



Legal, Authorisations,
Compliance and Enforcement

20 YEARS OF EIA

Reflections, challenges and looking ahead...

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REFLECTIONS 2008 - 2018

RECAP ON MAIN CONCERNS RAISED AT THE 10 YEAR EIA CONFERENCE

- Some of the main concerns identified at the conference included:
 - Rationalisation of EIA;
 - Development of alternative tools to complement or replace EIA where appropriate;
 - Improved cooperative governance;
 - Addressing capacity concerns;
 - Improving compliance monitoring and enforcement;
and
 - Developing an Environmental Impact Assessment and Management Strategy



DEA - EIA REVIEW

- **Effectiveness and Efficiency Review of EIA - (2008)**
 - **Effectiveness of EIA in South Africa: did it meet its set objectives?**
 - Effectiveness was marginal, different interpretations of the Regulations limited effective, consistent implementation;
 - This Instrument was not equally effective for all types of applications and developments, but it was the only mechanism available which considered the impact of activities on the environment specifically.
 - **Efficiency: : what were the time implications of the EIA process**
 - EIA process was relatively efficient considering the average time taken to produce and evaluate EIAs
 - Cost of EIA was not regarded as a major issue for large-scale developments or activities undertaken by big corporates
 - often unaffordable for poor persons, small businesses, entrepreneurs and communities prohibiting access to the market



IMPROVING CAPACITY TO MEET TIMEFRAMES

- **EIA turn around strategy 2009 - 2010**
 - Enhance review capacity within all competent authorities
 - Capacity needs analysis – lead to:
 - Formalized training of case officers
 - Assistance with internet connection and computers
 - Secondment of staff for EIA administration
 - Development of the National Environmental Application System – support to provinces with staff for NEAS updating
 - Promotion of Environmental Management Frameworks to assist in decision making



Providing support to individuals who are unable to comply to EIA requirements

- Contacted the North West University to provide services to individuals who are unable to comply to the EIA regulations for financial reasons
- Recruiting and training young graduates to gain essential work experience, through a structured skills development programme in which they engage with and are exposed to various environmental assessment tools.
- 2014 – CSIR appointed to continue the programme - also using young graduates



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STAKEHOLDER PARTNERSHIP TO INFORM EFFICIENT AND EFFECTIVE IEM

- **National Environmental Impact Assessment and Management Strategy (EIAMS) 2009 - 2013**
 - Multi-stakeholder group set out to prepare recommendations to address the shortcomings within IEM system – direct outcome of the 10 Years of EIA Conference.
 - Aimed to give effect to the framework for integrated environmental management by providing for a diverse range of regulatory and other mechanisms to ensure proactive assessment and management that is implemented through cooperative governance and accountable, transparent and participatory decision making - to ultimately achieve sustainable development.
 - Completed 2013 – stakeholder workshop to discuss implementation
 - Implementation through the business plans of the Department



CLARIFICATION – EIA PROCESS

- **Amendments to the EIA regulations - 02 August 2010**
 - Timeframes expanded by automatic extension for decision-making
 - Extension of timeframe between public holidays
 - Notification of decision also to be done in a newspaper and confirmation of when timeframes are calculated from
 - Provision is made for mining related matters e.g. rehabilitation, financial provisions, etc.
 - Proof of investigation of alternatives to be provided, or motivate where alternatives could not be considered
 - Ability to be exempted from certain aspects of public participation, but not public participation per se
 - Mining activities listed but not in effect
 - Provision for timeframe for decision-making added
 - Automatic withdrawal of a pending application if a previously listed activity is no longer listed
 - EMF regulations are stand alone regulations as this is a separate environmental tool
 - Listing notice 3 added
 - Several amendments to listing notices and thresholds



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REDUCING ADMINISTRATION & GIVING EFFECT TO ONE ENVIRONMENTAL SYSTEM

- **Amendments to the EIA regulations - 08 December 2014**
 - Concurrent submission of applications and concurrently running processes
 - Provided for a national classification system, a screening report drawn from a national screening tool and identified the manner in which a site should be spatially represented
 - Introduced concept of minimum information requirement to be set for an activity
 - The requirement for a single application form to be submitted for the same development within the area of jurisdiction of a competent authority
 - Provided for a peer review if the EAP or specialist were seen as not independent
 - Concession on requiring approval from land owner for linear activities, mining activities or SIPs
 - Set the period within which commencement must occur – 10 years
 - Required the period for which the EA was to be granted and date on which the activity is deemed to be concluded where there are no operational aspects
 - A distinction between the portions of the EA dealing with operational and non-operational aspects was introduced
 - Auditing of the EMPR
 - Prescribed timeframes for all the steps in the EIA process – proponents and decision maker
 - Provided for different procedures for an administrative/more substantive amendments
 - Mining activities require EA



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ADDITIONAL IEM FACILITATION

- **Amendments to the EIA regulations – 2017**
 - Made provision for generic EMPRs and protocols
 - EAP not required for amendments where there is no change in scope
 - EMPRs to include outcomes and actions – actions can be amended without notification or process
 - Allow the Minister to amend the process followed (BA or EIR) in a gazette
 - Closure plan can meet the closure plan requirements of the Financial Provisioning Regulations
 - May not accept an application for amendment if the authorization has lapsed
 - Transitional provisions for mining activities
 - General amendments to the listing notices



