



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002 Tel: +27 12 399 9000, Fax: +86 625 1042

Ref: EDMS 148243

Enquiries: Ms Dee Fischer

Tel: 012 399 8843 Email: DFisher@environment.gov.za

Mr Tshediso Matona
Acting Director-General
The Presidency
Republic of South Africa
Department of Performance Monitoring and Evaluation
Private Bag X944
PRETORIA
0001

Email: tshediso@presidency-dpme.gov.za

Dear Colleague

IMPLEMENTATION EVALUATION OF ENVIRONMENTAL GOVERNANCE IN THE MINING SECTOR – RECOMMENDATIONS AND MANAGEMENT RESPONSE

The Department of Environmental Affairs (DEA) has reviewed the final report on the Evaluation of Environmental Governance in the Mining Sector. DEA would like to thank the Department of Performance Monitoring and Evaluation (DPME) for the excellent management of this process. As requested, the completed Recommendations and Management Responses document has been attached. Where the response indicates a “disagreement”, this does not reflect a disagreement with the principle or concept but rather that the additional law reform process has superseded the recommendation.

The Department would support the submission of the report to Cabinet, however as there have been significant amendments made to the governance framework in December 2014, it would be important to ensure that the findings and recommendations are considered in relation to these amendments. It is therefore suggested that the Departments submit a joint submission to Cabinet. The submission from DEA would:

- request Cabinet to reaffirm support to the 'One Environmental System' with a mandate to consider additional streamlining measures, e.g. further alignment of SEMAs;
- request that Cabinet support a discussion on the prioritising of mine closures to ensure environmental protection and reduce socio-economic risk to surrounding communities; and
- identify a mechanism to deal with the regulatory gaps which result from the delay in approval of the MPRD amendment bill.

Since the finalising of the report, DEA had an opportunity to meet with DPME around the upcoming mining Phakisa initiative. At this meeting a three day workshop was proposed between the three departments to strengthen integration and cooperation related to the issuing of mining rights and environmental authorisation. The workshop would be held under the leadership of the DPME, and would aim at achieving the following:

- Develop a framework to achieve a win-win situation for mining in a particular area using a proactive assessment process allowed for, through the undertaking of a Strategic Environmental Assessment. The methodology would include:
 - identification of an area to be prioritised for mining development;
 - proactive assessment of environmental sensitivity which would include biodiversity, water, cultural issues, etc.;
 - identifying areas in which mining should be precluded and areas in which mining could be supported; and
 - identifying features which should be offset and areas in which offsets should be directed.

Should the process prove to be successful, the methodology could be rolled out to other priority mining areas. This process will improve institutional arrangements and provide more regulatory certainty by improving decision making. DEA would also include a request to Cabinet to support this process.

Should this suggestion be supported, we would welcome further discussion on the modalities. Once again we would like to thank DPME for engaging the Department on this important issue, and we are looking forward to working with DPME on the Mining SEA.

Yours sincerely



Ms Nosipho Ngcaba
DIRECTOR-GENERAL

DATE: 15/10/2013

cc: Dr Ian Goldman, Head: Evaluation and Research, DPME

cc: Professor Tsakane Ngomane, Outcome Facilitator for Outcome 7, DPME



The Presidency
 Republic of South Africa
 Department: Planning, Monitoring and Evaluation
 Department of Environmental Affairs
 Department of Mineral Resources

Recommendations and Management response on the Implementation Evaluation of Environmental Governance in the Mining Sector

NB: Please respond only to the recommendations that are applicable to your department.

Recommendations from the Implementation Evaluation of Environmental Governance in the Mining Sector	Record of Agreement or Disagreement	Reasons for Disagreement
1. The guideline for calculating the cost of financial provision for the rehabilitation and closure of mines should be updated.	The Department agrees that the guideline is not the correct method of calculating the costs of rehabilitation. However, as the Department has prepared Financial Provision Regulations which should be gazetted	The evaluation was undertaken before the financial provision regulations were complete. The guideline will no longer apply to calculating the financial provision. There is therefore no need to update the guideline.

Recommendations from the Implementation Evaluation of Environmental Governance in the Mining Sector	Record of Agreement or Disagreement	Reasons for Disagreement
	for implementation in the near future. There is no need to update the guideline.	
2. When the new guideline is published, training should be provided to mines and consultants on its implementation.	Agreed that with any new requirement, training must be given.	The Department agrees with training requirements. Training will be undertaken for both competent authorities as well as the mining sector.
3. Where possible, concurrent rehabilitation should be encouraged or enforced.	Agreed – this is the basis of the financial provision regulations	
4. In terms of the determination of sustainable land use, the term 'sustainability' should be clearly defined, there should be a clear demarcation of responsibility between the mine and the authorities for conducting sustainability assessments and the method for undertaking these assessments should be defined.	Disagree	The research question raised the issue of determining the most sustainable land use. This is not a requirement in terms of NEMA or the MRPD. The term "Sustainable development" has been defined in NEMA and the principles include aspects which must be considered in order to ensure sustainable development. In addition Cabinet approved a National Strategy for Sustainable Development and Action Plan (NSSD) 2011-2014. The concept of sustainable development has already been discussed in the NSSD.
5. Mining companies should be responsible for all foreseeable environmental impacts as approved in their EMP, as well as any	Disagree	One of the principles of NEMA is the principle of "Polluter pays". Section 28 of NEMA also enforces a duty of care and

Recommendations from the Implementation Evaluation of Environmental Governance in the Mining Sector	Record of Agreement or Disagreement	Reasons for Disagreement
unforeseen environmental impacts at the time of operation. The State should then be liable for all other unforeseen environmental impacts.		remediation of environmental damage.
6. As the DMR is the competent authority henceforth, and another change to the regime will be too disruptive to the mining industry, it should develop the capacity, skills, technical expertise and systems necessary to meet the criteria required for an effective competent authority	Agree	The Department is willing to assist with training.
7. Communication channels within and between the different departments should be reviewed and improved. The amended legislation as detailed in the post-script to this evaluation, which allows for the three acts related to environmental governance in mining to be read together, is an important step towards harmonisation of the framework.	Agreed	Although the legislation is now almost all aligned there needs to be on-going interaction regarding implementation. Quarterly implementation workshops are held at which all competent authorities discuss coordination and implementation issues. These implementation workshops feed in to the Working Group, MinTech and MinMec structures, which deal with coordination and integration of the environmental function as a concurrent function.
8. The legislation, in particular NEMA, should provide definitions across environmental regulations to avoid any confusion regarding the regulatory requirements and standards.	Agreed – already in place	
9. The current online application system, the South African Mineral Resources Administration System (SAMRAD), which processes mining licence applications, should continue to be strengthened such that it is available 24 hours a day, is more user-friendly and links to the DEA's	Agree – the EIA regulations require all competent authorities to report onto the national	

Recommendations from the Implementation Evaluation of Environmental Governance in the Mining Sector	Record of Agreement or Disagreement	Reasons for Disagreement
existing systems.	web based reporting system which has been developed and is being upgraded and be spatially enabled and include an on-line application function. There is also a requirement for the SAMRAD system to be linked to the national web based reporting system to ensure reporting and data capturing.	

Endorsed by



Ms Nosipho Ngcaba

Director General; Department of Environmental Affairs

Date: 15/10/2015