

The Environmental Audit, Assessment and Review Regulations, 2000

Legal Notice No.31 of 2000

Gazetted 21st April 2000

In exercise of the powers conferred by section 18 of the Swaziland Environment Authority Act 1992, and in consultation with the Authority, the Minister for Tourism, Environment and Communications makes the following Regulations

PART A: INTRODUCTION

Citation and Commencement

1. These Regulations may be cited as the Environmental Audit, Assessment and Review Regulations, 2000 and shall come into operation on the date of publication in the Gazette, except that the Third Schedule shall come into operation on a date prescribed by the Minister by notice in the Gazette, and until that date all references in these Regulations to fees shall have no legal effect.

Application

2. These Regulations shall apply to the Government and any other persons, bodies and institutions.

Interpretation

3. In these Regulations, unless the context otherwise requires -

"authorising agency" means any person empowered by law - to issue a permit, licence, consent or approval in respect of a project, undertaking or activity which may have an impact on the environment;

"Category" means a class or projects to which a proposed project may be assigned under sub-Regulation 6(1) and which is subject to a specific environmental review procedure;

"comprehensive mitigation plan" or "CMP" means a document containing a description of the mitigation measures to be implemented that would prevent, reduce or otherwise manage the environmental impacts of a project and done according to the reporting requirements in the Second Schedule;

"day" excludes Saturday, Sunday and an official public holiday;

"environmental audit" or "EA" means work done to identify and evaluate the environmental impacts of existing projects which is done according to the reporting requirements in the Second Schedule;

"environmental compliance certificate" or "ECC" means a certificate issued by the Authority under Regulation 15 which certifies that the Authority has consented to an

existing undertaking continuing to operate, or, to a proposed project proceeding, subject to the operator or proponent complying with the conditions specified in the certificate and in the approved comprehensive mitigation plan;

"environmental impact" means any positive or negative impact, on the natural and/or environment, on any form of life, on the social, economic and/or cultural conditions that influence human life, or on any inter-relationship between these elements or factors, which is, will be, or may be, directly or indirectly caused by an existing or proposed project, policy, plan or programme;

"environmental impact assessment" or "EIA" means the process of predicting and evaluating the likely environmental impacts of a proposed project where the scale, extent and significance of the environmental impacts cannot be easily determined;

"environmentally sensitive area" means an area which merits a high degree of environmental protection because the environment in that area, or any constituent part of it, is rare, endangered, or sensitive to harm, or has particular environmental, archaeological, social, or cultural significance or value, whether or not the area is legally or administratively protected, and includes areas designated as environmentally sensitive by the Minister under Regulation 6(2);

"existing undertaking" means an enterprise or activity which was being conducted on a site in Swaziland on 12 April 1996 and which has continued to be conducted on the same site without interruption until the present;

"initial environmental evaluation" or "IEE" means an environmental analysis of a proposed project whose environmental impacts may be easily determined and for which there are appropriate, well known and tested mitigation measures;

"operator" means a person who is the owner of, in control of, or responsible for the management of, an existing undertaking or project;

"person" includes both natural and legal persons, a government ministry, department or agency, a statutory public body, a body answerable directly to the Ngwenyama which is empowered to formulate or implement policies, programmes, plans or projects which may have an impact on the environment, a municipality, a local authority, a partnership, an unincorporated joint venture and an unincorporated association;

"project" means an enterprise, undertaking or activity, or a proposal or plan for a new enterprise or activity to significantly change an enterprise, an undertaking or a project, and includes a plan, operation, undertaking, construction, development, change in land use, or alteration which may not be implemented without a permit, license, consent or approval from an authorising agency;

"project brief" means a document which incorporates a brief plan and/or outline proposal for a project which contains sufficient information to enable the Authority or an authorising agency to determine to which Category the proposed project should be assigned;

"project compliance report" or "PCR" means a report produced periodically, during and after the implementation of a CMP, which describes actions and results taken to implement a CMP and which is done according to the reporting guidelines in the Second Schedule;

"proponent" means a person responsible for initiating a project and obtaining the appropriate authorization;

"notice of acceptance" means a notice issued in accordance with Regulation 10 by the Authority or an authorising agency to an operator or proponent in respect of an EA, IEE, EIA, CMP or summary submitted by that operator or proponent confirming that the document in question appears to conform with the requirements of these Regulations and any relevant guidelines issued by the Authority and will be made public and evaluated for the purposes of deciding whether or not to grant an environmental compliance certificate.

PART B: EXISTING UNDERTAKINGS

Preparation of Environmental Audit Reports

4. (1) The Authority shall -

(a) identify and maintain a list of undertakings which cause concern to the Authority or to the public because of their impact on the environment and shall publish the list of these undertakings in its annual report;

(b) require an operator of an identified or listed undertaking to submit an EA report and a CMP to the Authority and that operator shall submit to the Authority the EA report and the CMP within six (6) months after notification to do so.

