



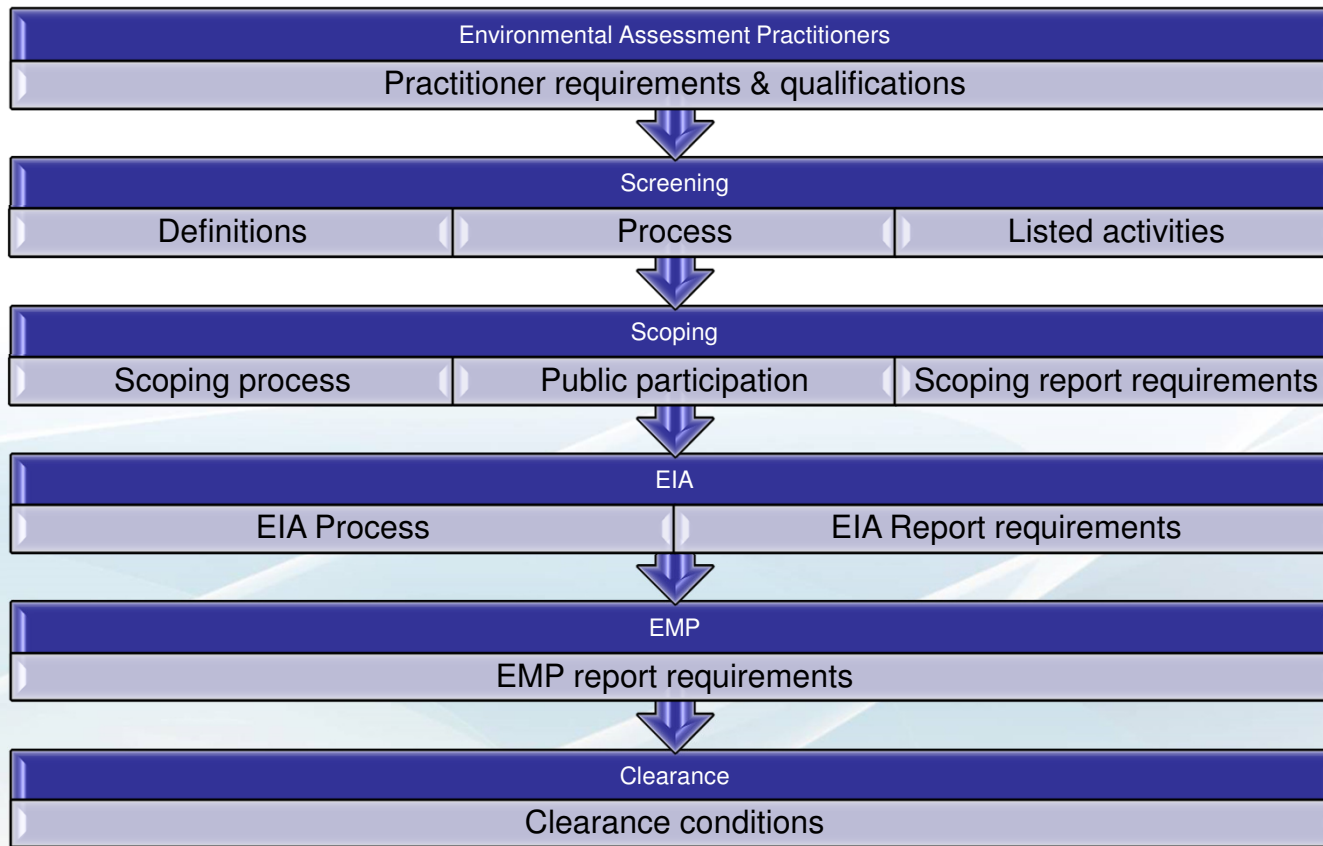
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EAPAN Perspective

Regulation challenges relating to the environmental management process

30/05/2013

Agenda: Environmental Assessment Process



Key Issues

- Listed activities
 - Limits
- Process
 - Short vs. full assessment
- Timeframes
 - Public participation / comment periods
 - Notification periods
 - Authority review

EAPs

- Independence needs to be addressed.

Screening: Process

- 6 (3) If any other organ of state is in terms of section 30(1) of the Act identified as the competent authority in respect of a listed activity the application must be submitted to the designated organ of state.

“organ of state” means -

(a) any office, ministry or agency of State or administration in the local or regional sphere of government; or

(b) any other functionary or institution –

(i) exercising a power or performing a function in terms of the Namibian Constitution; or

(ii) exercising a public power or performing a public function in terms of any law,

- Environmental Clearance can theoretically be granted by other “organs of state”.
- MET should be the only Authority able to issue Environmental Clearance

Screening: Process

- 12. (1) Receipt of application and registration of application –
 - Falls under Scoping Process section – confusion between “application” and scoping report submission
 - this is relevant to Section 7 (application registration) not “Consideration of Scoping report”

Screening: Process

- Scoping & EMP vs Full Process
 - Allowed for / hinted at BUT not clearly defined
 - Separate listed activities
 - NB – setting limits
 - Processes and requirements must be dealt with separately

Screening: Definitions

- Construction: “means the building, erection or modification of a facility, structure or infrastructure that is necessary for the undertaking of an activity, including the ***modification, alteration, upgrading or decommissioning*** of such facility, structure or infrastructure;”
 - Major concern for interpretation of listed activities.

