

Appendix A

Policy and statutory framework

The Government of the Republic of Namibia wants to ensure that the aims and objectives of sustainable development are achieved and maintained. Policies and statutes, and structures within Ministries, such as the Directorate of Environmental Affairs in the Ministry of the Environment and Tourism, have been established to deal with environmental issues.

1 The Constitution of the Republic of Namibia (1990)

Article 95 (1) of the Constitution provides that

“...the State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at... maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of natural resources on a sustainable basis for the benefit of all Namibians both present and future; ”

2 National Policies

In 1992, Namibia's Green Plan was formally tabled at the United Nations Conference on Environment and Development (“Earth Summit”) in Rio de Janeiro, on behalf of the Republic of Namibia. It created a national common vision around its environmental issues, priorities and future actions, and drew together government, non-government organisations (NGOs), private sector and civil society towards a common future. The Green Plan led to Namibia's 12-Point Plan for Integrated and Sustainable Environmental Management in 1993, which was incorporated into the first 5-year National Development Plan (NDP1), 1994/5 – 1999/2000.

2.1 Vision 2030: Third National Development Plan of Namibia, 2006/7 – 20011/12

President Hifikepunye Pohamba launched the ambitious Third National Development Plan (NDP3) on 26 November 2008, which requires investments of N\$60 billion over the next five years until March 2012. The broad thrusts and goals of the NDP3 are derived from the Vision 2030, the 2004 SWAPO Party Manifesto, the directions from the November 2005 Cabinet Retreat, the Millennium Declaration, and the lessons learned from implementing the NDP2. Vision 2030 states that

“The nation shall develop its natural capital for the benefit of its social, economic and ecological well-being by adopting strategies that: promote the sustainable, equitable and efficient use of natural resources; maximize Namibia's comparative advantages; and reduce all inappropriate use of resources. However, natural resources alone cannot sustain Namibia's long-term development, and the nation must diversify its economy and livelihood strategies.”

2.2 Environmental Assessment Policy, 1995

The Cabinet of the government of Namibia approved the Environmental Assessment (EA) Policy in August 1994, published as "Environmental Assessment Policy for Sustainable Development and Environmental Conservation, January 1995". It provides that all policies, projects and programmes should be subjected to EA procedures, regardless of where these originate. These procedures must aim for a high degree of public participation, and consider the environmental costs and benefits of projects proposed. Policies, areas and activities that may have significant environmental effects are specified. In line with best practice, EAs are conducted at an early phase of project development, allowing for identification and avoidance of adverse impacts.

The Policy provides that once a project has been approved, the proponent (both Government and private enterprise) shall enter into a binding agreement based on the procedures and recommendations in the EA report for construction, operational and decommissioning phases, as well as monitoring and auditing. This ensures that mitigation and other measures recommended in the EA, and accepted by all parties, are complied with.

The Policy contains two appendices. Appendix A explains the EA procedure that should be followed, Appendix B contains the listed activities that require an EA. These include mining, mineral extraction and mineral beneficiation (activity 24).

The Environmental Management Act 7 of 2007 supports this policy, and is discussed later in this chapter.

2.3 The National Environmental Health Policy

Throughout construction, implementation and decommissioning of any of its components, mine operations must be guided by the aim of this Policy, which includes the following:

- Facilitate the improvement of the living and working environments of all Namibians, through pro-active preventative means, health education and promotion and control of environmental health standards and risks that could result in ill-health; and
- Ensure provision of a pro-active and accessible integrated and co-ordinated environmental health services at national, regional, district and local levels.

3 National statutes

Promulgated statutes as well as proposed Bills are discussed in this section.

3.1 Environmental Management Act 7 of 2007

The Environmental Management Act (2007) (EMA) was promulgated in December 2007 and will be administered by the Directorate of Environmental Affairs (DEA), under the auspices of the Ministry of the Environment and Tourism. It has not commenced yet. Its main objectives are to ensure that:

- Significant effects of activities on the environment are considered carefully and timeously;
- There are opportunities for timeous participation by interested and affected parties throughout the assessment process; and
- Findings are taken into account before any decision is made in respect of activities.

