

One Environmental System

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environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



STRUCTURE

- Why the “One Environmental System”
- What is the “One Environmental System”
- What makes it the “One Environmental System”
- What’s the fuss
 - ✓ Advantages
 - ✓ Disadvantages

WHY THE “ONE ENVIRONMENTAL SYSTEM”

LOCATION, LOCATION, LOCATION INTEGRATION, INTEGRATION, INTEGRATION

- Integration of administrative and legislative requirements is a Government priority
- Planning Commission **identified** among the key challenges which prevented the country making substantial progress toward reducing poverty, inequality and joblessness
 - ✓ the performance of the public service is uneven – South Africa needs to simplify its policy, law and regulation processes and make them more effective
 - ✓ **Concluded** that a ‘business-as-usual’ approach for the future would result in the country failing to meet many of the objectives it set itself
 - ✓ **Called for** - a more coherent and predictable regulatory framework which reduces red tape and the cost of compliance.
 - ✓ Specifically identified the need for **integration** between mining, water and environment

PROBLEM STATEMENT

- Prior to 8 December 2014 - environmental aspects of mining activities were regulated in terms of the MPRDA
- Notwithstanding, some construction activities related to mining trigger listed activities under the EIA regulations
- Undesirable situation - both laws had their own process and information requirements leading to:
 - ✓ Unnecessary duplication DMR felt there was no need to comply to NEMA as MRPD covered environmental impacts – mines became non-compliant
 - ✓ Challenge for cooperative governance
 - ✓ Confusion in the mining sector
 - ✓ No alignment and no integration
 - ✓ Not efficient – time, resources and costs

PROBLEM STATEMENT

- In 2010, the “Strategy for Sustainable Growth and Meaningful Transformation of South Africa’s Mining Industry” was adopted
- The Strategy identified amongst others fragmented licensing mechanisms as one of the key binding constraints to the global competitiveness of the industry
- In 2008 the Minister responsible for Water and the Environment and the Minister responsible for Mineral Resources came to an agreement to align the environmental function of mining
- The agreement entailed
 - ✓ Environmental function of mining to be regulated under NEMA
 - ✓ Processing and approval timeframes to comply to MRPD
 - ✓ Competent Authority would remain with DMR for 36 months then would revert to DEA, not included in MRPD
 - ✓ Appeal authority would be Minister Environment

NEMA AMENDMENTS – 2008

- Amendments made to NEMA to effect 2008 agreement
- Definitions
 - ✓ EMP added
- Added additional definitions to align with MRPD
 - ✓ Exploration, mining, production, prospecting area – removed in 2014 too broad
 - ✓ Holder
 - ✓ Mine
 - ✓ MRPD
 - ✓ Owner of works
 - ✓ Residue stockpile & residue deposit

NEMA AMENDMENTS – 2008

- 24P – Financial provision for remediation of environmental damage
 - ✓ Section (2) made provision for DMR to use the fund to rehabilitate in certain situations
 - ✓ (4) (a) Minister DMR can appoint an independent assessor to conduct the assessment and determine the financial provision at the costs of the holder
- The holder was to monitor the approved EMPr
- Timeframe of 5 years was set in the EIA regulations
- 24R was related to mine closure moved to NEMA

MPRD AMENDMENTS – 2008

- 16(a) and preceding section dealing with other rights - Any person who wishes to apply to the Minister for a prospecting right, mining right, mining permit, exploration right, cooperation permit, must simultaneously apply for an environmental authorisation
- 16 (b) submit environmental reports required in terms of Chapter 5 or NEMA within 60 days
- 38A – the Minister (DMR) is the responsible authority for implementing the environmental provisions in terms of NEMA as it relates to prospecting, mining, exploration, production or activities incidental thereto on a prospecting, mining, exploration or production area.
- An EA issued by the Minister (DMR) shall be a condition prior to the issuing of a permit or the granting of a right in terms of this Act (MPRD)
- Section 38B EMPlan or EM Program approved in terms of MPRD = EA

2013 Discussions

- The NEMAA came into effect on 01 May 2009.
- DMR seemed to be reluctant to bring the amendments to the MPRDAA into effect even though they were assented to by the President on 21 April 2009
- Resulting in no change to the pre 2008 situation
- Further discussions were held between the Ministers – 2011 to 2014 which lead to additional legislative reform
- Minister of Environment was also Minister of Water – WULAs, Waste and Air Quality authorizations were added to the discussions
- Discussion allowed DMR to bring the MPRDAA into effect 07 June 2013 to enter into force 18 months after – 08 December 2014

2013 Agreement – What makes it the “One Environmental System”

- NEMA 50A (2) Agreement means the Agreement reached between the Minister, the Minister responsible for water affairs and the Minister responsible for mineral resources titled *One Environmental System* for the country with respect to mining, which entails-
 - that all environment related aspects would be regulated through one environmental system which is the principal Act and that all environmental provisions would be repealed from the MPRD Act, 2002;
 - that the Minister sets the regulatory framework and norms and standards, and that the Minister responsible for MR will implement the provisions of the principal Act and the subordinate legislation as far as it relates to prospecting, exploration, mining or operations;

2013 Agreement – What makes the One Environmental System

- that the Minister responsible for MR will issue environmental authorisations in terms of the principal Act for prospecting, exploration, mining or operations, and that the Minister will be the appeal authority for these authorisations; and
- the Minister, the Minister responsible for MR and the Minister responsible for WA agree on fixed time-frames for the consideration and issuing of the authorisations in their respective legislation and agree to synchronise the time frames.