Screening: Definitions

- Effects vs. impacts
 - Environmental IMPACT Assessment regulations
 - Continuity required

Screening: Listed Activities

- **WASTE MANAGEMENT, TREATMENT, HANDLING AND DISPOSAL ACTIVITIES**
 - **2.2. Any activity entailing a scheduled process referred to in the Atmospheric Pollution Prevention Ordinance, 1976.**
 - No air pollution permitting at this stage.
 - Means of managing industrial activities.
 - **Hazardous waste not mentioned (dealt with in elsewhere)**
 - **Radioactive waste**

Screening: Listed Activities

- **MINING AND QUARRYING ACTIVITIES**
- **Quarrying is not addressed by the Minerals Act – not one mention of the word “quarry” in the Minerals Act**
- **Extraction of “natural resources” – no definition**
- **3.3 Resource extraction, manipulation, conservation and related activities.**
 - **Industrial processing not adequately addressed**
- **Extraction and processing of gas – not mining or quarrying?**
- **EPL’s vs. ML’s**

Screening: Listed Activities

- **FORESTRY ACTIVITIES**

- **4.** The clearance of forest areas, deforestation, afforestation, timber harvesting or any other related activity that requires authorisation in term of the Forest Act, 2001 (Act No. 12 of 2001) or any other law.
 - **The removal of individual protected trees requires authorisation**
 - **Environmental Clearance for individual tree removal?**

Screening: Listed Activities

- **AGRICULTURE AND AQUACULTURE ACTIVITIES**
- **7.8 The introduction of alien species into local ecosystems.**
 - Farming?
 - Alien “invasive” species

Screening: Listed Activities

WATER RESOURCE DEVELOPMENTS

- **8.4 “Construction of canals and channels including the diversion of the normal flow of water in a *riverbed* and water transfer schemes between water catchments and impoundments”**
 - Riverbed definition
- **8.8 Construction and other activities in water courses within flood lines.**
 - Vague
- **8.9 Construction and other activities within a catchment area.**
 - This is essentially everywhere.

Screening: Listed Activities

- **HAZARDOUS SUBSTANCE TREATMENT, HANDLING AND STORAGE**
- **9.1 The manufacturing, storage, handling or processing of a hazardous substance defined in the Hazardous Substances Ordinance, 1974.**
 - Classification not available.
- **9.2 Activities requiring permits for discharge**
 - Industrial activities BUT no permitting system for air quality at present
 - Needs to be addressed in these regulations

Scoping: Reporting

- Scoping report contents:
 - 8 (h) description and assessment of the significance of any significant effects
 - Not scoping outcome unless final report
 - Need to clearly split expected deliverables: short vs. full process
- Terms of reference
 - 9 Section within a Scoping Report not stand-alone document

Scoping: Process

12 (1) (c) within 14 days of receipt of *application* (**Scoping Report**) consider the scoping report and (i) accept the scoping report;

- **Then refer to sections 14 & 18 if full process OR refer to section 13 if just Scoping (split must be clearly defined)**

13. The Environmental Commissioner must notify applicant of decision within *seven days*.

- **There is no decision-making timeframe.**

Scoping: Process

14. If the Environmental Commissioner decides that the proposed activity requires an assessment, ***the Environmental Commissioner must determine the scope, procedures and methods for assessment***

- This is presented in the Terms of Reference by the EAP

Scoping: Public Participation

Public consultation process

21 2 (c) Advertising - once a week for two consecutive weeks in at least two newspapers

- Massive cost for smaller projects
- Split according to scale of assessment?

EIA: Process

15. (1) The proponent must instruct the EAP to prepare an assessment report within 21 days of receipt of a notification in to carry out a full assessment.

- **Ambiguous:**

- Instruction to prepare an Assessment Report must be issued in 21 days – why?
- Carry out an Assessment within 21 day – this is not possible and often contrary to the timeframes required for a detailed study.
- Not instruction from proponent – outcome of process

EIA: Process

Notification of the application and assessment report

16. (1) (b) On receipt of the assessment report the Environmental Commissioner must notify the public;

- The Environmental Commissioner must notify the public!
- Should be the responsibility of the EAP.
- Contradicted in section 23 (2).

EIA: Process

Amendment of environmental clearance certificate

19(3) If the Environmental Commissioner intends to amend an environmental clearance certificate he / she must -

- **(a) notify the holder of the certificate in writing of the proposed amendment; and**
- **(b) give the holder an opportunity to submit representations on the proposed amendment, in writing.**
- **Is this not backwards – receive notification from holder then make decision?**
- **Process need to be clarified.**

EIA: Process

Transfer of environmental clearance certificate

- **No requirement for public consultation**
- **No requirement for due diligence**

EIA: Reporting

Assessment Report:

- 15. (2) Issues vs. effects vs. impacts
- (j) Conditions of authorisation
 - the EMP contains the required conditions.

EMP

- Only description within Scoping Report section.
- Draft Management Plan
 - Final plan at time of submission (for both processes)
- There is no stand-alone EMP section in the regulations.
- EMP contents need to be clearly defined.

Environmental Clearance

- Conditions of approval:
 - Consent from all stakeholders

Thank you

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