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1 PURPOSE

This information sheet has been compiled in order to provide the reader with an introduction to 'Environmental Impact Assessment, more commonly referred to as EIA' – a process that has gained for some time now since its inception in South Africa much attention due to its significant contribution to sustainable and socio economic development

This section describes the key impacts of the state of environment on the South African economy and society, the use of the EIA as a tool to address these challenges, and highlights how these impacts, in turn, impact on our environmental rights and the National Development Plan.

The changes in the physical, chemical or biological state of the environment determine the quality of ecosystems and the welfare of human beings. In other words changes in the state may have environmental or economic 'impacts' on the functioning of ecosystems, their life-supporting abilities, and ultimately on human health and on the economic and social performance of society. The EIA tool plays a crucial role in screening, assessing, evaluating and determining sustainable measures to be put in place to mitigate these activities.

2 INFORMATION SOURCE

The information contained in this outline document is sourced from the following: (University of Pretoria & Environmental Science Associates; 2008), Implementation of evaluation of EIAs document: 2019; the CD IEA Annual report 208/19, NEMA ACT 108 of 1998, NEMA EIA Regulations of 2014)

Environmental Impacts

The document will outline the Blue, Green and Brown issues associated with environmental activities and their associated impacts on the receiving environment and also what response government has initiated to mitigate the situation.

3 DISCLAIMER

This information sheet has been made available as a contribution to improving environmental literacy in South Africa and does not necessarily represent the policies, views or positions of the Government of the Republic of South Africa or its department of Environmental Affairs.

4 SUMMARY:

History of EIA

Environmental Impact Assessment (EIA) really started in earnest in the 1970s in the United States in response to the National Environmental Protection Act of 1970 other countries such as Australia soon followed. During this first decade of EIA the environment was fragmented into discrete components in order to assess specific impacts of actions - such as impacts on air, water and soils. During the 1980s public participation and social aspects of developments were introduced. Scoping was also developed as the tool to identify and focus on the important aspects.

In South Africa, EIA was introduced as a legal requirement in terms of the Environment Conservation Act (Act 73 of 1989) (although it had previously been used to some degree on a voluntary basis). The EIA Regulations promulgated under the Environment Conservation Act identified listed activities that were required to comply with the process, and substantive enquiries, set out in the General EIA Regulations. Decision-makers under this EIA regime made their decisions in terms of Part V of the Environment Conservation Act (principally sections 21 and 22, read with section 26) together with the substantive requirements read in Regulations 6 to 10 of the General EIA Regulations of 1997. (University of Pretoria & Environmental Science Associates; 2008). The 1997 ECA EIA Regulations (Government Notice No. R. 1182 & R. 1183) (came into effect on 5 Sept 1997). By then only one (1) Listing Notice: 9 activities with one (1) process: Scoping & EIA) was in place. The final decisions were possible after Scoping and there were instances where exemptions were applicable from having to obtain environmental authorisation.

Following the adoption of the 1996 Constitution, NEMA was enacted to give effect to the environmental right contained in section 24 of the Constitution. Chapter 5 of NEMA, entitled "Integrated Environmental Management" identifies various environmental instruments such as inter alia environmental management frameworks, strategic environmental assessments, environmental management programmes and, significantly, environmental impact assessments.

In 2006, environmental impact assessment regulations were promulgated in terms of NEMA (the "2006 EIA Regulations"). In terms of the 2006 EIA Regulations activities requiring environmental authorisation before being undertaken were identified in GN R 386 in Government Gazette 28938 dated 21 April 2006, as amended and GN R387 in Government Gazette 28938 dated 21 April 2006, as amended. The 2006 EIA Regulations became effective on 2 July 2006. As with the EIA Regulations that preceded them, under the Environment Conservation Act, the 2006 EIA Regulations were the subject of significant judicial attention. The important principles that can be extracted from these cases, and that should inform the manner in which EIA Administrators undertake their statutory responsibilities will be discussed and analysed in the lectures. (University of Pretoria & Environmental Science Associates; 2008). The 2006: NEMA EIA Regulations (Government Notice No. R. 385 – R. 387) (came into effect on 3 July 2006) and had two (2) Listing notices namely: Listing Notice 1: 25 activities) and Listing Notice 2: with ten (10) activities. Two (2) processes: Basic Assessment, & Scoping & EI Reporting were in place. Furthermore, thresholds were put in place including timeframes prescribed for deciding on reports & application. No final decisions was possible mid-process and no exemptions existed from having to obtain environmental authorisation.

The 2006 EIA Regulations, have, with effect from 2 August 2010 been repealed and replaced by new environmental impact assessment regulations (the "2010 EIA Regulations") (University of Pretoria & Environmental Science Associates; 2008). Government together with the environmental sector realised that the regulation required a review after 10 years of implementation, a 10 Year Review of the Effective & Efficiency of EIA in SA (DEAT, 2008): was

undertaken. The key findings revealed that there is a need to significantly do improvement in effectiveness & efficiency of EIA from the ECA regulations to the NEMA regulations.

