



# Recent ISO reforms: Significant or superficial therapies for the credibility crisis of the voluntary and certified conformity assurance movement

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# Themes

- 🌍 **Great expectations**
- 🌍 **What is the voluntary and accredited certification conformity assurance movement all about**
- 🌍 **What are the expectations?**
- 🌍 **The relationship between ISO 14001 and legal compliance**
- 🌍 **What performance?**
- 🌍 **What reforms**
- 🌍 **Conclusions**




**Great Expectations:  
Performance of Accredited ISO  
14001 based Management  
Systems to Support Legal  
Compliance**



# Great Expectations

- 🌐 **Compliance enforcers around the world had and some still have great expectations**
  - 🐟 **That an accredited certification of an EMS based conformity assurance process**
  - 🐟 **will be a reliable alternative to command and control measures**
  - 🐟 **and an ally**
  - 🐟 **to drive enforcement by assuring compliance**



**What is the voluntary and certified conformity assurance movement all about – Standards, Certification and Accreditation**



# STANDARDS, CERTIFICATION, ACCREDITATION AND ASSURANCE

- 🌍 **Proliferation of management system based conformity assurance standards since the mid-1990s**
  
- 🌍 **The flagship environmental management system standard – ISO 14001**
  - 🐟 **First Edition: 1996**
  - 🐟 **Second Edition: 2004**
  - 🐟 **Third Edition: 2015**



# Standards, Certification, Accreditation and Assurance

 **Certification bodies (CBs) may be accredited or not to certify organisations for conformity against International Standards**

 **The SA accreditation body is SANAS**

 **CBs are not compelled to be accredited in SA**

 **Some are accredited by foreign bodies**<sub>7</sub>



**What are the Expectations?**





# What are the Expectations?

- 🌐 **Legal compliance should be at the heart of an EMS**
- 🌐 **An accredited EMS certificate should go a long way to provide assurance that the organisations are indeed compliant to applicable environmental law**



# What are the Expectations?

- 🌐 **That organisations should be legally compliant before**
  - 🐟 **a certificate of conformity is issued or**
  - 🐟 **an existing certificate is renewed**



**What is the relationship  
between ISO 14001: 2004 and  
legal compliance?**



# ISO 14001 and Legal Compliance Relationship

- 🌐 ISO 14001 however does not directly and explicitly require legal compliance
  
- 🌐 In stead it requires
  - 🐟 of top management to make a policy commitment to comply to applicable legal requirements and to
  - 🐟 identify such law and to
  - 🐟 verify such compliance on a regular basis (expected to be once a year) and to
  - 🐟 review the suitability, adequacy and effectiveness of the EMS against the verification results





**So, How do ISO 14001 based  
EMSs Perform to Assure  
Compliance to Applicable Legal  
Requirements?**



# EMS's Legal Compliance Performance

## Not well: 2007

-  **The state's environmental management inspectorate has named three companies as serious transgressors of environmental laws and permits, all three of which are ISO 14001 certified**
-  **The department of Environmental Affairs, which houses the Green Scorpions, said it was "taken aback" at the levels of non-compliance**



# EMS's Legal Compliance Performance

## **Geoff Visser, the then SABS's executive of standards,**

-  *said that an ISO14001 certification did not necessarily mean a company always had to be in compliance with environmental regulations.*



*"The idea behind the ISO14001 standard is that you manage your own compliance to achieve being within the framework of the law," he said. "There are times when a company may be outside legal compliance."*

*However, a habitual polluter would not be certified, he said.*

-  **SANAS did not respond**



# REMAS Findings

-  **No evidence was found to support the hypothesis that higher levels of environmental performance result in better compliance outcomes**
-  **Regional and sector deviations in legal provisions and enforcement efforts negate any attempts to establish a relationship between an EMS and legal compliance**






# Other Research Findings

## USA 2000

-  Not possible to determine whether organisations with an EMS have higher levels of compliance

## Dahlström 2003

-  Sites with and EMS do not necessarily deliver better compliance



**Opportunities Lost - Reforms to Reconcile the Expectations with the Actual Performance of an Accredited EMS Certificate?**









# E/A7-04 European Clarification

- 🌍 In 2012 SA adopted the European E/A7-04 Guidelines for legal compliance as part of an accredited ISO 14001 certification
- 🌍 **Compliance is defined as**
  - 🐟 Full implementation of applicable environmental legislation
  - 🐟 Compliance occurs when requirements are met and
  - 🐟 The desired changes are achieved



# E/A7-04 European Clarification



## E/A7 Main Points

-  I&Aps expect absolute compliance
-  Certification against ISO 14001 is not a guarantee of compliance
-  Certification auditors
  -  are not inspectors of the regulators
  -  They should not make statements on the state of compliance – the organisation must demonstrate that
-  The organisation must demonstrate that it achieved compliance




# E/A7-04

## E/A7 Main Points

-  Documented agreements with the regulator, where organisations are not in compliance
-  An accredited EMS certification should demonstrate that the auditors have evaluated and confirmed that the EMS ensure fulfillment of the policy commitment to be compliant
-  Accredited certification only indicate that the EMS is 'effective' – it delivers!