(2) An operator on whom a notice to submit an EA report and CMP is served under sub-Regulation 1 shall -

(a) submit these documents together with the fee prescribed in the Third Schedule to the Authority within six (6) months of the date of the notice;

(b) indicate any information in these documents which the operator considers should not be made public on the basis that it is commercially confidential or that disclosure would be contrary to the public interest and shall indicate the grounds for maintaining the confidentiality of the information; and

(c) bear the costs of the preparation of the EA report and the CMP.

(3) The Authority shall consider any EA report and CMP submitted to it and shall -

(a) issue a notice of acceptance to the operator if the Authority considers that the EA report and the CMP -

(i) comply with the requirements of these Regulations and to any relevant guidelines published by the Authority; and

(ii) are satisfactory to enable a decision to be made as to whether or not the Authority should issue an environmental compliance certificate, and if so, to determine the terms and conditions on which it should be issued; or

(b) notify the operator of the amendments to the EA report and/or the CMP which the Authority requires and the date by which the amended document must be resubmitted to the Authority together with the fee prescribed in the Third Schedule; and

(c) where the Authority is satisfied that some of the information in the EA report or the CMP should not be made public on the grounds of commercial confidentiality or in the public interest, the Authority shall, by notice in writing, require the operator to submit a summary of that EA report and/or the CMP which excludes the confidential information, to the Authority within 15 days of the notice.

(4) Where the Authority is not satisfied that an amended EA report or CMP which has been submitted in response to a notice under sub-Regulation (3)(b), complies with the requirements of these Regulations and to any relevant guidelines published by

the Authority; the Authority may itself amend the EA report or CMP and issue a notice of acceptance in respect of the amended document and charge the operator the fee prescribed in the Third Schedule.

(5) Where the Authority is not satisfied that a summary which has been submitted in response to a notice under sub-Regulation (3)(c), is sufficiently clear, comprehensive or accurate to enable the public to appreciate the full environmental implications of the undertaking bearing in mind the need to maintain the confidentiality of certain information, the Authority shall require the operator to submit a revised summary within a period specified by the Authority and where the operator does not submit a revised summary which is acceptable to the Authority within the period specified, the Authority may itself amend the summary and issue a notice of acceptance in respect of the amended document on payment of the fee prescribed in the Third Schedule.

(6) The Authority shall distribute copies of the EA report and the CMP to every ministry concerned or responsible for the control of the project for its comments.

(7) A ministry required under sub-Regulation (3) to comment shall submit its comments to the Authority within a period of four (4) weeks after receipt of the copies of the EA report and the CMP.

(8) Any EA report, CMP or summary of one of these documents, in respect of which the Authority has issued a notice of acceptance, shall be a public document and may be inspected by the public at a place designated by the Authority and may be copied subject to payment of the cost of the copies.

(9) The Authority may make available copies of an EA report and the CMP or any summary of these documents for inspection by members of the public at selected locations in the vicinity of a project, to which it relates, for a period of not less than twenty (20) days.

(10) The procedure for public review, inspection, submission of comments and objections shall be in accordance with Regulation 11.

PART C: PROPOSED PROJECTS

Submission of Project Briefs

5. (1) The proponent of a proposed project which -

(a) requires a permit, licence, approval or other consent from an authorising agency; or

(b) is forwarded to the Ministry of Economic Planning and Development (MEPD) for inclusion in the Development Plan, shall submit to the appropriate authorising agency a project brief which incorporates a brief plan and/or outline proposal for a project and which contains sufficient information to enable the authorising agency to determine to which Category the proposed project should be assigned in accordance with Regulation 6.

(2) The Ministry of Economic Planning and Development shall be the authorising agency in respect of any proposed project is forwarded to that ministry for inclusion in the Development Plan by a Government ministry, department or agency, a public body, or a body concerned with national development which is answerable directly to the Ngunyama.

(3) Where the project requires a permit, licence, consent or approval from more than one authorising agency, for the purposes of sub-Regulation (1) the "appropriate authorising agency" means -

- (a) the municipality or local authority within whose area of jurisdiction the proposed project is to be situated unless the municipality or local authority is the proponent;
- (b) the Authority if the authorising agency is also the proponent of the project or if the project is not situated within the area of jurisdiction of a municipality or local authority and there is more than one authorising agency.

Categorization of Projects

6. (1) The appropriate authorising agency shall review the project brief and may request the proponent to amplify the project brief or to provide any additional information which the authorising agency may reasonably require, by a date specified by the authorising agency. Once the authorising agency is satisfied that it has sufficient information concerning the proposed project the authorising agency shall categorise the proposed project -

- (a) as a Category 1 project if the authorising agency considers that the proposed project is unlikely to have any significant adverse environmental impacts;
- (b) as a Category 2 project if the authorising agency considers that the proposed project is likely to have some significant adverse environmental impacts but that the impacts are relatively well-known and easy to predict and the measures which can be taken to prevent or mitigate these impacts are well-known;
- (c) as a Category 3 project if the authorising agency considers that the proposed project is likely to have significant adverse environmental impacts and that in-depth study is required to determine the scale, extent and significance of the impacts and to identify appropriate mitigation measures.

