environmental affairs
Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Rustenburg: Orion Hotels and Resorts (Donkerhoek Road, Rustenberg Kloof, NW Province).

Meeting Notes: North West EIA Sector Seminar: Working Towards Improved Relations **31 October 2018**	
A. EIA Competent Authorities Presentations	**Way forward** **Please note that, where relevant, more clarity / improved explanation to the issue raised at the seminar are provided below.**
1. DEA (National Department of Environmental Affairs) provided feedback to EAPs, Government Officials, and Applicants 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. Presentations were e-mailed to all attendees on 31 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 (LNs) 1, 2, and 3, contact the IQ help desk – iq@environment.gov.za
2. The Department of Mineral Resources (DMR), Mr Phumudzo Nethwadzi, provided feedback to the EAPs and Applicants regarding matters related to EIA applications for listed and/or specified activities where DMR is the competent authority (CA). This is in instances where such application is for prospecting, exploration, extraction and primary processing of a mineral or petroleum resource or activities directly related thereto.	
B. Comments and Issue raised by Applicants, Regulated Community, EAPs, Specialist, NGOs, I&APs and others	**Competent authority Response / Way forward / Clarification provided**
1. The EIA Regulations state that all interested and affected parties (I&APs) should be notified of the decision within 14 days of the date of the decision. This presents a challenge in situations where the Environmental Authorization (EA) is received e.g. on December 13 and yet the proponent and applicant must refrain from conducting any public participation process during the period of 15	Regulation 4(1) of the EIA Regulations 2014, is very clear in that the applicant must, in writing, within 14 days of the date of the decision on the application ensure that: o all registered interested and affected parties are provided with access to the decision and the reasons for such decision; and

December to 5 January. It then becomes difficult to explain to Compliance and Enforcement officials when they identify not notifying the I&APs in this time as an issue of non-compliance.	○ the attention of all registered interested and affected parties is drawn to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations, if such appeal is available in the circumstances of the decision. Regulation 3(2) is further very clear that the period of 15 December to 5 January must be excluded in the reckoning of days. **This therefore is an implementation matter. The** DEA Chief Directorate (CD) for IEA and CD Compliance will discuss this matter and find a practical way forward in this regard.
2. EAPs usually do not get original copies of the EA and on this basis the Commissioner of Oaths refuse to certify the copies.	The originals are posted with the exception where the applicant has specifically requested to collect the original. ○ Where relevant, EAPs or the Holder can submit an affidavit if the original document was not received. ○ EAPs or applicants can also request to collect the original copy at the DEA, prior to the mailing thereof.
3. Once an application is submitted, the acknowledgement of receipt should indicate the contact details of the case officer as it is difficult for the EAP to identify who to approach regarding queries.	This suggestion is noted and will be considered.
4. Can different technologies be used as an alternative? E.g. for a proposal to build a substation on a specific site with a specific layout.	Yes, this includes alternatives such as technology, layout, footprint. The EIA Regulations, 2014 do not specify that a site alternative must be investigated. A motivation must be provided in the event where no alternatives were considered, Such a motivation would likely be questioned.
5. Is it acceptable to provide site coordinates in another format e.g. decimal degrees as provided by the applicant, even though DEA requires the degrees, minutes and seconds?	Regulation 5(6) of the EIA Regulations states that coordinates must be provided in degrees, minutes and seconds using the Hartebeesthoek94 WGS84 co-ordinate system. This is also indicated in the application form. There are tools on the internet that enables conversion of different coordinate formats.
6. Does the DEA have a standard format for maps since it is written in the presentation that Google Maps are not to be used?	Google maps are not clear and are therefore discouraged. It is often difficult to identify the location and footprint of the development as legends and outlines are often not included in the google maps received. The BAR template indicates what must be contained in the site layout plan and that should include a legend and overlay of the site. 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.

