

Meeting Notes: Northern Cape EIA Sector Seminar: Working Towards Improved Relations & Information Session on Energy Applications and EIA Regulations 15 and 23 (3&4)

23 January 2019

Savoy Hotel (19 Old De Beers Road, Kimberley).

A. EIA Competent Authorities Presentations	Way forward
<p>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:</p> <ol style="list-style-type: none"> IEA Admin EIAs Integrated Permitting System Section 24Gs Waste Management Licensing 	<p>Chairperson: Sabelo Malaza</p> <p>Presentations were e-mailed to all attendees on 25 January 2019.</p> <p>Contacts to whom queries should be emailed:</p> <ul style="list-style-type: none"> 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 For Waste Management related queries, contact Lucas Mahlangu LMahlangu@environment.gov.za and Hlamarissa Mavodze HMavodze@environment.gov.za
B. Comments and Issue raised by Applicants, Regulated Community, EAPs, Specialist, NGOs, I&APs and other	Competent authority Response / / Way forward Clarification provided
<p>1. Does the provincial competent authority experience similar challenges to the ones outlined in the presentation by the National Department of Environmental Affairs?</p>	<p>The Northern Cape Department of Environment and Nature Conservation (DENC) also experience similar challenges.</p> <p>Previous sessions of stakeholder engagement (Seminars for EC, KZN, FS and NW) have shown that the provincial competent authorities and the DMR had similar challenges. In addition, an issue of fraudulent applications was highlighted by DMR in the KZN and NW Seminars.</p>

<p>2. The South African Heritage Agencies find the EIA time frames very challenging when commenting on EIA reports, more specifically, in terms of Section 38(8) of the National Heritage Resources Act, 1999 (Act No 25 of 1999) [NHRA]. Sometimes the heritage officials do not get the reports in time and this delays their comment and impacts on the timeframes of the EAPs. Due to these delays comments from the Heritage Authority often miss the 30 day commenting deadline and are subsequently not included in the final report submitted for decision making.</p> <p>A further challenge is that some SAHRA officials refuse to comment on Draft reports. Perhaps SAHRA need to be engaged with or perhaps a time line of responsibilities is required as is done in the Western Cape.</p>	<p>The EIA Regulations are 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).</p> <p>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.</p> <p>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.</p> <p>The Heritage Authority has the option to write to the competent authority (CA) to request the relevant CA to, where and if possible, include their comments as conditions in the EA decision.</p> <p>CAs should provide EAPs the contact details of the official who is / will dealing with the specific project to enable SAHRA to liaise with the correct official at the CA directly.</p> <p>DEA committed to engage SAHRA on this matter.</p>
<p>3. Clarity is required on who needs to be consulted with regard to NEMA listed and / or specified activity applicability queries as applicants tend to rely on the authorities to give them guidance.</p> <p>Where the applicability of the listed and / or specified activities is not clear, the EAP requests confirmation and clarity from the CA in order to advise the applicant correctly. The EAP may go to the extent of obtaining a legal opinion for assistance in this regard.</p>	<p>The onus is on the EAP and Applicant to identify the listed and / or specified activities that may be triggered by a proposed development. It is not the role of the DEA EIA Admin team to identify these activities on behalf of the EAP and Applicant.</p> <p>The IQ Helpdesk and the EIA admin team will assist in this regard in the event where sufficient information is provided and the question is clear.</p>
<p>4. Farmers are faced with a challenge of having to obtain numerous permits inclusive but not limited to ploughing certificates, EAs, Water Use License (WUL). DAFF established a committee to deal with this. DENC is represented on this forum. However in some cases there are often uncertainties as to whether the EIA Regulations is triggered. In addition there are cost and timeframe challenges e.g. a farmer cannot get the WOOL without a ploughing certificate. The farmers are being encouraged to run the processes concurrently.</p> <p>Farmers do not understand the legislation and that different departments have different mandates. Officials need to be knowledgeable on the different permits that may be required in</p>	<p>Cooperative Governance is required in line with Chapter 3 of the Constitution of the Republic of South Africa. In this regard there are existing forums set up by Government such as working groups, task teams and implementation workshops.</p> <p>Authorising departments can do more to facilitate the multiple permit requirements in terms of different legislation. This may include e.g. joint site visits, pre-application meetings, and the running of the application processes concurrently. The required permits and timeframes need to be clearly communicated to the applicant.</p>

