intention of the One Environmental System. The DWS remains the authority responsible for the issuing of Water Use Licenses (WUL).
3. What is a mining area in terms of the NEMA and / or EIA Regulations, 2014?	<p>Neither the EIA Regulations nor the NEMA defines or even mentions the term 'mining area'. The intention was also never to do so. The fact that an activity listed or specified within one or more of the listing notices may happen on or outside a mining area (as defined in the MPRDA) is irrelevant in determining the competent authority in terms of the NEMA and or EIA Regulations.</p> <p>In terms of the NEMA the DMR is the competent authority where the specified and / or listed activities requiring an environmental authorisation are directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource.</p>
4. Clarification required on whether slag is deemed to secondary or primary processing. The example of a smelter was provided.	In terms of the EIA Regulations and Listing Notices a smelter is a facility for secondary processing and NOT primary processing. The competent will never be the DMR. It will be either DEA or the provincial environmental Department.
5. Clarity on competent authority required for enforcement actions where the DMR is the competent authority. Can the provincial environmental Department or the DEA also enforce the NEMA enforcement provisions?	<p>DMR is the responsible authority for any enforcement in terms of the NEMA where the listed or specified activities are directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource.</p> <p>The environmental management inspector (EMRI) has to be designated by the minister responsible for Mineral Resources,</p>
6. At a competent authority Implementation Workshop an interpretation was made that for all EIA activities in a mining area, DMR is the CA	<p>This is not correct. DMR is the responsible authority for any enforcement in terms of the NEMA where the listed or specified activities are directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource.</p> <p>E.g. if a 10km road is to be developed from e.g. a National road to a mine and the road would be used for mining purposes only and nothing else, the DMR will be the competent authority for the application for environmental authorisation for that road (even if 99% of the road is outside any mining area as defined in the MPRDA).</p>
7. Is there a possibility for the DEA to develop a guidance document / explanatory note on this issue of clarifying when the DMR is the competent authority in terms of NEMA?	This will be considered by DEA.

8. BAR Template is still used by EC DEDEA, although it is not used any longer by the DEA	DEA expects the EAP to comply with Appendix 1 of the EIA Regulations. A Template for BAR will not be developed.
9. What is the communication strategy by the department when a report is submitted wrongly and therefore delayed	The DEA communicates directly with the EAP. The onus is on the EAP to communicate to the applicant.
10. Google Earth information are recent; why is its use discouraged?	For EIA reporting purposes it is acceptable to use Google to supplement maps. In future the use of screening tool will assist with this matter. Use of Google Earth is discouraged as the maps are not clear, and it is often difficult to identify the location and footprint of the development.
11. Google Earth images are at times in conflict with cadastral data as images are often warped and may even give wrong coordinates. Suggests that EAPs check with local planning officials.	Comment noted
12. What should be done in a situation where someone commented but did not want to be registered as an I&AP.	The EIA Regulations requires the EAP to develop a register of all I&APs who have commented. Either the I&AP should withdraw the comment or allow for registration as per the regulations
13. If there is an illegal development, there a directive should be issued to stop. If non-compliant, it would also be in terms of the directive issued. Is there no requirement to halt activities?	The NEMA uses the word “may”. In this regard the onus is on the competent authority to make a decision in this regard. Also a pre- directive is issued before the applicant reacts with a 24G application. . After the issuing of a pre- directive, the CA could issue a directive requiring activities to cease.
14. It does not seem that any Section 24G applications have been refused before. Not aware of any refusal of a 24G application. In this regard an expectation has been created that all applications in terms of section 24G would be successful.	DEA has been collating information on S24G applications, but have not included refusals in this regard. Despite the fact that there may have been few Section 24G refusals, it should not be seen as the authorities “being soft” as it often includes very strict conditions, and the administrative enforcement action would result in bringing the transgressor back into compliance (e.g. developers may be directed to rehabilitate a site before the Section 24G application have been finalised).
15. For unlawful commencement of a listed activity in 1998 and the Section 24G application is only submitted now, does the new fine calculator apply with a maximum fine of R5million?	No, the relevant fine calculator (as per ECA) must be used.