# E/A7-04

 **Deliberate or consistent non-compliance shall be considered a serious failure to support the policy commitment**

**★ It should preclude certification or**

**★ Cause an existing certification to be**

**→ Suspended or**

**→ Withdrawn**



# ISO 17021-2001 Part 1

 **9.1.2.2.2 The audit objectives shall describe what is to be accomplished by the audit and shall include an**


-  **b) evaluation of the ability of the MS to ensure the client meets applicable statutory, regulatory and contractual agreements**

**★ Note: A management system certification audit is not a legal compliance audit**



# ISO 17021-2001 Part 1

## 9.2.3.2 Stage 2 Audit

-  The purpose of the stage 2 audit is to evaluate the implementation and effectiveness of the EMS
  - ★ c) the client's management system and performance as regards legal compliance





# ISO 17021-2001 Part 2

## 5 Competence requirements for EMS auditors

### 5.7 Legal and other requirements

#### Knowledge to determine

- ★ whether an organisation has identified the legal requirements and
- ★ evaluated its compliance with all applicable legal requirements



# Future Challenges

- 🌐 **Compliance with legal requirements is a key concept of ISO**
- 🌐 **Global opinions differ of what may be expected from certified EMSs**
- 🌐 **Defining legal compliance is a regulatory function not of the IOS**
- 🌐 **No organisation can demonstrate full compliance all the time**
- 🌐 **Certification does not and cannot guarantee full legal compliance**



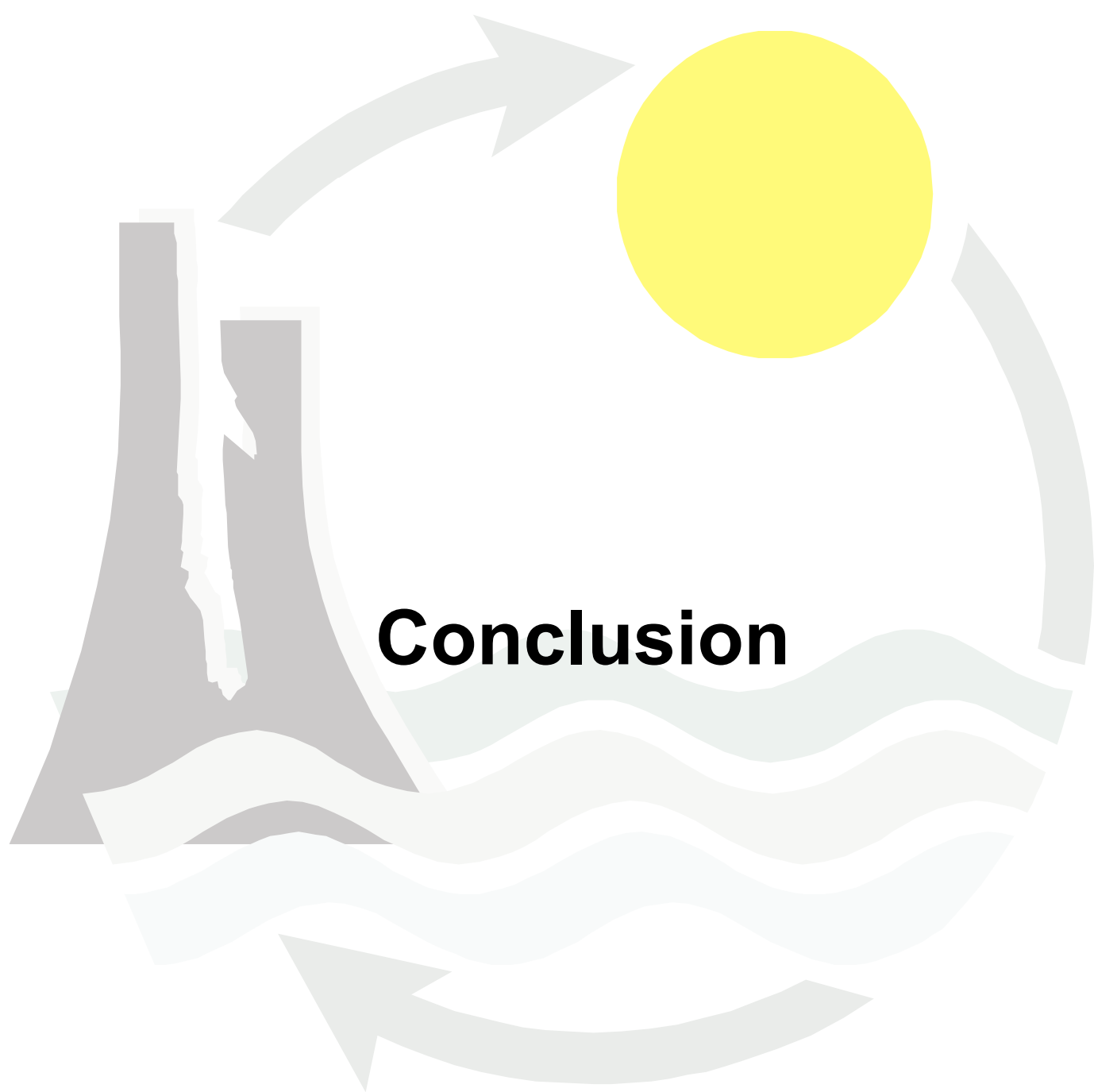
# Future Challenges

- 🌐 **Examples of certified organisations that are not compliant, abound**
- 🌐 **Demonstrated commitment to legal compliance means the organisation has**
  - 🐟 **Implemented the ISO requirements related to legal compliance**
  - 🐟 **Knowledge and understanding of its compliance status**
  - 🐟 **Plans in place to achieve compliance if non-compliances exist**



# HLS for Management System Standards

 **Is silent on legal compliance**



**Conclusion**



# Conclusion

- 🌍 **The reform process of**
  - 🐟 **MS certification auditing (The 17001 series of reforms)**
  - 🐟 **ISO 14001**
    - ★ **HLS**
    - ★ **FC**
    - ★ **The standard itself**
- 🌍 **All fail to deliver on the acknowledged expectations**
- 🌍 **The non-delivery position on assuring compliance seems to be more entrenched than before**
- 🌍 **And yet another standard for managing compliance has been born!**



**Thank You!**