<p>order to assist the developer and or farmer. E.g Some farmers need to be made aware of the introduction of indigenous vegetation as a listed and specified activity in the 2014 Listing notices.</p> <p>Engagement such as a stakeholder/consultation meeting on a provincial level is suggested.</p>	<p>DEA committed to meeting with the National Department of Agriculture (NDA), thereby attempting to harmonise authorizations. DEA further committed to sending a representative for a facilitation meeting that would include DAFF, DENC, DEA, the Department of Water and Sanitation (DWS) etc. DENC committed to facilitate such engagement in Northern Cape as development and investment need to be supported.</p>
<p>5. Some EAPs believe that the date on which they have posted reports to competent authorities is the date the 30 day commenting period or 107 day decision-making period commences.</p>	<p>The EIA Regulations is clear in that the 30 period commences from the day of receipt of the report. The same applies for the 107 day decision-making provision.</p> <p>The word “receipt” is clearly defined in the EIA regulations and means the following: “receipt” means receipt on the date indicated— (a) <u>on a receipt form if the application or document was hand delivered or sent via registered mail;</u> (b) <i>in an automated or computer generated acknowledgment of receipt;</i> (c) <i>on an acknowledgement in writing from the competent authority as the date of receipt if the application or document was sent via ordinary mail; or</i> (d) <i>on an automated or computer generated proof of transmission in the case of a facsimile message;</i></p> <p>The Regulations were formulated so as to align the three pieces of legislation – National Waste Act (NWA), NEMA, MPRDA through allocating days to the applicant/EAP, commenters and the decision maker.</p>
<p>6. Is there a process that can consolidate numerous ‘old’ EAs obtained over time, for the sake of compliance? There is a cost challenge with regard to audits as each EA has different conditions and commitments. None of the EA conditions will be omitted.</p>	<p>The scenario sketched was for EAs of different mines to be consolidated into one: Not possible to consolidate in this scenario as activities are what are authorised and each have their own impacts. Mining are large –scale developments with significant impacts on the environment. The individual EAs issued are also linked with financial provisions, liabilities and audit reports.</p> <p>Suggestion to inquirer: Consider more cost effective measures such as appointing the same EAP? Specialist/ Auditor to undertake the different audit reports on the different authorisations in the same week.</p> <p>DWS have been consolidating WULAs at the request of the applicant in instances where most of the conditions are similar. This will need to be looked at on a case by case basis</p>
<p>7. It is estimated that 3% of annual runoff contains sewage. Have directives been issued in this regard?</p>	<p>Government is well aware of the problems facing South Africa in this regard. Officials from several Government departments dealing with Compliance and Enforcement are considering how to resolve these matters.</p>

<p>8. Has a Bill been passed that indicates that there will not be a Section 24G fine for an activity commenced with without an environmental authorisation if such is undertaken for protection of people, property, or the environment?</p>	<p>There is no Bill of this nature. Section 30A of NEMA provides for the Emergency Situations where the competent authority may on its own initiative or on written or oral request from a person, direct a person verbally or in writing to carry out a listed/specified activity, without obtaining an environmental authorisation.</p> <p>There is a responsibility to work within a specific time period. In the event where a proponent is issued with such a directive, he or she can lawfully commence with the relevant listed and / or specified activities. Section 24G of the NEMA would not be applicable for the relevant scenario and subsequently a Section 24G application cannot be submitted or duly considered. In this regard no fine can or will be issued.</p> <p><i>‘Emergency situation’ means a situation that has arisen suddenly that poses an imminent and serious threat to the environment, human life or property, including a ‘disaster’ as defined in section 1 of the Disaster Management Act, 2002 (Act No. 57 of 2002), but does not include an incident referred to in section 30 of this Act.</i></p> <p>In the event where someone has commenced with a listed and / or specified activity without and EA or a section 30A directive, such commencement was unlawful and constituted an offence. For such an application in terms of Section 24G may be submitted and the administrative fine provisions still applies.</p>
<p>9. What is being done about Municipalities that are non-compliant in management of the Municipal waste disposal sites?</p>	<p>Landfills are classified as general waste for which DEA has no mandate. This mandate sits with the relevant provincial NEMA competent authority. Since 2008 DEA all 106 landfills countrywide have been licensed through DEA.</p> <p>Since some Municipalities are still not managing the landfills adequately, DENC have decided to go the compliance route and will, where required, revoke licenses. The DENC has no option but to follow the punitive way since “all” other avenues have been exhausted.</p>
<p>10. Recently a waste management strategy meeting was held in Kimberley. It was noted that awareness must start with officials. There is no hazardous waste disposal site in Kimberley and therefore hazardous waste has to be transported to either Gauteng or Western Cape Provinces.</p> <p>There is also a problem of illegal animal waste dumping. Recycling is also inadequate; can DEA not assist?</p>	<p>The distances between main centres is a big challenge and therefore having a hazardous waste disposal site run by government is not financially viable.</p> <p>Hazardous waste site will need to be a private company and industry initiative as it is not government’s intention to have more hazardous waste sites.</p>
<p>11. Revoking of license will not add value as the waste stream does not stop. Municipalities must comply with its own laws. More education and awareness is required.</p>	<p>Closing of municipal landfills is not an option. Municipalities have all the knowledge and tools to manage the landfills. It is the Municipality’s mandate to allocate the budget for waste management. There is a directorate at DEA who deal with training of municipalities’ country wide.</p>

