

20 Years of Environment Impact Assessment in South Africa

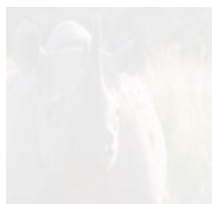
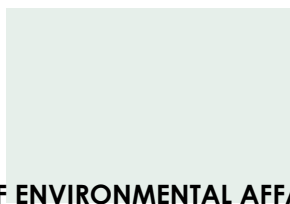
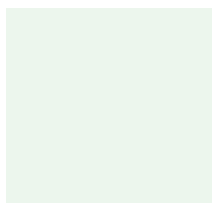
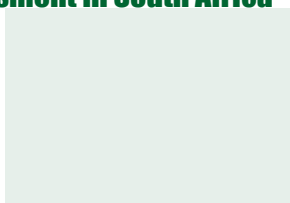


environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA



20 Years of Environment Impact Assessment in South Africa



DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Design and layout by

Department of Environmental Affairs

Chief Directorate Communications

Private Bag X447, Pretoria 0001

South Africa

Contents

Background to the Environmental Impact Assessments (EIAs) evaluation in South Africa	1
1. Legal provisions	2
2. What is an EIA, the need and value thereof?	3
3. EIA Time-Line over the past 20 years	3
4. Key Moments and Interventions	4
5. EIA Statistics: August 2010 onwards	7
6. Shortcomings and concerns identified with EIAs	7
7. Impact of EIA on other Sectors	8
8. Alternative Instruments	8

BACKGROUND TO THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) EVALUATION IN SOUTH AFRICA

The National Environment Management Act, 1998 (Act No. 107 of 1998) (the NEMA) introduced the environmental impact management regime, in particular the Environmental Impact Assessment (EIA) process. The EIA process is a tool which requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves the present and future generations. The EIA is South Africa's key regulatory instrument to mitigate and/or manage the impacts of new developments and activities that are considered to potentially impact on the right to an environment that is not harmful to health and well-being. It is considered to be one of the processes that actively promotes or ensures sustainable development. The EIA process is outlined in the Environmental Impact Assessment Regulations and Listing Notices aimed at implementing chapter 5 of the NEMA.

The Regulations provides for listing of activities which may not commence without an environmental authorisation and also identifies a process and reports to be submitted to the Competent Authority for decision making purposes. The process provides the proponent with an opportunity to assess the potential environmental impacts of the proposed development as well as provide for identification of mitigation measures to be in place to ensure that environmental impacts are avoided, minimised or mitigated. Key to this process, is the public participation element, which is also legislated. It forms the integral part of the EIA process and comments and inputs from the interested and/or affected parties are taken into consideration by the competent authority when making decisions on applications.

The EIA is sometimes cited as a key barrier to development due to its requirements for rigorous participatory processes and scientific investigation which may often be viewed as time consuming and expensive.

There is also a concern about the one-size-fits-all application of the EIA process to all developments. However, this weakness in the overall environmental impact management regime has been acknowledged and new, more appropriate and effective impact management tools are being used or developed. Despite this, the EIA continues to play a key role in South Africa's environmental impact management regime.

The desired outcome of implementing the EIA process is mainly to ensure that section 24 of the Constitution is upheld, in order for everyone to enjoy a right to an environment that is not harmful to their health or wellbeing and that the environment is protected for the benefit of the present and future generations. The EIA process has not been designed to be a stand-alone process, but needs to be informed by the strategic (broader spatial



and non-spatial) context within which it is situated. This strategic context is essential in facilitating the identification of impacts and the significance thereof. One of the key criteria to understand /determine the extent to which an EIA process results in sustainable outcomes, is to determine the extent to which the EIA was informed by the strategic context within which it operates. In essence, an EIA predicts impacts and it is only through the ongoing monitoring of a development proposals after it has been authorised and implemented that it can be evaluated to see if the impacts predicted during the EIA process were accurate and if the mitigation measures were appropriate/adequate (and if they were implemented).