To further improve on the poor quality of EIAs as well as Monitoring & Enforcement to be given enough attention. The 2010: Furthermore, two (2) processes: Basic Assessment, & Scoping & EI Reporting. No final decisions possible mid-process and no exemptions from having to obtain environmental authorisation existed and timeframes were prescribed for deciding on reports & application.

In 2014, one environmental system came in to effect. Where by National Environmental Management Act (Act No. 107 of 1998), Mineral & Petroleum Resources Development Act (Act No. 28 of 2002), NEM: Air Quality Act (Act No. 39 of 2004), NEM: Waste Act (Act No. 59 of 2004), and National Water Act (Act No. 36 of 1998) amendment have to be made, to give effect to “One Environmental System” for SA. The date of effect of the last of the amended provisions was 7 December 2014. The Minister responsible for Environmental Affairs, the Minister responsible for Mineral Resources and the Minister responsible for Water and Sanitation agreed on “One Environmental System”, whereby: all environment related aspects will be regulated through one environmental system (Note: heritage aspects was always integrated with the EIA processes in terms of Section 38(8) of the National Heritage Resources Act (Act No. 25 of 1999).) all environmental provisions have been repealed from the MPRDA; the Minister for Environmental Affairs sets the regulatory framework and norms and standards, and that the Minister for Mineral Resources are the Competent Authority in terms of NEMA and the Licensing Authority in terms of NEMWA as far as it relates to prospecting, exploration, mining or operations; the Minister for Environmental Affairs is the appeal authority in terms of decisions issued by the Minister for Mineral Resources in terms of NEMA; timeframes are fixed and synchronised for the consideration and issuing of the decisions in terms of the respective legislation.

Purpose and aims of EIA

“The principle of environmental assessment as the means of ensuring equality is the practical cornerstone of the principles of sustainable development and equitable use of our natural resources and environment. Moreover, the principle of environmental assessment is premised upon and interrelated to a precautionary principle, mandating a risk-averse and cautious approach.”

The environmental assessment process is used to understand the potential environmental impacts of a development, and to inform environmental decision-making before the development (and more particularly, the listed activities that require environmental authorisation under NEMA) is authorised. The information recorded during the EIA process provides the basis for a decision to grant (with or without conditions) or refuse authorisation in respect of a given application, and with regard to the authorisation of an application, informs the selection of the most appropriate alternative.

The Department of Environmental Affairs (the Department) is mandated to give effect to the right of citizens to an environment that is not harmful to their health or wellbeing, and to have the environment protected for the benefit of present and future generations. To this end, the Department provides leadership in environmental management, utilisation, conservation and protection towards sustainability for the benefit of South Africans and the global community. The mandate and core business indicated above is derived from the provisions of section 24 of the Constitution of the Republic of South Africa, 1996 which states as follows:

“Everyone has a right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures...”

Drivers of Indicators for Environmental Impact Assessments (EIAs)

The following sectors, due to their significance in terms of contribution to the national economy and (NDP goals orientated), and the fact that they are clearly subjected to EIA authorisation:

- Mining (e.g. open cast, underground, minerals processing, small and large ranging from sand mining to fracking);
- Agriculture (e.g. feedlots, broilers, abattoirs, etc.);
- Energy (e.g. coal fired power stations such, transmission infrastructure, renewable energy projects, etc.);
- Tourism (e.g. access and accommodation infrastructure in national parks, etc.);
- Housing (e.g. high cost country, golf and lifestyle estates; low cost housing developments; mixed land use developments);
- Bulk Services Infrastructure and Transport (e.g. linear development such as rail and pipelines, etc.);
and
- Waste Management (e.g. waste storage, waste processing activities, recycling, etc.).

EIA in South African Context

Progressive realisation of the environmental right described in Section 24 of the Constitution of the Republic of South Africa, promotion of the Section 2 principles of NEM, achievement of sustainable development as defined in NEMA and relevant case law, and ensure the realisation of section 33 of the Constitution which requires just administrative action.

1. Impact

To what extent has the EIA process been effective in achieving its objectives, towards sustainable development?

In South Africa, EIA already has a very strong and explicit sustainability mandate which means that the challenge for EIA does not lie with the mandate (or the establishment of appropriate enabling legislation) but rather with giving effect to this mandate in practice.

The national Department set yearly targets i.e. to give effect to sustainable development in a commitment to deliver and improve in the percentage of EIA decisions finalised within prescribed legal time frames. In the past financial year 2017/2018 alone, a total of 1245 EIA applications were finalised by all Competent Authorities. Of these, a total of 1227 applications were finalised within the regulated time frames - with only 18 finalized outside the regulated timeframes. This translates to 99% efficiency in processing of applications within regulated timeframes and we will strive to reach a 100% target in the new financial year. The Department ensures that the environmental sector is pursuing the path of sustainable development, thereby putting in place a regulatory system that is both streamlined and effective, in order to make it easier to do business in the country, as well as to attract much needed investment.

The Department has over time simplified and rationalised the EIA processes to allow for greater regulatory efficiency as well as faster turnaround time.