Section 3(2) provides a set of principles which give effect to the provisions of the Constitution for integrated environmental management. Decision makers must take these principles into account when deciding on the approval of a project.

Schedule 1 specifies a list of 35 activities that require an EIA, broadly grouped as follows:

- Construction and related activities that include roads, dams, factories, pipelines and other infrastructure;
- Land-use planning and development activities that include rezoning and land-use changes;
- Resource extraction, manipulation, conservation and related activities, such as mining and water abstraction; and
- Other activities such as pest-control programmes.

The Act promotes public participation, and makes provision for external review by the Environmental Commissioner, where required, at the proponent's expense.

The Minister may, on the recommendation of an Advisory Council, make regulations that include:

- Disposal of certain types of waste;
- Requirements for listing or delisting of projects in Schedule 1, and what constitutes a project for purposes of listing or delisting, in terms of size, production or storage capacity, timing, geographical location, potential for significant effects, type of industry to which the projects are related, and type of proponent;
- Form and content of an application, for environmental clearance certificate;
- Fees payable for any application made in terms of this Act;
- The assessment process, the form and content of an assessment report; and
- The procedure and time limits within which organs of state must do anything required to be done in terms of this Act.

Contravention of the Act, or failure to comply with any provision in the Act, may incur a penalty not exceeding a fine of N\$ 500,000 or imprisonment for a period not exceeding 25 years or to both such fine and imprisonment.

3.2 The Water Resources Management Act 24 of 2004

This Act is administered by the Department of Water Affairs, Ministry of Agriculture, Water and Forestry (MAWF), and came into operation on 8 December 2004. It repeals the Water Act of 1956. Its objective is to ensure that Namibia's water resources are managed, developed, protected, conserved and used in ways which are consistent with or conducive to fundamental principles set out in section 3 of the Act.

3.3 Labour Act of 1992: Regulations for the Health and Safety of Employees at Work

The Regulations relating to Health and Safety at the Workplace in terms of the Labour Act 6 of 1992 came into force on 31 July 1997. These regulations prescribe conditions at the workplace, and inter alia deal with the following:

- Welfare and facilities at work-places, including lighting, floor space, ventilation, sanitary and washing facilities, usage and storage of volatile flammable substances, fire precautions, etc.;
- Safety of machinery;
- Hazardous Substances including precautionary measures related to their transport, labelling, storage, and handling. Exposure limits, monitoring requirements, and record keeping are also covered;
- Physical hazards including noise, vibration, ionising radiation, non-ionizing radiation, thermal requirements, illumination, windows and ventilation;

- Requirements for protective equipment;
- Emergency arrangements;
- Construction safety; and
- Electrical safety.

The new Labour Act 11 of 2007 commenced on 31 December 2007.

3.4 Nature Conservation Ordinance 4 of 1975 (as amended 1996)

The Nature Conservation Ordinance deals with *in situ* and *ex situ* conservation by providing for the declaration of protected habitats as national parks and reserves, and for the protection of scheduled species wherever they occur. It regulates hunting and harvesting, possession of, and trade in listed species.

3.5 Atmospheric Pollution Prevention Ordinance 11 of 1976

The Ordinance provision on air pollution is administered by the Namibian Ministry of Health. In terms of Section 5 any person carrying on a “scheduled process” within a “controlled area” has to obtain a registration certificate from the administering authority, in this case the Department of Health. The Act lists 72 processes in Schedule 2 which must be registered and a registration certificate (air pollution permit) obtained.

3.6 Draft Pollution Control and Waste Management Bill of 1999

A draft version of the Pollution Control and Waste Management Bill of 1999 has amalgamated a variety of Acts and Ordinances that provide protection for particular species, resources or components of the environment. These include, but are not limited to, the Nature Conservation Ordinance 4 of 1975, the Sea Fisheries Act 29 of 1992, the Sea Birds and Seals Protection Act 46 of 1973, Seashore Ordinance 37 of 1958, Hazardous Substances Ordinance 14 of 1974 and amendments, and the Atmospheric Pollution Prevention Ordinance 11 of 1976. All construction, disturbance, effluent and pollution resulting from the MDP will be required to be in strict accordance with the regulations outlined in the Pollution Control and Waste Management Bill.