(Illustrative examples of the types of projects which would ordinarily be assigned to each Category are given in the First Schedule).

(2) In deciding to which Category a proposed project should be assigned, the authorising agency shall take into consideration all relevant factors including the scale of the proposed project and its location in relation to environmentally sensitive areas.

(3) The Minister, by notice in the Gazette, may designate areas as environmentally sensitive areas for the purposes of these Regulations.

(4) Subject to sub-Regulation 7(2), the authorising agency shall, within fifteen (15) days of assigning a proposed project to a Category, submit to the Authority the project brief, a written copy of the decision categorizing the proposed project and the reasons for the decision.

(5) The Authority may, within five (5) days after receipt of that decision of the authorising agency change the categorisation of the proposed project. If the Authority re-categorises the proposed project the Authority shall, within ten (10) days of the date of the re-categorization, notify in writing the authorising agency which first categorised the project.

(6) A person shall not, after the Authority has accepted or amended a categorisation of a project, subsequently change, alter or amend that categorisation without the consent of the Authority.

Category 1 Projects

7. (1) Where a project is classified under Category 1 the Authority or an authorising agency to which power has been delegated under sub-Regulation (2), shall within ten (10) days of the classification or reclassification, issue an environmental compliance certificate.

(2) Where the Authority considers that a municipality, Ministry or other public body has sufficient expertise to correctly identify and classify Category 1 projects, the Director may, by notice in writing delegate authority to that body to issue notices of acceptance and environmental compliance certificates on behalf of the Authority for Category 1 projects in respect of which that body is the appropriate authorising agency under sub-Regulation 5(2) or (3) and any such delegation shall be subject to the condition that the agency to whom this authority is delegated shall keep a record of each project brief and the reasons for classifying it as a Category 1 project for at least three (3) years and at the request of the Authority shall forward copies of any of these records to the Authority to enable the Authority to satisfy itself that the agency is classifying projects correctly.

Category 2 Projects

8. (1) Where a project is classified under Category 2 -

- (a) the proponent shall prepare an IEE report and a CMP in accordance with the requirements set out in the Second Schedule and shall submit three copies of the IEE report and the CMP to the appropriate authorising agency and one copy to the Authority together with the fee prescribed in the Third Schedule;
- (b) the Authority shall, within fifteen (15) days of receipt of the IEE report and the CMP, decide whether the IEE report and the CMP conform to the prescribed reporting requirements specified in the Second Schedule and to any relevant guidelines published by the Authority, and -
 - (i) if they do conform, the Authority shall issue a notice of acceptance to the proponent and notify the proponent of the number of copies of the IEE report and the CMP which the Authority requires for public review purposes; and
 - (ii) if they do not conform, the Authority shall order the project proponent to prepare and submit an amended IEE report and CMP to the Authority;
- (c) the Authority shall within fifteen (15) days of receipt of the amended documents together with the fee prescribed in the Third Schedule, either issue a notice of acceptance if the Authority considers that the amended documents comply with the requirements of these Regulations and to any relevant guidelines published by the Authority; or notify the proponent in writing that the documents have been rejected giving reasons for the decision;
- (d) after issuing a notice of acceptance the Authority shall review that IEE report and the CMP and if it considers that further studies are necessary to assess the likely impacts of the project or to identify appropriate mitigation measures, the Authority may by notice to the project proponent and copied to the authorising agency order the project proponent to prepare and submit an EIA and a revised CMP and to follow the procedure under Regulation 9 for projects under Category 3.

Category 3 Projects

9. (1) A proponent in respect of a project classified under Category 3 shall, before preparing an EIA report and CMP, effect a consultation process to involve or include concerned or affected Government agencies, local authorities, non-governmental

organizations and any other interested and affected persons to help determine the scope and effect of the project or work to be carried out.

(2) A proponent, after compliance with sub-Regulation (1), shall submit to the Authority for its determination a draft of the terms of reference which shall take into account the results of the consultation mentioned in sub-Regulation (1).

(3) The Authority shall, within five (5) days after receipt of the draft of the terms of reference, determine whether or not it is acceptable and where the draft is not acceptable, the proponent with the assistance of the Authority shall prepare and submit to the Authority acceptable and final terms of reference.