The key players in the process are the eleven competent authorities which are the Department of Environmental Affairs, Department of Mineral Resources, and 9 provincial Departments responsible for environmental management. Additional to this are the Environmental Assessment Practitioners, the public, interested and affected parties and proponents. Government and the various stakeholders make investments into the EIA process with the understanding that it will lead to sustainable development

1. LEGAL PROVISIONS

In respect of the Bill of Rights included in the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the citizens of South Africa have in terms of Section 24, the right to have the environment protected and to live in an environment that is not harmful to human health or well-being. One of the legal instruments developed to ensure that this right is given effect to, is Environmental Impact Assessments (EIA), as detailed in the EIA Regulations (different sets of Regulations promulgated over time in terms of the ECA and NEMA).

Activities that may result in substantial impact to the environment have been identified and which require environmental authorisation by following the EIA process. The EIA Regulations require that an EIA process be undertaken for these activities and submitted to the competent authority for consideration. Commencement with any of these identified activities prior to obtaining authorisation from the relevant competent authority is prohibited by these Regulations and constitutes an offence. A person convicted of such unlawful commencement is in terms of NEMA liable to a fine not exceeding R10 million **or** to imprisonment for a period not exceeding 10 years, **or to both** such fine or such imprisonment.

2. WHAT IS AND EIA AND THE NEED AND VALUE THEREOF?

- a. An EIA in short is an assessment of possible and expected impacts a proposed development would have on the environment. Such an assessment, inclusive to a public participation process, allows the competent authority to conclude an informed decision as to whether the development proposal can continue or not (in terms of the NEMA). The competent authority can after consideration of all submitted information, issue an environmental authorisation with or without conditions; or refuse environmental authorisation.
- b. Development is crucial and supported by the 11 competent authorities, but such

needs to happen in an environmentally sustainable manner. The process aims to, unless a fatal flaw has been identified, identify mitigation measures to be implemented if an impact or impact cannot be avoided. In this regard an EIA aims to test the environmental sustainability of a development proposal, inclusive but not limited to the consideration of possible:

- disturbance of ecosystems and loss of biodiversity;
- pollution and environmental degradation;
- disturbance of landscapes and cultural heritage;
- waste – avoidance, minimisation, re-use, recycled, alternatively responsible disposal.
- exploitation of non-renewable resources.

3. EIA TIME LINES OVER THE LAST 20 YEARS

EIA for certain identified activities became compulsory in law on the 8th of September 1997. Prior to this date, a few EIAs have however been **voluntarily** conducted by certain Government departments and Industries. The following table depicts the current and previous sets of EIA Regulations, including amendments thereto over time:

a. Previous sets of EIA Regulations and Listing Notices

EIA Regulations	Government Gazette	Effective Dates
EIA Regulations promulgated in terms of the Environment Conservation Act (ECA), Act No 73 of 1989	GNR 1182 & 1183: Government Gazette No 18261, Pretoria, 5 September 1997	08 September 1997 – end of day 09 May 2002.
Amendment of the ECA EIA Regulations	GNR 670 and GNR 672 of 10 May 2002, Government Gazette No 23401	10 May 2002 – end of day 02 July 2006.
2006 EIA Regulations promulgated in terms of the NEMA, Act No 107 of 1998	GNR 385, 386 and 387 Government Gazette No 28753, Pretoria, 21 April 2006	03 July 2006 – end of day 01 August 2010
2010 EIA Regulations promulgated in terms of the NEMA, Act No 107 of 1998	GNR 543, 544, 545 and 546 Government Gazette No 33306, Pretoria, 18 June 2010	02 August 2010 – end of day 07 December 2014

b. Current EIA Regulations (including the 2017 Amendments)

EIA Regulations	Government Gazette	Effective Dates
2014 EIA Regulations promulgated in terms of the NEMA, Act No 107 of 1998	GNR 982, 983, 984 and 985 Government Gazette No 38282, Pretoria, 04 December 2014	08 December 2014 – end of day 06 April 2017
Amended 2014 EIA Regulations promulgated in terms of the NEMA, Act No 107 of 1998	GNR 324, 325, 326 and 327 on 07 April 2017, Government Gazette 40772, Pretoria, 07 April 2017	07 April 2017 – current

