EMA AND THE EIA REGULATIONS

Legal Issues

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INTRODUCTION

INTERNAL

POSITIVE

S

NEGATIVE

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EXTERNAL

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WEAKNESSES

1. No explicit –
   • environmental right
   • environmental obligation
WEAKNESSES

2. Environmental management principles (s 3)
   • no provision for project life cycle analysis
Use Planning tools throughout planning and design to identify environmental impacts, aspects and risks (EIA) and develop management plans (EMP).

**Planning and Design**

- **Decision to proceed**
  - EIA commences
  - Greenfields Development
  - Preparation / reconnaissance
  - Identification
  - Termination: Dismantling / rehabilitation
  - Brownfields Development
  - Closure / Decommissioning
  - Manage Change

**Operational Phase**

- **Identification Design Construction**
  - EIA, EMS
  - Identification Design Construction
  - Expansion / Modification
  - Operations

- **Construction / Implementation**
  - Audit
  - Audit Instruction training
  - Commissioning
  - Audit

- **Commissioning**
  - Audit
  - Audit Instruction training
  - Operations

- **Operational Loop**
  - Tender Specifications
  - Contractor / Supplier section

**Commercial Loop**

- **Detailed Design**
  - Design specifications
  - Appraisal and Changes
  - Audit
  - Contract

- **Tender**
  - Specifications
  - Tender Specifications

Nel and Kotzé in Strydom and King (eds) Fuggle and Rabie’s Environmental Management in SA 15
WEAKNESSES

3. Sustainable Development Advisory Committee (Part IV)
   • Only advisory
   • EMB – Sustainable Development Commission
4. Access to environmental information (s 47)
   • Only public sector
   • Not civil society
THREAT

1. Vague wording
   – i.e. Reg 4(a) “EAP must have ... knowledge of and experience in conducting assessments, ... the Act, regulations and guidelines ”
2. Lack of access to environmental information
THREAT

3. 100% legal compliance impossible
   • ISO 14001
4. Legal uncertainty
   • Time periods
   • Contradictory procedures
   • Conditions in ECC
   • Lack of criteria to grant or refuse ECC
   • Prospecting & exploration
   • Existing authorisations
THREAT

STRICT TIME PERIODS

• Effect of non-compliance
CONTRADICTORY PROCEDURES - ACT VS REGS

- Regulations cannot regulate beyond the ambit of the Act or deviate from the Act
- Ultra vires
CONDITIONS IN ECC

- Conditions
- Clearance = conditional
- Example:

“In view of the risks and environmental sensitivity of the area, the MET reserves the rights to attach further regulatory conditions during the operational phase of the project.

From this perspective, we issue the clearance with the following condition: all key stakeholders, including Regional and Local Authorities concerned, must be properly consulted and their consent taken into account prior to any exploration activities.”
THREAT

LACK OF CRITERIA TO GRANT OR REFUSE ECC

• section 33(2)(b)(iv)
THREAT

PROSPECTING & EXPLORATION

• EMA vs Minerals Act
• lack of consistency
• scoping + EMP OR EIA + EMP?
• in- or outside protected area?
THREAT

EXISTING AUTHORISATIONS

• Section 57
• No predecessor to EMA = no such thing!
THREAT

DURATION

• Section 40
• No renewal!
1. Section 5 – Prohibition re waste
STRENGTHS

2. S 18 – Environmental officers
3. Section 45 – Appointment of external specialist
4. Regulation 11 – Consultation between organs of state
1. Section 33(2)(b)(iv) – “may take into consideration principles of environmental management”
2. Section 53 – Piercing the corporate veil
THANK YOU
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