(4) After the Authority has approved the terms of reference, the proponent shall:

- (a) prepare an EIA report and a CMP in accordance with the requirements set out in the Second Schedule and shall submit one copy of the EIA report and the CMP to the appropriate authorising agency and three copies to the Authority together with the fee prescribed in the Third Schedule; and
- (b) the Authority shall within twenty (20) days of receipt of the EIA report and the CMP, decide whether the EIA report and the CMP conform to the prescribed reporting requirements specified in the Second Schedule and to any relevant guidelines published by the Authority and -
 - (i) if they do conform, the Authority shall issue a notice of acceptance to the proponent; and
 - (ii) if they do not conform, the Authority shall order, the project proponent to prepare and submit an amended EIA report and CMP and notify the proponent of the number of copies of the EIA report and the CMP which the Authority requires for public review purposes;
- (c) the Authority which shall, within twenty (20) days of receipt of the amended documents together with the fee prescribed in the Third Schedule, either:
 - (i) issue a notice of acceptance if the Authority considers that the amended documents comply with the requirements of these Regulations and to any relevant guidelines published by the Authority and notify the proponent of the number of copies of the EIA report and the CMP which the Authority requires for public review purposes; or
 - (ii) notify the proponent in writing that the documents have been rejected giving reasons for the decision.

PART D: ACCEPTANCE OF DOCUMENTS AND PUBLIC PARTICIPATION

Notices of Acceptance

10. (1) The Authority or the appropriate authorising agency shall issue a notice of acceptance to an operator or proponent in respect of an EA, IEE, EIA, CMP or summary submitted by that operator or proponent if, in the opinion of the Authority or the authorising agency, the document in question conforms with the requirements of these Regulations and any relevant guidelines issued by the Authority.

(2) A notice of acceptance constitutes confirmation by the Authority or the appropriate authorising agency, that the document to which it refers is acceptable to the Authority and will be made public and evaluated for the purposes of deciding whether or not to grant an environmental compliance certificate.

(3) Irrespective of whether or not a notice of acceptance has been issued in respect of any document concerning an undertaking or project, the Authority may, at any time, by notice in writing, require the operator or proponent to furnish the Authority with further information which the Authority considers to be necessary or desirable to enable it to make a properly informed decision as to whether or not to issue, suspend or cancel an environmental compliance certificate.

Public Reviews

11. (1) Immediately after the Authority has issued a notice of acceptance in respect of an IEE or EIA and the accompanying CMP, or a summary of any of these documents, and has received any additional copies of these documents requested from the proponent, the Authority shall concurrently -

(a) distribute copies of these documents to concerned and affected ministries, local authorities, parastatals, non-governmental organizations and any other persons;

(b) display conspicuously such copies in public places or such other places in the vicinity of the site of the proposed project; and

(c) advertise the public review -

(i) in the Government Gazette;

(ii) on the Swaziland Broadcasting Service; and

(iii) in a newspaper circulating in Swaziland twice a week and for two consecutive weeks, specifying the place and the times where copies may be available for inspection, inviting objections, comments or submissions from interested and affected persons, specifying the procedure for the submission of comments and objections and the date on which the public review period will terminate in accordance with sub-Regulation (2).

(2) The period for public review of the reports mentioned in the sub-Regulation (1) shall be calculated from the date of the last notification in the newspaper and subject to sub-Regulation (3), shall not be less than

(a) fifteen (15) days for Category 2 projects; and

(b) twenty (20) days for Category 3 projects.

(3) The Authority may extend a public review period for a period of not more than ten (10) days where the Authority considers it necessary because of the sensitive nature of a project.

(4) Where the Authority believes a project is likely to have significant impacts on the environment of a neighbouring country or that country so requests the Authority shall forward the relevant reports and documents to that country at the same time the reports or documents are made available for public review in Swaziland.

(5) The Authority shall immediately after receipt of objections, comments or submissions:

(a) acknowledge receipt of all written objections, comments or submissions; and

(b) send a copy of the objections, comments or submissions to the proponent and the authorising agency.

(6) The Authority shall, at the expiration of the public review periods specified under sub-Regulations (3) review the comments or submissions and in accordance with Regulation 12, determine within five (5) days whether or not to hold a public hearing.

(7) The Authority shall not, if so requested by a person who submitted a written comment or an objection, disclose or make public the personal information or data of that person.

(8) The proponent shall be responsible for all expenses incurred including expenses for the preparation of an IEE, EIA reports and the CMP and shall provide sufficient copies during all review procedures.

Public Hearings

12. (1) The Authority shall hold a public hearing, where -

(a) after examining the IEE and/or EIA report and accompanying CMP for the proposed project, it is of the opinion that the project is of such a sensitive or significant nature that the public should have the opportunity to make submissions or comments at a public hearing; or

(b) the public concern over the project is great and the number of written and substantiated objections exceeds ten (10).

(2) The Authority shall, where a public hearing is to be held -

(a) publish a notice, at least once a week for two (2) consecutive weeks, in a newspaper circulating in Swaziland, stating the date and place where the public hearing is to be held at least fifteen (15) days before the public hearing is held and the expenses in respect of the publication of the notice shall be borne by the proponent;

(b) display and make available for inspection and copying in public or other places in the vicinity of the proposed project, all reports, documents, written comments and objections during and after the period of public review until the public hearing is finalised; and

(c) call upon any party who has an interest in the outcome of the public hearing, including the project proponent, the authorising agency, the commenting agency and any other person, to attend the public hearing or solicit in writing comments from other government agencies or offices with expertise or regulatory power over the proposed project.