4. KEY MOMENTS AND INTERVENTIONS

a. Continuous Improvements to EIA Regulations and Listing Notices

Over the 20 preceding years of EIA, many improvements were effected to the EIA process to be followed. In addition, over time, activities requiring environmental authorisation were also refined. E.g:

- **EIA Regulations:** *On 08 December 2014 strict time-frames for the applicant / EAP were included where such were absent in the preceding 17 years.*
- **Listing notices:** *many activities that previously required environmental authorisation have been excluded whilst new activities have recently been included in the Listing notices.*

b. Review of the Effectiveness and Efficiency (REE) of EIA Study

Overall, the EIA study observed that "EIA in South Africa is marginally effective and it should not be discarded as an instrument as there is currently nothing better to take its place". Effectiveness in the study was defined to mean "the ability of the EIA to meet the objectives set for it", whereas efficiency had to do with the time implications of the EIA process. It was found that EIA was not effective for all types of developments, and as such different suites of instruments for impact prediction and management would have to be investigated and used either in place of, or complimenting EIA. Furthermore challenges related to interpretation of the EIA Regulations have also been identified to be another limiting factor on the effectiveness of the EIA process, in that various authorities would provide different responses to certain regulations, eventually leading to lack of effectiveness on the EIA system.

c. 10 year Of EIA Conference, 2008.

The Conference afforded representatives from all walks of society- government, business, civil society, academia and environmental practitioners the opportunity to get together to discuss and debate issues relating to the status of EIA in South Africa. It provided a platform to present the outcomes of the REE, but most importantly mapped the road ahead for EIA and integrated environmental managed in general. Some of the main focus areas identified at the time was:

- Rationalisation of EIA;
- Development of alternative tools to complement or replace EIA where appropriate;
- Improved cooperative governance;
- Addressing capacity concerns;
- Improving compliance monitoring and enforcement to prevent the authorisation process to become just a rubberstamp for unbridled development, with little concern for the environment; and
- Environmental Impact Assessment and Management Strategy;

d. Environmental Impact Assessment and Management Strategy

This Strategy was developed to address the shortcomings within current IEM system and processes as identified in the REE and as part of the outcomes of the 10 Years of EIA Conference. The environmental sector was mobilized to drive the compilation of the strategy through the participation of representatives from sectors like national, provincial and municipal government, NGOs, Business, Chamber of Mines, IAIA, EAPs, etc. The Strategy aims to give effect to the framework for integrated environmental management by providing for a diverse range of regulatory and other mechanisms to ensure proactive assessment and management that are implemented through cooperative governance and accountable, transparent and participatory decision making, to achieve sustainable development. It has as its goal an enhanced system for integrated planning and implementation, enhanced government systems and relevant capacity and sustainable environmental management. Such a system will only be achieved if it based on the following fundamental principles that meets the objectives Chapter 5 of the NEMA viz. integration, sustainability, reasonableness and administrative discretion and public participation. An action plan for the implementation of the Strategy was developed, with specific actions identified in terms of the following strategic focus areas -

- **Focus Area 1:**

Progression of an effective and efficient integrated environmental management system through relevant policies/legislation, systems and tools/ instruments for decision making to achieve sustainable development

- **Focus Area 2:**

Enhance and Implement capacity building programmes, awareness campaigns, including training programmes and skills development within the integrated environmental management system to achieve sustainability objectives

- **Focus Area 3:**

Facilitation of effective governance and administration- e.g. Promote cooperation, coordination, alignment and integration between government departments.

- **Focus Area 4: Monitoring and Reporting:**

Compliance, Monitoring, Evaluation and reporting.

e. Harmonisation and rationalization of environmental legislation

The current environmental regulatory framework is fragmented and is seen to be hampering development in South Africa. The Department has therefore embarked on a review process of the NEMA, SEMAs and its subordinate legislation that are under the administration of the Department, with the view to identify and eliminate duplication, address gaps in the existing legislation and to align procedures and processes as far as possible. In an effort to ensure wide engagement and the involvement of other government departments, an external review of environmental legislation that are administered by these government departments will also be undertaken by the Department of Planning, Monitoring and Evaluation (DPME) to identify and remove duplication and to ensure alignment. These collaborative processes will be done in close cooperation with all relevant stakeholders and departments. The review processes aim to minimize the administrative burden on applicants and to provide a simplified environmental legislative framework, which will in turn contribute to sustainable development in South Africa.

f. One Environmental System

The One Environmental System (OES) was introduced, which brought mining related environmental impacts under the NEMA legislative framework. In this regard, on 08 December 2014, the DMR became the competent authority for mining related applications for environmental authorisation, such as prospecting, exploration, extraction and primary processing of a mineral or petroleum resource or any activities directly related thereto.