This Bill deals mainly with the protection of particular species, resources of components of the environment. Various sections, of relevance for the project, are described below.

Air Pollution

- Co-ordination and monitoring of Namibia’s air quality, through reference to air quality objectives that will be drawn up once the Bill is promulgated;
- An air pollution licence will be required for the discharge of pollutants to the air, subject to air pollution objectives that are set, standards, treatment processes, the contents of an environmental assessment, and an air pollution action plan that stipulates the best possible means for reducing and preventing the discharge of pollutants to the air.

Water Pollution

- Water quality monitoring will be co-ordinated by an Agency, in terms of water quality objectives and activities liable to cause water pollution;
- Regulations under this pending law will include limits for discharges of pollutants to water and land from fixed and mobile sources, water quality objectives, standards for the pre-treatment or purification of pollutants, and procedures required for

compliance with any standards. It will also prescribe offences and water quality action areas and the restriction of polluting activities in these areas, as well as require application for water pollution licences to be accompanied by an environmental assessment report, and offences.

Integrated Pollution Control

- Processes creating a risk of pollution to more than one environmental medium, e.g., air and water, may be subject to specific regulations that adopt an integrated approach to pollution and licencing. These prescribed processes shall be subject to an Integrated Pollution Control Licence.

Noise, Dust and Odour Pollution

- Local authorities or a separate agency created to deal with dust, noise and odour will have the power to issue an abatement notice for activities causing a nuisance. The activity may be stopped, or conditions determined for mitigatory or other measures to reduce the nuisance to acceptable levels;
- Regulations may come into force under this Act that set standards for noise, dust and odour emissions, and product or process standards that have a bearing on noise, dust and odour pollution.

Waste Management

- The production, collection, sorting, recovering, treatment, storage, disposal and general management of waste shall be covered under this Act.

Hazardous substances

- The Bill further makes provision for regulations that establish standards and other requirements in relation to hazardous substances.

Accident Prevention Policies

- The Bill makes provision for the enforcement of regulations that require a person in possession of specified hazardous substances or products containing hazardous substances or any person carrying on an activity involving significant risk of harm to human health or the environment, to take measures to limit the risk of accidents occurring as a result of those substances or activities.

When this Act comes into force, it shall repeal the following:

- The entire Atmospheric Pollution Prevention Ordinance No of 1976;
- The entire Hazardous Substances Ordinance 14 of 1974; and,
- Section 21 of the Water Act of 1956.

3.7 The Parks and Wildlife Management Bill of 2001

This new legislation will eventually replace the existing Nature Conservation Ordinance 4 of 1975, with amendments. The Bill provides for the declaration of protected areas and steps to be taken before declaration.

The Ministry of Environment and Tourism declared the *Sperrgebiet* as a protected area on 1 December 2008. This means that all activities within the area will be subject to the provisions of the Bill when it comes into force.

3.8 Minerals (Prospecting and Mining) Act 33 of 1992

This Act enables the Ministry of Mines and Energy to control the reconnaissance, prospecting and mining of all categories of minerals in Namibia. This is done through a Minerals Board, established in terms of the Act, responsible for maintaining policy in terms of which the provisions of the Act are to be implemented. Applications for prospecting, reconnaissance and mining work is made to the Ministry in terms of this Act. This Act replaces the Mines, Works and Minerals Ordinance (No. 20 of 1968) and explicitly refers to the environment and its protection. It provides for environmental impact assessments, for rehabilitation of prospecting and mining areas and for minimising or preventing pollution. In addition, there is an emphasis throughout the Act, as in the provisions for registering a mining claim, "that such a person intends to carry on mining operations in good faith and has the technical and financial resources to do so." This is based on the principle that sufficient funds must be available for environmental recovery from the negative impacts of mining.

3.9 The Diamond Act 13 of 1999

This Act came into operation on 1 April 2000. Section 52 deals with Restricted Areas, where approved persons must enter with the required permit. Restricted Areas are declared as such by the Minister in the Government Gazette, and include areas where on- or offshore mining or related activities take place.