7. Distribution of reports for comment within the internal directorates of the DEA is a challenge. The EAPs do not know the directorates and contacts to send the reports to.	The DEA EIA admin unit has moved away from distributing reports to the directorates due to capacity constraints and EAPS are requested to do so. It is important for EAPs to be advised as to who the responsible officials of the different branches are within the DEA. IEA Admin or the case officer will when requested provide guidance in this regard, but will not undertake the actual distribution. There are contacts for the different branches available on the DEA website.
8. Must the application form be submitted for the first time simultaneously with the draft report or the final report?	In terms of the EIA Regulations the draft report must be submitted with the application form, alternatively shortly thereafter. The EIA process commences on the day of submission of the application form. A final report cannot be submitted with the application for environmental authorisation as the Regulations are clear that the report submitted for decision-making must have been subjected to a 30 day commenting period after the submission of the application.
9. Time frame for specialist study validity e.g. soil assessment – the soil profile does not usually change from year to year.	The DEA normally works with a 5 year validity period but this is amongst other variables very site and environment specific. The validity period will therefore differ on a case by case basis. The onus rest on the EAP to motivate to the competent authority why he or she is of the view that an existing specialist study is still valid, alternatively outdated. The competent authority will always follow a precautionary approach.
10. If an application lapses, how valid is the public participation i.e., does the advertisement, site notice etc. need to be re-done when the application is re-submitted?	The initial site notice and newspaper advert will in some cases be acceptable. Public participation (including the newspaper advert) in any event will more than often happens prior to the submission of an application for environmental authorisation and long before the applicant obtains a reference number. EAPs are strongly advised to discuss this with the relevant competent authority on a case by case basis prior to the submission of the 2nd application for environmental authorisation. It is important that all I&APs involved in the first application are informed of the submission of the 2nd application and the fact that the 1st application have lapsed.
11. For some applications where the applicant is not the landowner, the landowner may refuse to give consent. What is DEA's approach?	Regulation 39 (1) indicates that written consent must be obtained from the landowner or person in control of the land and Regulation 39 (2) indicates that this does not apply for- - linear applications - directly related to mining; and - strategic integrated projects.

	Procedurally, where the required written consent is not obtained, the application will be incomplete and will likely be refused at the decision-making stage. This issue will be raised for discussion at the next national competent authority implementation workshop.
12. The maximum fine is R5 million. The North West Department of Rural, Environment and Agricultural Development (NWREAD) approach is such that once they establish that the unlawful commencement is by a repeat offender, no other factors are considered, and the maximum fine is meted out.	Approach noted
13. **Section 24G matter:** A developer unlawfully commenced with the development of a house *(where one or more listed or specified activities have been commenced with)* but also intends to build more houses. Will the entire development be subjected to section 24G?	A section 24G application cannot be submitted and considered for an activity not unlawfully commenced with. The activities that were not unlawfully commenced with must follow the normal EIA process, whilst those unlawfully commenced with must be dealt with in terms Section 24G of NEMA. The following example was used to provide more clarity: Development of a road where activity 24 of LN 1 has been unlawfully commenced with, but activity 12 and 19 of LN 1 e.g. 10kms from the current groundwork's (watercourse activities) have not yet been commenced with. For this scenario section 24G can be applied for activity 24 of LN 1 whereas the watercourse crossings (activities 12 and 19 of LN 1) needs to follow the normal EIA process. Proponents requiring further clarification on a specific scenario are requested to contact the relevant competent authority.
14. There are instances where an applicant requires permits from the Department of Water and Sanitation (DWS) and the DEA or the NWREAD. In such cases it may be found that the conditions in the authorizations / permits / licences are contradicting. At what stage will integrated authorisations be considered in terms of the One Environmental System (OES)?	The Minister responsible for Environmental Affairs, the Minister responsible for Mineral Resources & the Minster responsible for Water and Sanitation agreed on the "One Environmental System" (OES) in 2014. The intention of the OES is to streamline the authorization process and not for an integrated authorization. An ideal situation would be where all the permits could be obtained under one roof. Currently the individual components have to be authorised by the respective departments within their exclusive mandates. Where relevant, holders of the permits / authorisations can either appeal the decision or alternatively apply for an amendment thereto.
15. Where Eskom is dealing with an emergency situation that would jeopardize lives e.g. a hospital or perhaps as a result of maintenance that ended up triggering a listed or specified activity. Would Eskom still be fined in terms of section 24G or is there a process to exempt or reduce the amount?	Section 30A of the NEMA specifically provides for emergency situations. EMA defines an 'emergency situation' as 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