To give further effect to the OES, the Financial Provisioning Regulations were promulgated on 20 November 2015. The Regulations aim to ensure that sufficient financial provision is made to address the rehabilitation and remediation of adverse environmental impacts as a result of prospecting, exploration, mining or production activities, including the pumping and treatment of polluted or extraneous water, throughout a mine's development, operation, closure and beyond closure. This seeks to further the responsible use of resources to attain equitable economic growth, while advancing social development and inclusion, and promoting integrated and sustainable management of natural resources and ecosystems.

g. Appointment of Registration Authority

On 8 February 2018, the Minister appointed EAPASA as the only registration authority for EAPs for a 5 year period, while investigating long term options for regulating the sector.

h. Training offered by competent authorities.

Competent authorities have over the years provided training to many different disciplines and professions, including NGOs, EAPs, industry, other organs of state, tertiary institutions etc. For example, DEA's Integrated Environmental Management (IEM) Programme is presented annually and targets among others, EIA administrators (reviewers), local government support officials, EAPs, developers, municipalities as well as interested and affected parties (I&APs).

i. Pro-Bono Work offered:

The DEA's Special Needs and Skills Development Programme (SNSDP) provides assistance to people with special needs as required in Regulation 47 EIA Regulations 2014. This programme provides pro-bono environmental services for people who cannot afford to pay the costs of an EIA and in addition also contributes to job creation and skills development by recruiting and training young graduates to gain essential work experience, through a structured skills development programme in which they engage and are exposed to various environmental assessment tools.

5. EIA STATISTICS: AUGUST 2010 ONWARDS

EIA statistics for the preceding 7 years and 8 months (02 August 2010 to date):

Competent authority	Received	Finalised	Average received per annum
DEA	2760	2554	360
Eastern Cape	1336	1249	174
Free State	543	484	71
Gauteng	1262	1156	165
Kwa-Zulu Natal	1966	1664	257
Limpopo	1291	1204	169
Mpumalanga	1089	982	142
North West	726	673	95
Northern Cape	260	247	34
Western Cape	2170	2072	283
TOTAL	13 403	12 285	1750

* *DMR statistics excluded.

6. SHORTCOMINGS AND CONCERNS IDENTIFIED WITH EIA

The shortcomings include, amongst other, the following:

- a. **'Fit for purpose tool'**: EIA is not the best suited instrument for **certain development scenarios** and the process required to be followed to obtain an EA (via the normal EIA route) is lengthy with limited results [e.g. one of the listed activities includes the development of abattoirs with a certain annual production throughput. Industry recently introduced new technology in the form of mobile abattoirs. Such mobile abattoir requires an Environmental Authorisation for every new site the facility would be established (parked)].
- b. EIAs seldom influence spatial development planning;
- c. EIA by itself cannot achieve sustainable development;

- d. EIAs for an individual development proposal is very site specific and cannot, with exceptions, in detail consider cumulative impacts e.g. at Provincial or National level;
- e. Unregulated environmental assessment practitioner sector;
- f. Quality of EIA reports in certain instances; and
- g. Inconstant interpretation and implementation by all stakeholders and the 11 CAs of the EIA Regulations and Listing Notices.

7. IMPACT OF EIA ON OTHER SECTORS

Amongst other, over the preceding 20 years the introduction of compulsory EIA has, to mention a few, resulted in the following:

- a. Creation of 100s of EIA practitioners businesses;
- b. Creation of 1000s of environmental management positions in private sector. Subsequently resulting in, amongst other, increased understanding of environmental duty of care and need for sustainable development and development practices;
- c. Creation of 100s (1,000s) of environmental management positions in Government Departments and other organs of state;
- d. A huge impact on the academic fraternity: Huge increase in graduates in environmental management field and sizing-up of environmental management /science faculties at Tertiary institutions;
- e. Significant increase in public involvement, understanding of / and interest in environmental matters; and
- f. Establishment of EAPASA, a registration body, which seeks to advance environmental assessment in South Africa.