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2014 amendment – reduced applications

Competent authority	2010 Regs	2014 Regs	%Decrease
DEA	497	328	-34%
Eastern Cape	235	120	-49%
Free State	123	54	-56%
Gauteng	278	210	-24%
Kwa-zulu Natal	413	258	-38%
Limpopo	162	153	-6%
Mpumalanga	231	120	-48%
North West	134	86	-36%
Northern Cape	93	32	-66%
Western Cape	498	127	-74%
TOTAL	2664	1488	-44%



* **Data:**

- * 2010 Regs (Q3, Q4 2013/14; and Q1, Q2 2014);
- * 2014 Regs (Q3, Q4 2015/16; and Q1, Q2 2016).



PROFESSIONALISING THE SECTOR

- 2014 - Fee regulations promulgated
- 2013/2014 financial support to EPASA through the green-fund – approximately R4 million
- July 2016 - 24H regulations promulgated providing for:
 - the recognition of a professional body and the requirement for registration of practitioners
 - Facilitating transformation and restructuring in the environmental assessment profession
 - Ensure the professionalization of EAPs, with specific focus on candidate black professionals, women, the disabled and the youth
- February 2018 - Recognition of EPASA as the single registration authority
- 2018/2019 further financial support to EPASA – approximately R4 million



ALIGNMENT OF LEGISLATION & CO-OPERATIVE GOVERNANCE

- **One Environmental System (2014)**

- Management of environmental impact from the mining industry brought under NEMA
- DMR became the competent authority for the issuing of environmental authorization for mining activities
- Minister of Environmental Affairs became the appeal authority
- Appeal regulations – suspension of activity during appeal and set timeframes for finalizing appeals
- 2014 – DPME/DEA/DMR/DWS commissioned the “Review of governance in the Mining Sector”
- Promulgation of the Financial Provisioning Regulations on 20 November 2015 under NEMA to give effect to one environmental system
- 2017 promulgation of regulations under the National Water Act to set authorization timeframes and implement the one environmental system



INSTRUMENTS

- **Instrument regulations**

- **Instrument regulations have been published for public comment**
 - Identifies the adoption requirements for instruments which would allow for: reduced reliance on EIAs as a process to obtain an EA
 - reduced reliance on environmental authorisations
 - will facilitate the exclusion from the requirement to obtain an environmental authorisation as contemplated in Section 24(2)(c) and (e) of the NEMA
- **Renewable energy development zones and power corridors**
- The outputs of two SEAs have been gazetted to identify geographical areas in which BAs rather than the EIAR process will be followed
- Reduced decision making timeframes
- For electricity grid infrastructure – pre-negotiated route to be submitted to the CA

- **Gauteng Standards**

- Zones identified through an EMF process in which EAs are substituted by compliance to a standard with an EMPR



CHALLENGES



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CHALLENGES

- **‘Fit for purpose tool’**
 - EIA is not the best-suited instrument for *certain development scenarios* and the process required to be followed to obtain an EA (*via the normal EIA route*) is lengthy with limited results
- EIAs seldom influence spatial development planning;
- EIA by itself cannot achieve sustainable development;
- EIA for an individual development proposal is very site-specific and cannot, with some exceptions, in detail consider cumulative impacts on e.g. a Provincial or National level;
- There was an unregulated environmental assessment practitioner sector;
- Quality of EIA reports in certain instances left much to be desired; and
- Inconsistent interpretation and implementation of the EIA Regulations and Listing Notices by all stakeholders, including competent authorities.



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LOOKING AHEAD



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HARMONISATION AND RATIONALISATION OF ENVIRONMENTAL LEGISLATION

- **DEA has embarked on a harmonization and rationalization of environmental legislation project (ongoing)**
 - Current environmental regulatory framework is fragmented and is seen to be hampering development in South Africa.
 - DEA embarked on a review process of the NEMA, SEMAs and its subordinate legislation to identify and eliminate duplication, address gaps in the existing legislation and to align procedures as far as possible.
 - The Department of Planning, Monitoring and Evaluation (DPME) is willing to coordinate the process to identify and remove duplication within interdepartmental legislation



PROPOSED ADDITIONAL INSTRUMENTS

- **Generic EMPRs - will allow for the submission of a standard EMPR**
 - Overhead power lines
 - Electrify sub-stations
- **Assessment protocols for the following environmental themes**
 - **Agricultural**
 - Assessment of impacts on agricultural resources
 - Assessment of impacts on agricultural resources from pipelines
 - **Avifauna**
 - Assessment of impacts for large scale wind energy facilities
 - Assessment of impacts for the removal of indigenous vegetation
 - Assessment of impacts for overhead power lines
 - **Biodiversity**
 - Assessment of impacts on terrestrial biodiversity
 - Assessment of impacts on aquatic biodiversity
 - Assessment of impacts on terrestrial species



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IEM SYSTEMS

- **Consolidated and Integrated Permitting system**
 - EIA
 - CITES
 - TOPS
 - Waste
- **National web-based screening tool**
 - Will produce the screening report as identified in regulation 16(1)(b)(v) of the EIA regulations



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Thank You



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