The Diamond Regulations in terms of the Act make provision for security check procedures for persons wishing to enter Restricted Areas, and security plans which must be submitted by licence holders, such as Namdeb.

4 International Conventions and Protocols

Multilateral environmental agreements that are most relevant for the project are discussed in the sections that follow.

4.1 The Stockholm Declaration on the Human Environment, Stockholm 1972

The United Nations Conference on the Human Environment, which led to the Stockholm Declaration on 16 June 1972, aimed to provide "a common outlook and common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment" (UNEP 1972). Namibia adopted the Stockholm Declaration on the Human Environment on 28 August 1996; it includes

- Principle 2. The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate
- Principle 4. Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.
- Principle 7. States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

4.2 Convention on Biological Diversity, Rio de Janeiro, 1992

Namibia signed the Convention on Biological Diversity (CBD) on 12 June 1992 in Rio de Janeiro, at the United Nations Conference on Environment and Development, and ratified it on 18 March 1997. Namibia is accordingly now obliged under international law to ensure that its domestic legislation conforms to the CBD's objectives and obligations. Article 14 requires each contracting party to carry out EIAs for projects that are likely to adversely affect biological diversity. It further requires that the EIA be aimed at avoiding or minimising such effects and, where appropriate, allow for public participation in the assessment.

5 International Standards and Guidelines

In addition to the regional, national and international legislative requirements, there are international standards, protocols and guidelines that are applicable as best practice.

- The International Finance Corporation (IFC), a member of the World Bank Group, has developed operational policies that, *inter alia*, require an impact assessment to be undertaken within the country's overall policy framework and national legislation, as well as international treaties, and that natural and social aspects are to be considered in an integrated way. IFC in 2007 published Environmental, Health, and Safety Guidelines (known as the 'EHS Guidelines') containing guidelines and standards that are technical reference documents with general and industry-specific examples of Good International Industry Practice (GIIP). The objective is to avoid and minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities. It outlines a project approach to pollution prevention and abatement in line with internationally disseminated pollution prevention and control technologies and practices. Other institutions, such as the European Bank for Reconstruction and Development (EBRD), have similar guidelines and standards for EIAs.
- The Rio Declaration of 1992 on Environment and Development calls for the use of an EIA as an instrument of national decision making (Principle 17), and establishes important principles for sustainable development that should be reflected in EIAs, such as the application of the precautionary principle (Principle 15).

5.1 Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) region, Johannesburg 1995

The Republic of Namibia is signatory to the Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) region, agreed to in Johannesburg on 28 August 1995. This Protocol is based on the conviction of "the need for coordinated and environmentally sound development of the resources of shared watercourse systems in the SADC region in order to support sustainable socio-economic development" (SADC 1995).

Article 3 of the Protocol calls for the establishment of River Basin Management Institutions for shared watercourse systems. The functions of the River Basin Management Institution are fulfilled by the Permanent Water Commission which was formally agreed between the Government of the Republic of Namibia and the Government of the Republic of South Africa on 14 September 1992 (International Water Law Project 2008). The Commission was established "to act as technical adviser to the two Parties on matters relating to the development and utilisation of water resources of common interest to the Parties".

5.2 United Nations Framework Convention on Climate Change, Rio de Janeiro, 1992

The United Nations Framework Convention on Climate Change was concluded in Rio de Janeiro in June 1992. The objective of the Convention and subsequent related legal instruments (such as the Kyoto Protocol) is “the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner” (Johnson 1993).

Namibia signed the Convention on 12 June 1992, ratified it on 16 May 1995 and it entered into force in Namibia on 14 August 1995.