<p>12. Is there a way to force waste license holders to make financial provision for maintenance? E.g the Askham landfill site is in a very bad condition.</p>	<p>The NWA lists criteria for fit and proper persons for the purposes of a WML application. All annual reports are collated and with DEA's Compliance and Enforcement team, an appointment is made with the user wanting a review of a WML. Based on the report it will then be decided whether to go on site. While on site the officials can confirm the compliance track record. A repeat offender will likely not be subjected to a review.</p> <p>The directorate Waste Management License who issued the WML are not responsible for any Compliance and Enforcement actions, but assist industry to be and remain compliant. They receive the audit report and before the 5 year is over, by which time the license needs to be reviewed, any trend needs to be brought to the attention of C&E. Meanwhile the officials must assist with making the facility become compliant. License will still be reviewed, albeit with increased frequency of audits.</p> <p>The WML irectorate also adds conditions and the actions to be taken in the event of non-compliance, especially a wilfully negligent license holder. Steps can be taken to suspend and then revoke a license. The department can thereafter reconsider its decision if the license holder intervenes and shows compliance.</p>
<p>13. ECOs</p> <ul style="list-style-type: none"> ○ Question raised regarding the independence of an ECO especially since the ECO is paid by the applicant. ○ Condition of frequency (number of visits per week) of ECO on site is a challenge. Some ECO request the CA to write a letter about the number of visits required per week even without there being a site visit. The EMPr may talk about the frequency of the ECO. ○ Can an EAP of a project become the ECO of the same project? ○ There is no accreditation body for ECOs – how will this be addressed? 	<p>It is assumed that the person responsible for the activity and impacts will appoint the EAP and thereafter the ECO. It would be unfair to expect a party not involved in impacting the environment to pay the EAP or ECO. What may require looking at is whether the appointments after the EA e.g. ECO, are still independent. The people appointed after the EA is issued should not think themselves a part of the project as they are working on behalf of the environment.</p> <p>It is recommended that the ECO should proactively speak to the applicant to correct a non-compliance and then report how it was corrected; rather than reporting the non- compliance by the applicant to the authority.</p> <p>Neither the NEMA nor the Regulations mention "independence" with regard to the ECO. There is only mention of independent specialist and independent EAP. Independent ECO crept into the EAs. Sometimes independent ECO is advanced due to comments obtained during the Public Participation process where the IAPs want there to be some control. It is context specific. Applicants should write back to the CA if they need clarity on any condition as not every term in an EA can be defined in the EIA Regulations.</p> <p>Where uncertain of a meaning, the dictionary definition applies; Some EAs do not refer to an independent ECO. The EAP should ask the CA what exactly they interpret the independent ECO to be. Where the EAP/Applicant are able to persuade the CA that an independent ECO is not required, an amendment to the EA may be applied for to remove/modify the condition.</p> <p>The frequency of ECO visits needs to be clear in the EA. If the frequency is impractical may need to apply to the CA to clarify this. The term "regularly" should not be used in the condition.</p>

	<p>The EAP on a project, unless specifically prohibited in the EA, can become the ECO on the same project.</p> <p>Regulators and EAPASA will consider having a conversation on how the ECO concept can work and possibly be included in the EIA Regulations. If such ever materialise such discussions need to include and issues around possible accreditation of ECOs.</p> <p>A Waste Management Control Officer is required under the NWA; their tasks go beyond compliance.</p>
14. Is there a system that records all NEMA applications? Is that being considered?	The former President of South Africa announced that there would be an integrated permitting system. The process to revive it is underway. SITE need to indicate in writing if they can develop the required system. In the event where this is not possible, the DEA will be in a position to approach other service providers.
15. EAPs do not usually liaise with the applicants once the EA is issued e.g. the applicant may not be knowledgeable that he has to appoint an ECO. There is also a challenge that the EA is in English and most individuals in the Northern Cape is speaking Afrikaans.	EAPs cannot be forced to do work beyond the scope of their appointment with the applicant – (which is obtaining a decision on the application for EA). Applicants need to take responsibility and include in their appointment letter the fact that they need the EA to be explained.
Instruments, other than ELA	
Comments and Issue raised by Applicants, Regulated Community, EAPs, Specialist, NGOs, I&APs and other	Competent authority Response / / Way forward Clarification provided
1. After how many years must the Gauteng EMF Standard be reviewed?	The notice does not specify. However the Minister may state the period after which an Instrument needs to be reviewed.
2. Is Concentrated Solar Power (CSP) excluded in the GNR 114 notice for Large Scale Wind and Solar Photovoltaic Energy Facilities?	CSP indeed excluded .
3. Request for presentations of the day and suggestion to put the presentations on the DEA website.	Presentations and attendance register to be shared. DEA to consider how to share all provinces' seminar attendance registers, notes and presentations in light of the fact that there are still another 5 seminars to be held.