(3) A public hearing provided for under sub-Regulation (1) shall be held within twenty-five (25) days after compliance with sub-Regulation (2), by the Authority, but where the Authority is of the opinion that the number and complexity of the issues to be considered at the hearing requires additional time for preparation by any party to the public hearing, it may extend by ten (10) days the date of the public hearing.

Appointment of Officers for Public Hearings

13. (1) The Authority shall appoint a tribunal to conduct the public hearing of not less than three (3) and not more than five (5) persons, the majority of whom shall be persons holding professional qualifications in Environmental Management, Sociology, Economics, Engineering or Law and one of whom shall be the chairperson.

(2) Subject to sub-Regulation (3), an appointment made under these Regulations shall be for a specific and determinable period of time, commensurate with and coextensive with the duration of a public hearing which duration may be determined by the complexity of the issues to be heard and which, in any event, shall not exceed two (2) months.

(3) The Authority shall not, under these Regulations, in any event appoint a person to be a hearing officer for a period of time exceeding two (2) months in any one appointment and no person shall be lawfully or deemed for whatever reason or fact to be appointed in contravention of this sub-Regulation

Findings of Public Hearings

14. (1) The Chairperson of the public hearing shall make and deliver within fifteen (15) days after that public hearing a report approved by all the appointed hearing officers who participated in the public hearing, of its findings to the Authority for its determination.

(2) The Authority, shall make the report of the public hearing available for public inspection for a period of not less than twenty (20) days, and shall advertise details of where and when it may be inspected and copied, in accordance with Regulation 11(1)(c).

PART E: ENVIRONMENTAL COMPLIANCE CERTIFICATES

Issue of Environmental Compliance Certificates

15. (1) The Authority shall, within twenty (20) days after the expiry of the period for public review under Regulation 11, or if a public hearing has been held, after receipt of a report of a public hearing consider any EA, IEE, EIA, CMP and summary in respect of which a notice of acceptance has been issued, the comments, submissions and objections put forward by interested and affected persons, and the report of any public hearing, and either issue, or refuse to issue, an environmental compliance certificate

(2) The Authority shall issue an environmental compliance certificate subject to whatever terms and conditions the Authority considers appropriate to ensure that the adverse environmental impacts of the undertaking or project are satisfactorily mitigated, if the Authority considers that all the environmental concerns or impacts are adequately addressed by the EA, IEE or EIA report and the accompanying CMP.

(3) The Authority shall refuse to issue an environmental compliance certificate:

- (a) in respect of an existing undertaking, if the Authority considers that the continued operation of the undertaking is causing, or is reasonably likely to cause, danger to the environment or the public and that the mitigation measures proposed in the CMP are inadequate to satisfactorily mitigate the danger and the adverse environmental impacts of the undertaking;
- (b) in respect of a project, if the Authority considers that the implementation of the project would bring about unacceptable environmental impacts or that the mitigation measures may be inadequate to satisfactorily mitigate the adverse environmental impacts of the proposed project.

(4) If the Authority refuses to issue an environmental compliance certificate under sub-Regulation 3(a), the Authority shall simultaneously give notice to the operator to rectify or remove the cause of danger or potential danger in accordance with sub-Regulation 5(5) of the Act.

(5) The terms and conditions to be complied with by the operator of an undertaking, or by the proponent in undertaking the project, shall be specified in the environmental compliance certificate, and may be expressly stated in the certificate

or incorporated by reference to the relevant CMP which shall form part of, the environmental compliance certificate.

- (6) The Authority shall communicate its decision under sub-Regulation (1) -
- (a) in writing to any authorising agency giving reasons for its decision;
 - (b) by publishing that decision in a medium to be decided by the Authority;
 - (c) by publishing a detailed statement of the decision for public inspection in the manner specified in sub-Regulation 11(1); and
 - (d) by sending a copy of the decision to any person who has in writing submitted comments or lodged an objection to the Authority in terms of these Regulations.

Implementation of CMPs

16. (1) The person to whom an environmental compliance certificate is issued shall be responsible for implementing the CMP which forms part of the environmental compliance certificate, and for monitoring the environmental impacts of the project and the implementation of the CMP.

(2) The operator of an existing undertaking shall commence implementation of the CMP within fifteen (15) days of the date of issue of the environmental compliance certificate and the Authority shall monitor the undertaking to ensure that the operator is complying with the CMP.

(3) The holder of the environmental compliance certificate shall submit periodic Project Compliance Reports containing information on the implementation of the CMP in accordance with the provisions of the Second Schedule and with the directions of the Authority.

(4) Any authorising agency which issues any authorisation in relation to the undertaking or project shall ensure that the terms and conditions of that authorisation are consistent with the terms and conditions of the environmental compliance certificate (including the CMP).