8. ALTERNATIVE INSTRUMENTS

a. Proposed Instrument regulations

Industry, Environmental Assessment Practitioners (EAPs), NGOs and competent authorities have over the preceding 20 years identified overreliance on EIAs, in the absence of other better **'fit for purpose'** instruments, as a concern. The impacts of **some** activities, currently requiring an environmental authorisation (EA), are well known and as such could and should be excluded from such requirement (need for the proponent to conduct an EIA and to obtain an EA), subject to compliance with an instrument (e.g. an EMPr) or spatial tool.

Although the value of EIAs and Environmental Authorisations towards sustainable devel-



opment cannot be underestimated, such must be supplemented with other instruments with the same end goal in mind – **the goal being sustainable development**. The need for other instruments is provided for in the NEMA. In this regard Section 24(5)(bA) of NEMA allows the Minister or MEC, with concurrence of the Minister, to lay down the procedure to be followed for the adoption of prescribed environmental management instruments. Spatial tools and Environmental Management Instruments include amongst other:

- environmental management programmes;
- risk assessments;
- management plans;
- environmental feasibility assessments;
- spatial development tools;
- development setbacks; or
- any other relevant environmental management instrument that may be developed in time.

To enable the use of the most appropriate spatial tools or environmental management instrument provided for in NEMA, the Minister is in process finalising Instrument Regulations¹ that aims to set the minimum requirements for the adoption of such instruments. These Regulations would subsequently enable the Minister or the MEC, as the case may be, to adopt spatial tools or environmental management instruments which would, enable—

- reduced reliance on EIAs and environmental management programmes as contemplated in the EIA Regulations;
- reduced reliance on environmental authorisations and application of a fit for purpose tool (instrument); and
- exclusion from the requirement to obtain an environmental authorisation as contemplated in Section 24(2)(c) and (e) of the NEMA.

b. Other Instruments

In addition to the above-mentioned instruments, NEMA also makes provision for other instruments giving effect to the Bill of Rights. This includes e.g. the following:

¹ Regulations laying down the procedure to be followed for the adoption of spatial tools or environmental management instruments contemplated in Section 24(2)(c) and (e) of the National Environmental Management Act, 1998 (Act No. 107 of 1998)

<p>Norms and standards.</p>	<p>NEMA Section 24(2)(d) provides that the Minister, or an MEC with the concurrence of the Minister, may identify listed or specified activities that may commence without an environmental authorisation (and need for the EIA process to be followed), subject to compliance with prescribed norms or standards.</p> <p><i>E.g. the Gauteng Standard for certain zones within the Gauteng Province came into effect on 02 May 2018. Proponents undertaking certain development types within these zones can continue without following the EIA process or an environmental authorisation subject to compliance with the gazette Standard.</i></p>
<p>Restrictions or Prohibitions.</p>	<p>Section 24(2) (2A) of NEMA makes provision for the Minister to by notice prohibit or restrict the granting of an environmental authorisation by the competent authority for a listed or a specified activity in a specified geographical area for such period and on such terms and conditions as the Minister may determine, if this is necessary to ensure the protection of the environment, the conservation of resources or sustainable development.</p>

**Environment House
473 Steve Biko Road
Arcadia
Pretoria
0002**

Call Centre: 086 111 2468

Website: www.environment.gov.za

Environmental Crimes Hotline: 0800 205 005



**Find us:
Department of
Environmental Affairs**



**Follow us:
[@EnvironmentZA](https://twitter.com/EnvironmentZA)**



**Follow us:
[@EnvironmentZA](https://www.instagram.com/EnvironmentZA)**



**Follow us:
[EnvironmentZA](https://www.youtube.com/EnvironmentZA)**



To use this QR code conveniently you must have a smartphone equipped with a camera and a QR code reader/scanner application feature