16. How does the DEA deal with scenarios where e.g. five activities are triggered and two are commenced with illegally	The activities not unlawfully commenced with must follow the normal EIA process whilst those unlawfully commenced with must be dealt with in terms Section S24G of NEMA.
17. Is it acceptable for the EAPs on a project to become the ECO of the same project?	Neither the NEMA nor the EIA Regulations defines or mention the terms Environmental Control Officer (ECO). The appointment of an ECO is required as part of the conditions of certain issued environmental authorisations. In this regard the Independence requirement as provided for EAPs in the EIA regulations does not apply.
18. Structures experience issues with Supply Chain Management where the EAP becomes the ECO. If this does not happen, then different processes will have to be applied for. There is a lack of consistency in the CA approach from province to province. DEDEA advises clients to budget for both.	The EAP who has assessed the development, has a better view of the project impacts. However, EAPs are business people and it make business sense to link oneself, as EAP and ECO, to a project for business sustainability. There is therefore an incentive for the EAP to also be the ECO although this may compromise the EAPs independence being both the referee and the player. This matter needs to be looked at on a project to project level.
19. EAPs must realise that their responsibility and allegiance is not to the applicant but to the environment	Comment noted.
20. It would be helpful for DMR and the DWS to be present in such meetings so all can be objective.	DWS and DMR were invited to participate. Hopefully the two authorities will be able to attend in future.
21. Instead of demonising “fly-by-night” EAPs, a better way of dealing with it should be crafted. Government should have a responsibility to support those who are trying to enter the monopolized market and be active players. Municipalities must consider SMMEs in the appointment processes.	<p>Transformation of the sector has been under discussion for a while. All sectors should take responsibility in this regard and determine where an impact can be made in this regard.</p> <p>In developing the Section 24H Regulations, how to help those wishing to enter the market was considered. EAPASA would likely shed more light on this issue during their presentation.</p> <p>IAIAsa can be contacted with regards to the mentoring programme.</p>
22. With reference to “fly-by-nights” newcomers, especially previously disadvantaged Individuals (PDIs), must be supported. There is a challenge on both, but the EIA Regulations requires competence of the EAP for the work to be done.	
23. IAIAsa has a mentoring programme. Where there are EAPs needing assistance, please contact IAIAsa for possible assistance.	

24. The sector also needs to assist with new entrants into the market especially where often experience is used to exclude.	
25. The sector must be willing to assist people with limited experience.	Comment noted
26. There is always something that may be offered by those with limited experience e.g. establish and provide contracting services etc. Do not only look to be an employee, but consider becoming an independent contractor. In KZN, especially there are opportunities with local authorities in this regard. Graduates do have a space, especially if they are willing to take up smaller contracts.	
27. Often interns do not use internships effectively. On the other hand interns are not seen as service providers.	
28. At which point may the CA return an application to the applicant or EAP if such does not comply with the EIA regulations?	The competent authority has opportunity for 30 days to comment on all Draft Reports. At this point in time the competent authority must identify these shortcomings. Should the 'Final' Report not include the requested information the competent authority can and should refuse environmental authorisation based on a lack of information.
29. Submission of the draft and final reports: Some competent authorities fail to comment on draft reports.	The EIA Regulations is clear that competent authorities 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).
30. It would be useful to have a general feedback system from case officers where the case officers could provide feedback to the EAP on the work done, quality of reports, areas of improvement etc.	<p>This will be considered by DEA.</p> <p>The following could be considered:</p> <ul style="list-style-type: none"> ○ Whether this can be an assessment or just a feedback. ○ If indeed decided as a way forward, this should be made optional. There should not be an expectation that feedback would always be provided. ○ Such feedback could potentially be used as grounds of an appeal, alternatively interfere with the appeal process. ○ The need for such (is this really necessary)? The nature of the officials' comment during the application process should be seen as a reflection on the quality of the report. All reviewing officials already expected to do a good job in commenting.
31. One must be careful about assessing the quality of EAPs work at this stage. Quality assurance is regulated by SAQA and the process for EAPs has not been done yet. If one is not a qualified quality assurer your view may be challenged. The review could be done informally, as a peer review etc. but not formally. More thinking is required on this matter.	