6 Namdeb’s Safety, Health, Risk, and Environmental Policies

Namdeb conducts its business and planning in a manner that ensures the health and safety of their employees and of other persons, and gives proper regard to environmental protection. The responsibility for safety lies with all levels of operational management. All new mining operations are required to follow the Environmental Impact Assessment process in order to minimise significant environmental risks and impacts and enhance social benefits. Environmental management and continual environmental improvement are thus an integral part of the Company’s business, underpinned by:

- ISO 14001:2004 Environmental Management System
- OHSAS 18001 (2007)

6.1 Namdeb’s Environmental Policy

Namdeb’s Mission Statement is:

“To produce diamonds profitably, sustainably and responsibly to the benefit of our shareholders and other stakeholders whilst making a lasting contribution to Namibia”

Its Environmental Policy states that the company shall:

- Comply with applicable environmental legal and other requirements that the company subscribes to;
- Commit to continual environmental improvement by undertaking regular environmental risk and compliance audits, and by implementing management programmes;
- Conduct the environmental impact assessment process on all operations;
- Set and review objectives and targets for sound environmental management within the framework of an ISO 14001 standard Environmental Management System;
- Monitor and measure the use of materials, energy, water and the environmental impacts of emissions, effluent, waste, goods and services to conserve natural resources;
- Prevent pollution by undertaking the necessary precautionary measures, and remediate appropriately where pollution has occurred;

- Undertake appropriate rehabilitation during mining operations and where feasible make provision for mine closure;
- Require both company employees and contractors to follow environmental practices consistent with company policies;
- Consult with regulatory agencies, employee representatives, contractors, suppliers and local communities on environmental matters of mutual concern;
- Allocate resources to promote and give effect to this policy;
- Provide environmental training for employees and contractors; and
- Assist where possible with environmental research and development within mining licence areas.

These commitments guide the compilation of this project-specific EIA/EMP. The Environmental Policy is specific to the Company, based upon compliance with applicable legal, regulatory and consent requirements of the governmental authorities in Namibia, and other requirements.

The term *environment* has been broadly interpreted to include biophysical, social, economic, and cultural components. The principal aim of the EIA/EMP is to demonstrate compliance with existing environmental legislation in Namibia to authorities and I&APs.

6.2 Namdeb's Safety & Health and HIV/AIDs Policies

In addition to an Environmental Policy, Namdeb has also developed its own integrated Safety and Health policy and HIV/AIDs policy. These policies comply with the legal, regulatory and consent requirements of the governmental authorities in Namibia. Health and safety procedures have been developed over a long period of time and have been successfully integrated into existing Namdeb operational procedures, and the Company's EMS.

6.3 ISO 14001 Environmental Management System

The EIA/EMP will be integrated with Namdeb's ISO 14001 Environmental Management System (EMS). Figure 1 shows how the EIA/EMP is a part of the overall ISO 14001 EMS for Namdeb.

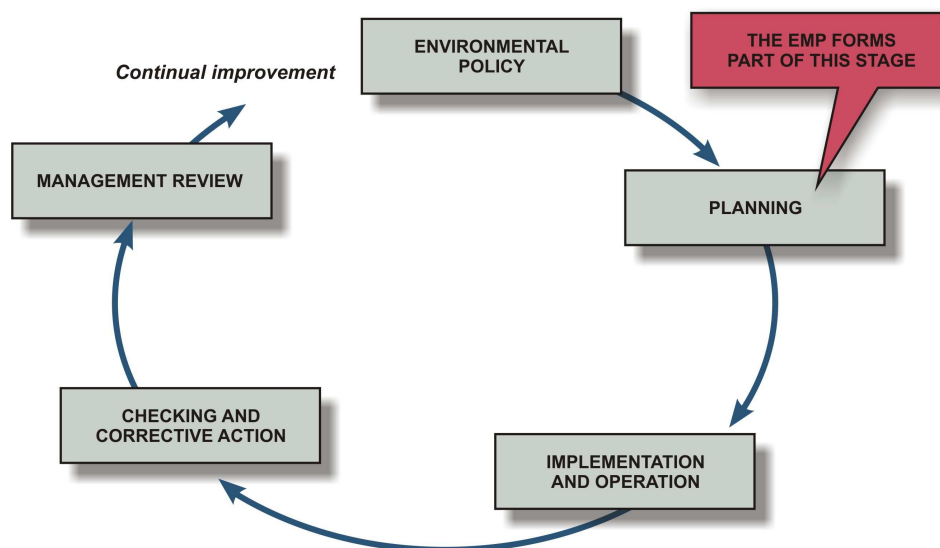


Figure 1. The EIA/EMP is a part of Namdeb's overall ISO 14001 EMS