16. There is a perception that certain organs of state are fined less than other offenders.	the Disaster Management Act, 2002 (Act No. 57 of 2002), but does not include an incident referred to in section 30 of this Act. In terms of NEMA 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 or specified activity, without obtaining an environmental authorisation in order to prevent or contain an emergency situation or to prevent, contain or mitigate the effects of the emergency situation Eskom need to inform the relevant Departments within their organisation of this provisions and, in event of an emergency (as defined by the NEMA), immediately approach the DEA in terms of Section 30A. Section 24G has been included in the NEMA to bring an entity back into the regulatory net. Should any organ of state be treated differently (far lessor fine amounts), the public will see the Minister as being biased. All entities, including parastatals and organs of state, are required to comply with the law.
17. Can one be fined if wrongly advised by a government department e.g. if there is a linear activity and the department advises that the proposed development is outside the urban edge and yet the municipality advises that it is within the urban edge.	**Urban Area issue:** Urban area in terms of the NEMA EIA Regulations means areas situated within the urban edge (as defined or adopted by the competent authority), or in instances where no urban edge or boundary has been defined or adopted, it refers to areas situated within the edge of built-up areas. Therefore, for the purposes of the EIA regulations, the urban edge as defined adopted by the competent authority applies and not the municipal urban edge (unless such has been adopted by the CA). For the scenario sketched it seems that the 'advise' provided by the competent authority was indeed correct. **Fining in the event where a proponent has been incorrectly advised:** Section 24G is a voluntary clause and a proponent cannot be forced to submit such an application. For the specific scenario the IQ help-desk can be approached (e-mail: iq@environment.gov.za).
18. The fraudulent manufacturing of EAs is a challenge.	These are implementation matters and competent authorities need to institute / consider instituting criminal proceedings where appropriate.
19. There is a challenge where DMR acknowledge receipt of applications supposedly submitted by an EAP where the relevant EAP has never heard of the project before.	
20. DWS RoDs: Does DEA keep DWS bound to the timeframes stipulated in NEMA?	The DWS were engaged with and committed to a certain time-frame. DWS currently has serious capacity constraints in terms of the Engineers who can sign-off designs, and are therefore not able to always fulfil the stipulated timeframes.
21. Submission of final designs with final report is a challenge as completion of detailed design takes time and requires the preferred site and impacts time lines.	DWS and DEA will not consider concept designs. The final report and final design must be submitted to DWS and the DEA as art of the final report. Thus also enable the DEA to conclude an informed decision on the application for a waste management licence.

22. There were Regulations published under NEM:WA highlighting that a list to exclude certain waste streams must be developed and made available. When will this registry available?	The intention was to gazette the waste stream for comment and approval. However, the list was not gazetted as such a list would have been limited to an extent. There are new innovations in waste beneficiation.
23. With relaxation in the regulations regarding mine residue deposits, if a mine already has a Waste Management License (WML) for the lining, what is the process going forward?	If it is an Hh type of waste disposal facility, one needs to comply with the current regulations. An amendment application will be required if the facility is to be expanded, even where the facility is to be subjected to a stricter regime.
24. Pollution Control Dams (PCDs) and the storage of hazardous waste in lagoon need to be clarified. The challenge is not the category of the waste but rather what to call the water that exudes from the facility e.g. is it effluent, waste water, sewage etc.?	DWS used to authorize water transporting ash (hazardous) e.g. at Sasol. Such is considered as a dump and not a dam. The water containing toxins requires a WML as chemicals will be needed to bring the liquid to a required quality standard. Where a process is industrial, such would constitute category B (hazardous) waste, but if the process deals with sewage then it is a category A (biological) waste. In terms of the EIA Regulations, effluent, sewage and waste water are grouped together and an EA is required if the listed activity is triggered and the thresholds are met. DEA Waste to discuss this matter internally and Eskom to provide clarity to DEA on their challenge.
25. Effluent and waste water get generated in an industrial process. May rather fall under Section 21(g) of the National Water Act if the solids are suspended in water. *Section 21(g) - For the purposes of this Act, water use includes disposing of waste in a manner which may detrimentally impact on a water resource.*	
26. If a project triggers category B or C or Category A or C should two NEM:WA processes be undertaken?	For a project that triggers a Category C waste management activity, the person must comply with the relevant requirements or standards. Such registration is through submission of hard copy and not online.
27. Scenario: Mine waste activities authorised prior to the OES. If people want to recover the tailings / stockpiles is the competent authority going to be DMR or DEA? The application was submitted to DMR and referred from the DMR to DEA who referred it back to DMR. Consideration should be given to the High Court decision on the De Beers Consolidated Mines Ltd v Ataqua Mining Pty Ltd and others, as it relates to dumps created prior and after the MPRDA. The bottom line is if the activities being undertaken amounts to mining as defined then the MPRDA would apply. The aspect shall therefore be looked at along these lines in order to establish proper context. The MPRDA application would simultaneously be lodged with an application for an Environmental Authorisation in terms of NEMA	Look at 43(A) of NEM:WA for competency of minister responsible for mineral resources. DEA Waste to discuss this matter internally and Eskom to provide clarity to DEA on their challenge.