Main Potential Impacts or Contributions of EIA: (Indicators)

1. promotion of sustainability in decision-making
2. promotion of wellbeing through a safer environment
3. establishment of an environmental assessment profession
4. promotes public participation
5. promotes public participation
6. increase environmental awareness
7. Reduction in unlawful commencement
8. Reduction in Interpretation queries: People now understand
9. Reduction in appealed decisions
10. Improvement in granting administratively just decisions and the stats for all decision granted or refused

5 WHAT IS ENVIRONMENTAL IMPACT ASSESSMENT?

“Environmental impact assessment” means a systematic process of identifying, assessing and reporting environmental impacts associated with an activity. In the EIA process, any listed activity must be applied for and will either follow a basic assessment (BA) or Scoping and Environmental Impact Assessment Report (S&EIAR) process for a decision to be granted or refused.

What is environment?

“environment” means the surroundings within which humans exist and that are made up of the land, water and atmosphere of the earth, microorganisms, plant and animal life, any part or combination of (i) and (ii) and the interrelationships among and between them and the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;

“Environment” is widely defined in terms of NEMA and includes both anthropogenic (e.g. human health and socio-economic considerations) and ecological components (e.g. flora and fauna). This broad definition of the term “environment” requires that the EIA process is more holistic in that it takes account of a broader range of considerations than those associated with the natural environment alone. Such an approach does however also reduce the significance of natural environmental aspects. In essence, EIA is a process that must at all times seek to facilitate the attainment of sustainable development through the careful assessment of all relevant considerations so as to appropriately inform environmental decision-making.

What is an Impact? The Dictionary definition

The word originates from Latin meaning to pushed against, fastened on, to thrust at, to drive in simply translated to mean the striking of one thing against another; forceful contact; collision or to have a strong effect on someone or something

What is assessment?

“Assessment”, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to decision-making;

6 EIA LEGISLATIVE FRAMEWORK

In implementing the EIA process, these developments or activities must be authorised using the following legislation within which the EIA is embedded (Design)

- The Constitution S24
- NEMA 108 of 1998
- EIA Regulations 2014 as amended
- PAJA

7 THE EIA ACTIVITY PROCESS

The EIA Activity Process as prescribed in the EIA regulations (Activity)

- Screening, Scoping, assessment and evaluation, PPP, review and appeals

Reports that contain information that enable Competent Authorities to take informed decision (Output)

- Scoping & EIA Report and Basic Assessment Report (BAR), EMPs Reports

8 SKILLS AND COMPETENCIES THAT UNDERPIN THE EIA PROCESS

- The developer/applicant provides an understanding of the particular development and or sector
- Consultant and EAP provides project management and integrative thinking skills and competencies
- Specialists provide scientific skills and competencies
- Public/civil society provides inputs based on values, experience and local knowledge
- Administrators/officials provide administrative and review skills and competencies
- Judiciary provides judicial skills, oversight and interpretation of legislation

9 WHAT ARE THE BENEFITS OF DOING EIA?

EIA in South Africa ensures that progressive realisation of the environmental right described in Section 24 of the Constitution of the Republic of South Africa, promotion of the Section 2 principles of NEM, achievement of sustainable development as defined in NEMA and relevant case law, and the realisation of section 33 of the Constitution which requires just administrative action are upheld and adhered to: These are:.

Progressive realisation of the bill of right S24 of the constitution (Impact)

- Progressive realisation of the environmental right i.e. Section 24
- Giving effect of NEMA section 2 i.e.
- Sustainable development
- Environmental Justice
- Environmental Governance
- Capacity Building and empowerment
- Cooperative Governance
- Administrative Justice

EIA is as much based on scientific approaches as it is on legal and administrative procedures. In this regard the process is essentially aimed at achieving the following objectives:

Short term benefit:

- provide information for decision-making by officials employed by the competent authority, as well as any appellate authority in due course, in terms of the environmental consequences of proposed activities;
- promote environmentally sound and sustainable development through the identification of appropriate enhancement and mitigation measures;
- improve the environmental design of the proposal;
- ensure that resources are used appropriately and efficiently;
- identify appropriate measures for mitigating the potential impacts of the proposal; and
- facilitate informed decision-making, including setting the environmental terms and conditions for implementing the proposal.

Long-term benefit:

- protect human health and safety;
- avoid irreversible changes and serious damage to the environment;
- safeguard valued resources, natural areas and ecosystem components; and
- enhance the social aspects of the proposal.

END NOTES:

In the South African context, Chapter 5 of NEMA and in particular Section 23 of NEMA establishes the principle of Integrated Environmental Management (IEM) as the cornerstone of environmental management which ensure that all decisions that significantly affect the environment are taken in light of the environmental principles in Section 2 of NEMA; Ensure that we identify, predict and evaluate the –actual and potential impact on the environment, socio-economic conditions and cultural heritage, and risks, consequences, alternatives and options for mitigation of activities; in order to minimize negative impacts and maximize benefits and promote compliance with principles of environmental management of Section 2 of NEMA; Furthermore the NEMA ensures that proper consideration of the effect of activities on the environment before commencement are taken in to consideration whilst ensuring that adequate and appropriate opportunity for public participation in environmental decision-making are adhered to ensure sustainable development;