(5) Where the proponent of a project is a government ministry or department it shall ensure that all contracts for implementing the project are consistent with the terms and conditions of the environmental compliance certificate and shall monitor the implementation of the project.

(6) Any person who monitors the implementation of a project or a CMP and who discovers that any term or condition of the environmental compliance certificate is not being complied with, or that unforeseen damage to the environment is occurring, shall immediately report this to the Authority.

Expiry of Environmental Compliance Certificates

17. (1) An environmental compliance certificate shall expire after three (3) years from the date of its issue if by that date, no substantial progress has been made in implementing the project such as earthworks or construction work, or if the project has been abandoned or postponed.

(2) Where an environmental compliance certificate has expired and the proponent intends to revive and proceed with the project, that proponent shall submit a revised project brief to the appropriate authorising agency.

(3) The proponent shall, when complying with sub-Regulation (2), inform the authorising agency of any changes or differences in the present proposals and the proposals sanctioned in the expired environmental compliance certificate and the authorising agency, shall in turn inform the Authority of those changes or differences.

(4) The Authority, on being informed as required by this Regulation, shall determine

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(a) whether the proponent ought to prepare an additional IEE or EIA report, and a CMP; or

(b) whether the proponent ought to do additional work to supplement an IEE or EIA report, and the CMP.

(5) Where the Authority determines that an additional IEE or EIA report and the accompanying CMP, should be done, the provisions of Regulation 8 or 9 (including the payment of the relevant fees prescribed in the Third Schedule) shall apply to that project.

(6) Where the Authority determines that only a supplementary work to the existing IEE report and the CMP, and EIA report and the CMP is required, it shall advise the proponent as to the nature of the additional work or information so required and the proponent shall comply before proceeding with the project.

(7) The Authority shall, on receipt of the supplementary work or information, display, distribute and lay open for review by any interested or affected person.

(8) An interested or affected person who is mentioned in sub-Regulation (7) may, within twenty (20) days from the first day of the review mentioned in that sub-Regulation, submit objections or comments to the Authority.

(9) The Authority shall within ten (10) days after the period of submission of objections and comments, decide in accordance with Regulation 16 whether or not to issue an environmental compliance certificate.

Suspension, Amendment and Cancellation of ECCs

18. (1) If, on the basis of information which has become available to the Authority after the issue of an environmental compliance certificate, the Authority considers that the implementation of the project or the continued operation of the undertaking is causing, or is reasonably likely to cause, danger to the environment or to the public, the Authority -

(a) may suspend the environmental compliance certificate and give notice to the proponent or operator to rectify or remove the cause of danger or potential danger in accordance with sub-section 5(5) of the Act; and

(b) may give the operator or proponent a reasonable opportunity of proposing amendments to the environmental compliance certificate which are acceptable to the Authority;

(c) subject to sub-Regulation (2), may amend or cancel the environmental compliance certificate by notice in writing to the proponent or operator.

(2) The Authority shall not cancel an environmental compliance certificate unless the Authority is of the opinion that the danger to, or adverse effect on, the environment or the public cannot be satisfactorily mitigated.

PART F: GENERAL MATTERS

Appeals

19. (1) Any natural person residing in Swaziland or legal person carrying on business in Swaziland or established under the laws of Swaziland, who -

- (a) has an interest in a decision of the Authority;
- (b) is aggrieved by its decision; and
- (c) has paid the appeal fee prescribed in the Third Schedule, may lodge an appeal in writing to the Minister in the prescribed form within the time specified under section 17 of the Act.

(2) In determining an appeal, the Minister may, if necessitated by the technical nature of the issues involved, seek an expert opinion for the Minister's consideration.

(3) In deciding appeals the Minister shall take into account the objectives of the Swaziland Environment Authority Act and may also take into consideration relevant environment policies, guidelines and practice of the Authority.

(4) An appellant shall be responsible for charges, costs and any other expenses reasonably incurred by the Authority incidental to the appeal including charges for expert opinions.

(5) The decision of the Minister shall be in writing, shall set out the reasons for the decision and shall be final.

Offences

20. (1) Any person who -

- (a) fails to comply with a written notice from the Authority requiring that person to comply with a condition imposed in an environmental compliance certificate within the period stipulated in the notice;
- (b) fails to comply with an instruction by the Authority under section 5(4)(a)(iii) of the Act to stop the operation, works or project;
- (c) continues to implement a project or conduct an undertaking, either after the environmental compliance certificate in respect of that project or undertaking has been cancelled, or while it is suspended, commits an offence and is liable on conviction to a fine or to a term of imprisonment or to both such fine or term of imprisonment not exceeding the maximum permissible under the Act.

(2) Where a person fails to comply with a written notice from the Authority requiring that person to comply with a condition imposed in an environmental compliance certificate within the period stipulated in the notice, the Authority may serve an enforcement notice on that person requiring that person to admit the commission of the offence in writing and to pay to the Authority within 30 days of the date of the enforcement notice, a penalty fee stipulated in the enforcement notice which shall not exceed five thousand Emalangenani, failing which that person may be prosecuted under sub-Regulation (1)(a).