32. What are EAPs supposed to do when government departments are late in issuing RODs and EAs? What can an EAP do?	It is unacceptable and unfair of government officials not to make decisions within the stipulated timeframes. The Court of Law can be approached to force the competent authority to make a decision.
33. Can the EIA process be speeded up from an investment point of view? The faster the EIA process, the better for business and economic development.	<p>The EIA Regulations, 2014 specifically provides for regulated timeframes thereby considering the impact of EIA permitting on development.</p> <p>EIAs became a legal requirement more than 20 years ago. Applicants must plan for EIAs. The BA process is 147 days and the EIA process is 300 days. Depending on workload, this does not prevent the competent authority from making a decision earlier to the 107 days provided.</p>
34. The Regulations need to be amended as it do not have a requirement for the EAP to distribute the final report to I&APs while they submit the final report to the CA. This is a gap that needs to be addressed.	This is not a gap and was not omitted by mistake. To enable the one environmental management system that step (as provided for in the e.g. 2010 EIA regulations) where excluded. Nothing prevents the I&AP to request a copy of the final report submitted for decision-making.
35. DEA could improve in instances where the public wishes to find information, or similar, it is very difficult to find who the correct person to contact is. The Department should make information easily accessible on website of contact people, guidelines etc.	Comment noted and will be duly considered.
36. Politicians still of view that EIAs are delaying and preventing development. Competent authorities need to engage SALGA as this view is still sustained.	In decision-making competent authorities must comply with the NEMA principles. If e.g. the information provided by the EAP is inadequate or the development does not take the environment and impacts of the development into consideration, then environmental authorisation will have to be refused. The intention of the EIA process is not to issue a great number of negative decisions.
37. IDP process promises goals for a specific financial year. Then EIA process has to be considered and only then a TOR can be compiled. The EAP is expected to ensure that approval is received.	<p>EIAs became a legal requirement more than 20 years ago. Applicants must plan for EIAs. The BA process is 147 days and the EIA process is 300 days. Depending on workload, this does not prevent the competent authority from making a decision earlier to the 107 days provided.</p> <p>Consideration needs to be given on how competent authorities can assist municipalities in e.g. the IDP process or towards a better understanding of the EIA requirements.</p>
38. At IDP review discussions, the competent authority often face the challenge of consistency at municipalities. One deals with one person only to find out a few months later that the individual no longer works at the municipality. SALGA and COGTA need to be aware of the problem and the need for a robust environmental management unit. Often the action from municipalities is not forthcoming.	Competent authorities to consider formulating a problem statement for this matter.

39. Is it realistic to expect the EAP to be impartial? Independence has to be qualified. EAPs are in the business of making money, yet operate within the environment.	Independence is defined in the EIA Regulations.
40. As EAPs, one must be responsible and tell the applicant when something cannot be done environmentally, even if it makes one unpopular. Even if you want the money, sustainable development should guide the EAP.	Views and comment noted.
41. If EAPs (advisors at municipalities, or EAPs, or government reviewers) all work together with a certain level of integrity, everything will go well. As an EAP-although one needs to make money, one does not have to charge the client for determining whether an environmental authorisation is needed or not. If you charge the client for this, be professional and consider the list and identify. Do not charge people for professional time if all you have done was administrative by asking someone else for a professional view.	
42. The issues of compliance and enforcement (C&E) needs more attention. More information on the website was promised, but is still wanting. Often reports are included where ECOs point out concerns, yet nothing happens.	Noted. DEA IEA to discuss the concerns with DEA Compliance and Enforcement.
43. Often problems relate to town planners creating expectations and often EAPs do not get involved early enough, especially in municipal processes.	<p>Comment noted. The sector needs to consider and converse on how to resolve these planning matters so as not to hinder service delivery.</p> <p>DEDEA: As a province, there are structures where the matter may be addressed. However, one must recognise that there are different role players in the process, each with a specific role to play. E.g. The applicant needs to ensure that they appoint the right EAP and provide adequate information for service delivery projects to the EAP, in order for CA to make an informed decision.</p> <p>There are continuous engagements with relevant Departments in this regard. There are always place for improvement.</p>
44. Ideally EIAs need to be integrated in the planning process, including the feasibility phase. If not, the problem will remain and the competent authority will be seen as the bad guy. Environmental constraints should be considered right at the start of a project.	
45. Competent authorities must consider proposals for improvement especially with Government partners including SALGA, municipalities, etc.	
46. Considering the effectiveness of EIA, government and other partners needs more programmes for engagement and cooperation.	