28. Scenario: There were contradictions between the provincial EA and the Water Use License Authorization (WULA) issued prior to 2014 for the tailings. After 2014 the regional officials sent the proponent to DMR. DMR informed the proponent that they could not assist as the facility did not have a mining right.	Where an activity under the NEMA or the NEMWA is triggered and such activity is directly related to mining, it does not require an existing link to a mining right or permit to establish the DMR's competency. The NEMA, NEMWA and the EIA Regulations clarifies that the Minister responsible for mineral resources is the competent authority where the listed or specified activity is or is directly related to prospecting or exploration of a mineral or petroleum resource; or extraction and primary processing of a mineral or petroleum resource. An example is the reworking of a tailings dam which, whether it requires a mining permit or not, will trigger Activity 21(b) of LN1.
29. Where a substation to be demolished is situated within a mining area, using the existing EA and EMPr can one continue with the decommissioning although DMR may now be the competent authority?	Activity 31 of LN 1 lists the decommissioning of infrastructure or facilities, only where such has an operational component. The decommissioning of a substation / rather facility for transmission or distribution of electricity is not listed but an amendment to the EA may possibly be required. 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 power line or substation to be utilized for mining purposes only the competent authority 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
30. DMR takes time to respond. What is the way forward to receive responses timeously from DMR especially as there are applications requiring authorization both in terms of NEMA and the MPRDA? Delays also affect mine closure.	The NEMA process is not subject to the MPRDA decision making process. This request can be referred to specific region. Capacity is a constraint but effort is being made by DMR to reject/accept applications timeously.
31. In a situation of external EAP review, which of the 2 EAPs will be held responsible for the EIA in such a case?	Both EAPs should be held accountable for the report in such instances.
32. What is the way forward in a situation where NWREAD has issued an EA for e.g. RDP housing and the DMR later issued a a prospecting right for the same portion of land.	The Constitutional Court judgement in terms of Maledu and Others vs Itireleng Bakgatla Mineral Resources (Pty) Ltd and Another provided some clarity in this regard. In this matter, mining rights were granted in respect of land lawfully occupied by the applicants. The mining companies obtained an eviction order from the High Court against the applicants as well as an interdict restraining the applicants from entering the relevant land and interfering with mining operations.

	The Constitutional Court held that the High Court's decision to grant the eviction order and the interdict was unlawful because the negotiations between the mining companies and the applicants had not been finalised. Further, the judgement held that the existence of a mineral right does not itself extinguish the rights of a land owner or any other occupier of the land in question. It is possible for authorizations to co-exist. Where affected people are not made aware through a process, the remedy is to appeal the decision through the minister DEA or DMR. For a specific scenario, the 2 competent authorities can be contacted for improved clarification.
33. The CAs should stick to authorizing listed activity e.g. if activity is clearance of vegetation, the CA should not get involved in municipal planning issues like ensuring availability of potable water.	There is a need to be multidimensional (integrated) in approach otherwise the decision by the competent will be incomplete. The competent authority, in deciding the application for environmental authorisation, must have a holistic sustainability view which includes the biophysical, economic and social environments, thus to determine e.g. the need and desirability of the proposed development or indigenous vegetation clearance. The absence of potable water may make a development proposal undesirable / be a showstopper and subsequently an application for environmental authorisation may potentially be refused for the planned indigenous vegetation clearance, as such clearance (for the proposed development which itself has a fatal flaw) will be undesirable.
34. It is a challenge to get the correct contact details for officials of local municipalities, district municipalities and provincial departments, even from their websites. Suggest the inclusion of "fax to email" numbers.	Noted
35. Does a similar section 24G fine apply to Eskom and municipalities? Have NWREAD dealt with any municipalities with regard to offences requiring section 24G applications, since the municipalities also apply for developments? **Suggestion:** NWREAD should liaise with and advise municipalities to keep away from sensitive areas, as this hinders the work of Eskom when they want to install services and find that there are settlements already there.	NWREAD have dealt with numerous Section 24G applications submitted by municipalities. More than often the municipalities appeal the amount of the issued Section 24G fines. Some municipalities are indeed repeat offenders. Some municipalities have approached the NWREAD in situations where they would e.g. formalize informal settlements. Such are dealt with on the merits of each case. In many cases formalising informal settlements do not trigger any of the listed or specified activities and no EA was / is required. There is no special treatment afforded to Government departments with regard to offences. Access to the minutes and records of all fines issued can be requested through the Promotion of Access to Information Act (PAIA) process.

36. Scenario: An existing coal-fired power generation facility intends to improve their emissions. Thus change will require a WULA and Atmospheric Emissions Licence (AEL). Clarity was requested as to whether Listed Activity 6 of LN2 will be triggered.	Listed activity 6 of LN 2 *(development of a new facility or infrastructure)* and 34 of LN 1 *(expansion of a facility or infrastructure)* relates to the generation or release of emissions, pollution or effluent. There are many possible scenarios that may be trigger activity 6 of LN 2, for others activity 34 of LN 1 will be triggered. For some scenarios neither of the 2 activities will be triggered although and amendment to an AEL or WUL may be required. The enquirer was requested to provide the DEA with specifics of the scenario as there are a number of variables that need to be considered.