(3) A person who pays a penalty fee in accordance with an enforcement notice under sub-Regulation (2) shall not be prosecuted for the offence specified in the enforcement notice.

Powers of the Court

21. On convicting any person for a contravention of these Regulations, in addition to any penalty imposed, the court may order -

- (a) the person convicted to pay the costs of, and incidental to, any measurement, testing, analysis or other matter or procedure undertaken by or on behalf of the prosecution towards the investigation of the offence and the giving of evidence (including expert witness fees) and may make whatever order concerning those costs as the court considers just;
- (b) the person convicted to compensate any person (including the Authority) who has or is likely to, suffer loss or damage caused by the offence including any expenses reasonably incurred in attempting to mitigate or repair environmental damage caused by the offence; and
- (c) the cancellation of an environmental compliance certificate; or
- (d) the suspension of an environmental compliance certificate subject to whatever terms and conditions the court considers appropriate to give effect to the objectives of the Act and these Regulations.

Repeals

22. The Environmental Audit, Assessment and Review Regulations, 1996 are revoked.

Transitional Provisions

23. (1) Any application made, EA, IEE, or EIA conducted, document submitted, approval given, or environmental compliance certificate issued, under the Environmental Audit, Assessment and Review Regulations, 1996, shall be deemed to have made, conducted, submitted, given, or issued under these Regulations.

(2) Notwithstanding sub-Regulation (1), any person who made an application or submitted documents to the Authority for approval prior to the commencement of these Regulations shall be exempted from paying any fees which would have been payable had the application been made or the documents been submitted after the commencement of these Regulations.

FIRST SCHEDULE

(Regulation 6(2))

Illustrative lists of the types of projects which may be allocated to categories 1, 2 and 3.

Note: The types of projects listed in this Schedule are indicative only. When assigning a Category, it is essential to consider the scale of the proposed project and its location, particularly in relation to environmentally sensitive areas. Projects are more likely to be classified as falling within a higher project Category (i.e. Category 3 instead of Category 2, or Category 2 instead of Category 1) if the area likely to be influenced by the proposed project includes an environmentally sensitive area.

Category 1 Projects

Projects under this Category are unlikely to cause any significant environmental impact. The following types of projects are likely to be classified as Category 1 projects:

- residential development not exceeding three (3) houses;
- renovations to existing structures not involving asbestos or other hazardous

substances;

- small-scale commercial buildings and structures;
- research activities;
- prospecting for groundwater, minerals and hydrocarbons using vibrosis and similar techniques;
- small-scale social infrastructure provision (rural health, educational, family planning);
- technical assistance and institutional strengthening activities;
- small scale tourism projects.

Category 2 Projects

Projects under this Category are likely to cause environmental impacts, some of which may be significant, unless mitigation actions are taken. Such projects cause impacts which are relatively well-known and easy to predict. Also, the mitigation actions to prevent or reduce the impacts are well-known.

The following types of projects are likely to be classified as Category 2 projects

- agro-industries (medium-scale);
- electrical transmission lines and rural electrification (medium-scale);
- irrigation and drainage (medium-scale)
- renewable energy production;
- residential development of more than three (3) and less than (10) houses;
- hotels, camp-sites and lodges;
- rural water supply and sanitation;
- watershed management and rehabilitation;
- urban area rehabilitation (medium-scale);
- small-scale infrastructure (roads, sewerage systems, water pipelines and treatment works;
- hospitals (medium-scale)
- non-food industries (medium-scale) without discharge of toxic substances or storage and use of hazardous substances;
- projects located near environmentally sensitive area.

Category 3 Projects

Projects under this Category are likely to have significant adverse impacts whose scale, extent and significance cannot be determined without in-depth study.

Appropriate mitigation measures can only be identified after such study. The following types of projects are likely to be classified as Category 3 projects:

- residential development exceeding ten (10) houses;
- dams and reservoirs;
- afforestation schemes and wood processing facilities (large-scale);
- industries and industrial estates (large-scale);
- irrigation, drainage and flood control (large-scale);
- mineral development (including hydrocarbons);
- reclamation and opening of new areas for agriculture;
- projects involving resettlement;
- river basin development;
- thermal and hydropower;
- manufacture, transport and use of pesticides or other hazardous substances;
- agriculture (especially involving large-scale monoculture);
- roads;

- projects located in environmentally sensitive areas;
- mining, soil excavation (large-scale)
- urban water supply and sanitation projects (large-scale).

SECOND SCHEDULE

(Regulations 8(1)(a) and 9(4)(a))

REPORTING FORMAT

A. INITIAL ENVIRONMENTAL EVALUATION

Introduction

Purpose of the IEE

Description of the Project

Location, size, construction or operational activities, schedule for implementation, workforce, any alternatives.