47. With regard to enforcement post EA, the content and wording of the EA is a concern, eg. Contradicting conditions, often cut and paste exercises. There is also often a gap between the Compliance section and the EIA section of Departments. Often Compliance do not have access to all information and begin to request the EAP for information.	. The legacy of an EAP is the EMP whereas the competent authority's legacy is the environmental authorisation. Conditions are at times unclear and open to interpretation. Often EMPs cannot be audited. Comments in this regard are noted.
48. Competent authorities should employ independent editors to format templates.	Financial constraints will not permit the appointment of an editor. Solutions will however be considered.
49. Applicants often change EAPs. The CA must take note of this as EAPs often have different views.	Issue noted. Issue to be addressed on project level.
50. I&APs are not made aware of extensions to the EAs and do not know if an EA has lapsed.	This is the EAP's responsibility. The issue is however noted and from competent authority's side it needs to be addressed on project level. DEA will consider clarifying this in its Regulation 3(7) extension of time-frame template.
51. The EIA Regulations do not make allowance for changes in changed or new technologies, where something is not listed.	Should a new technology or development type surface, the DEA with the other 10 competent authorities could consider adding such to one or more of the three Listing notices. This has happened in the past (e.g. 'recent' addition of water desalination plants listed activity and underground gasification of coal).
52. Where comments are received from I&APS by the CA, especially if such is a local authority, what is done with the input? Often the input is consolidated and relates to the municipality's own projects. Often this is the only platform for concerns to be raised. The municipalities should in fact do this PPP. It is not necessary to wait for the EIA process to engage. Competent authorities should consider how they deal with comments from the municipalities and how it influences the decision- making.	All comments from I&APs must be included in the final report (report subjected to decision-making). This is considered by the competent authorities.
53. Is there a way to have a register of applications made in similar geographical areas to assist in identifying issues?	The CIPS, once alive, will hopefully reflect applications submitted and authorised. This will however likely not reflect applications authorised before implementation date.
54. Often research is only desktop studies with inadequate ground – truthing. Examples are applications in the marine environment.	Marine research work is done by certain units in the DEA.

C. EAPASA Presentation	Way forward
EAPASA presented the item.	<p>As per the presentation. The presentation was e-mailed to all attendees on 21 September 2018.</p> <p>For any specific queries visit www.eapasa.org or e-mail chairperson@eapasa.org or registrar@eapasa.org</p>
D. Screening Tool Presentation	Way forward
<p>Mr. Deon Marais of DEA EGIMS presented the item.</p> <ul style="list-style-type: none"> ○ All attendees advised to visit webinar and liaise if further engagement required. ○ 	<p>As per the presentation. The presentation was e-mailed to all attendees on 21 September 2018.</p> <ul style="list-style-type: none"> ○ E-mail screening@environment.gov.za for comments, queries, suggestions ○ There is a link on the DEA website https://screening.environment.gov.za/screeningtool ○ The webinar is on www.iaia.org under resources and titled “Demonstration of South Africa’s National Environmental Screening Tool” ○ There is a link to EIAAdmin@environment.gov.za for EIA process queries.