Amendments to the – One Environmental System

- NEMA 50A (1) Any proposed amendments to the provisions relating to prospecting, exploration, mining or production in this Act, the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008), a specific environmental management Act or any other Act of Parliament that may have the effect of amending the provisions of the Agreement, must be subject to concurrence between the Minister, the Minister responsible for water affairs and the Minister responsible for mineral resources.
- Any intervention contemplated in paragraph (a) that may lead to the amendment of the provisions of the Agreement must be tabled in Parliament prior to any steps being taken to effect those changes, and Parliament may express its view on the proposed amendment of the Agreement.

Making it possible – One Environmental System

- To give full effect to the Amendment Acts the following subordinate regulations were and are being developed:
 - EIA regulations amended
 - Regulations pertaining to the financial provision for prospecting, exploration, mining or production operations, removal or disposal of minerals and primary processing of a mineral resource or petroleum resource
 - Listing of the management of residue stockpiles and residue deposits in terms of the Waste Act
 - Water Use Authorization regulations – timeframes and trigger
 - Should see regulations under the MPRDA to regulate administrative issues for the alignment between the EA and right – trigger

What's the Fuss – Advantages in general

- A synchronised system for environmental authorization between the National Water Act, the MPRDA, NEMA, National Environmental Management: Air Quality Act, 2004, National Water Act, 1998 and NEMWA;
- Systems run in parallel and decisions are issued simultaneously;
- This arrangement provides a case study to investigate the coordination of other Acts to provide certainty to developers;
- This arrangement supports the Infrastructure Development Act in that the timeframes for decision making on environmental authorisations can be confirmed in the Act and simultaneous submission of applications can be achieved;
- Meets the requirements of the NDP for integration of requirements

What's the fuss - Certainty in activities & timeframes

- The ambit of the competency has been defined and ring-fenced – does not consider mining area and ancillary activities - relates to extraction of minerals and petroleum resources and primary processing only
- Provided clarity that the secondary processing is not included in the mining licence (power station, beneficiation plant etc.)
- The mining competency has been defined in 24C(2A):
 - ✓ where the listed or specified activity is or is directly related to—
 - (a) prospecting or exploration of a mineral or petroleum resource;
 - or
 - (b) extraction and primary processing of a mineral or petroleum resource.
- The listing of mining and associated activities in NEMA now allows for the consideration of the entire development – not possible when considering only individual listed activities
- There are fixed and synchronised timeframes for the reviewing and deciding on mining right/permit, EIA, WL, AQL and WULAs

What's the fuss - Certainty in appeal timeframes

- All the Acts now provide for an internal appeal procedure and the appeal time-frames between the acts are aligned and run in parallel;
- The timeframe for submitting appeals begins directly after decision making– appeals run in parallel
- Timeframes for appeals is fixed – 90 days
- Appeals must be finalised before mining commences - appeal suspends authorization

What's the fuss - Parallel and synchronized process of all Environmental authorizations

- The trigger for applying simultaneously for the EA, WUL, AQL & WL processes is included in the MRPD amendment
- There is an opportunity to include the trigger for simultaneous applications of SEMAs after the mining right/permit application acceptance in NEMA through amendment process
- Not a cascading process a parallel process triggered by the acceptance of the mining application – not optional
- EA process timeframes are set in the EIA regulations – limited opportunity for extension
- Mining regulations will determine the timeframe between acceptance of the mining application and the submission of other related applications

What's the fuss - Consultation

- EIA process fully consultative process – considering the impacts of mining now subject to comprehensive consultation
- I&AP make input at scoping phase – scoping report is to be approved by CA – therefore there is agreement on the scope of the assessment before undertaking the assessment
- Because of the tight timeframes – the development is well defined on application - consultation process is meaningful
- No grey area in terms of activities to be considered – mining development
- Greater cooperation between three departments - no conflicting decisions as there is inter-departmental consultation prior to final decision making
- Mining may not continue without all other licences being in place – compliant industry
- NEMA provides for minimum requirements – DEA can set the standard of information/review
- EMPR has become outcomes based - three levels of impact management – can amend actions without consultation which allows for best practice - included in the next official audit
- Consultation and approval from the CA is required for amendment to the impact management outcome or management objective
- EMPR must be accessible on site and on website – will include the calculations for financial provisioning

What's the fuss - Environmental framework

- Policy and regulatory framework on environmental matters divorced from the department that must implement
- DEA develops regulations for mining
- Financial provision regulations are more comprehensive – identified the timeframe for which financial provision must be available
- Financial provision is calculated on annual, end of life of mine and latent defect – assessment of each step
- Can identify areas where applications may not be considered through NEMA - can include mining applications
- Compulsory pre-application screening which will identify the site spatially – ability to get a national perspective of new mining applications and approvals
- Ability to identify minimum requirements that must be applied – information requirements and assessment procedures
- Ability to provide specific environmental training and capacity building
- Moving more toward EMI – risk assessments, standards, specific assessments

What's the fuss – Disadvantages

- Department required to promote mining authorises and enforces the environmental provision
- For some time there may be implementation teething problems

Still to be done

- EMPR = EA in NEMA – provinces are against this.
- Transitional arrangements –
 - ✓ Mining right submitted before 14 December 2014 – did not need an EA however commence only after 14 December now need one
 - ✓ Period between mining licence acceptance to EIA application submission – needs to be 14 months
 - ✓ Confusion regarding a mining related activity happening outside of a mine i.e. crushing and screening of rock – Competent Authority.

Thank You



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