Description of the Project Environment

Brief description of physical, ecological and human aspects of the site and its surroundings.

Impact Description and Evaluation

Brief account of the significant impacts likely to occur if no mitigation occurs. If an EIA is needed because of the nature and extent of expected impacts then a recommendation to this effect should be made.

Impact Management

Description of mitigation measures, monitoring programmes and schedule of implementation. Technical and institutional requirements for successful implementation.

The IEE report should be short (no more than 20 pages) and written in clear, simple language. The IEE should result in a short IEE report and a CMP as per the format outlined in this Schedule (Reporting Format, under A)

B. ENVIRONMENTAL IMPACT ASSESSMENT

Executive Summary

A brief account (no more than 10 pages) of the findings of the EIA with emphasis on the key issues, for consideration by decision-makers in the Swaziland Environment Authority, the authorizing agencies and members of the public.

Introduction and Purposes of the EIA

Boundary of study area and time horizon for which impacts will be predicted (speculated future date or time).

Description of the Project and Reasonable Alternatives

Location, size, construction or operation activities, workforce, schedule for implementation.

Description of any associated project (for example roads, aggregate extraction) needed

Description of the Environment

An overall evaluation of the type and quality of the environment (bio-physical and social components and processes) within the study area with specific information presented only when relevant to the prediction and evaluation of impacts.

Description of any expected changes to the "baseline" environmental situation before implementation of the project subject to an EIA (the "no project" alternative).

Prediction and Evaluation of Impacts

For all alternatives:-

- * distinguish between significant adverse and beneficial impacts;
- * identify irreversible impacts;
- * allocate significance against international and or national Regulations, standards and quality objectives governing: - health and safety; - protection of environmentally sensitive areas; - land use; and - ambient pollution levels;
- * identify significant data deficiencies and assumptions made;
- * determine the spatial and temporal distribution of impacts;
- * identify mitigating measures.

Analysis of Alternatives and Selection of Preferred Option

Select preferred alternative by comparing the residual environmental impacts of each option (i.e. the environmental impacts which cannot be prevented) on the basis of the expected results of all mitigating actions to be implemented.

Impact Management Plan (For Preferred Alternative)

Action to enhance benefits and prevent or reduce adverse impacts. Required monitoring programmes. Schedule for implementation. Technical and institutional requirements for successful implementation.

Consultations

Results of any consultation held with government agencies, NGOs and the public during EIA work

The results from the EIA should be contained in an EIA report and a CMP as per the format outlined in this Schedule (Reporting Format, under B)

C. ENVIRONMENTAL AUDIT REPORT

Introduction

Purpose of EA Report

Description of the Project

Location, size, workforce, inputs and outputs, operations and manufacturing processes, transport.

Description of the Environment

Brief description of physical, ecological and human aspects of the site and its surroundings.

Impact Description and Evaluation

- * Inventory, with amounts of all effluent discharges, after pre-treatment to air, water

and land (including noise and vibration and odour). Inventory of all solid wastes produced and their handling, storage, transport and eventual disposal.

* Inventory of chemicals which are used in operational or manufacturing processes and which reach air, water or land through non-point source.

* Concentrations of chemical, radiological and energy pollutants in air, water, land in the vicinity of the installation (based on inventory).

Identification and evaluation of the impacts of these concentrations on the environment and health (when data allows).

The results should be contained in an EA report and a CMP as per the format outlined in this Schedule, under Reporting Format, under C)

D. COMPREHENSIVE MITIGATION PLAN

This plan is prepared by using the results obtained from IEE, EIA and EA Reports

Its identifies:- * impacts to be prevented or reduced in severity * benefits to be enhanced * mitigation measure, to achieve the above * costs, institutional and training requirements * monitoring programmes to track project related impacts and implementation of mitigation measures * community liaison procedures needed

The plan must contain * schedules for implementation/targets * reporting procedures * work programmes * budget * staffing and training requirements

E. PROJECT COMPLIANCE REPORT

Introduction

Purpose of the report

Description of Project

Location, size, phase of implementation (construction or operation) workforce.

Performance Review

Checking of implementation of CMP Actual impacts of projects (if data allows)

Recommendations

In order to improve performance

Preparation of next Project Compliance Report

THIRD SCHEDULE

SCHEDULE OF FEES

Regulation No.

Fee

Existing Undertakings

Submission of EA report and CMP
4(2)(a)
E1500

Resubmission of EA report and/or CMP
4(3)(b)
E500

Amendment of EA report and/or CMP by the Authority
4(5)
E500

Category 2 Projects

Submission of IEE report and CMP
8(1)(a)
E1500

Resubmission of IEE report and/or CMP
8(1)(c)
E500

Category 3 Projects

Submission of EIA report and CMP
9(4)(a)
E3000

Resubmission of EIA report and/or CMP
9(4)(c)
E500

Appeals

Submission of Appeal
19(1)(c)
E1000