

Introduction

The SDCEA was launched in 1995, bringing together the experience of activist organisations such as groundWork and Earthlife Africa, with the first-hand knowledge of communities living in south Durban, around a common struggle for a healthy living environment and environmentally sustainable and socially just development in south Durban and eThekweni in general.

South Durban is home to approximately half a million people, and is also the location of South Africa's largest chemical industry cluster, including two major oil refineries and two big paper mills as well as the transport infrastructure associated with Africa's largest port. Thus the SDCEA has many years of experience in interrogating developments that impact negatively on communities, and has confronted industry and government both through individual Environmental Impact Assessment (EIA) processes and through its own efforts to raise awareness and mobilise communities. (See Annex 1 for a list of EIA processes the SDCEA has engaged in since 2006).

This booklet is intended as a user-friendly guide to share the SDCEA's experience in mobilising community action around developments negatively affecting communities, including through engaging in EIA processes.

The SDCEA and communities across South Africa have voiced many frustrations about Environmental Impact Assessments (EIAs). Often

communities feel that an EIA is just a rubber stamping process for developments to go ahead, with the consultants running the process biased in favour of the developers and the government, while developers feel that EIAs are an expensive and unnecessary hindrance to progress. The Department of Environment has initiated a national 'Environmental Impact Assessment and Management Strategy for South Africa' to re-examine and fine-tune the EIA process as one of several decision-making tools to manage the impacts of development on the environment. Whatever the change that results from this in the future, the main steps in the EIA process are likely to stay the same, and communities should know how to get involved in EIAs and exercise their rights in the EIA process. There are also many creative ways for activists to mobilise communities and build pressure for environmentally just development outside of the EIA process. We hope that this booklet will provide you with the information and tools for this.

The SDCEA published a booklet titled "Environmental Impact Assessments" in 2008, which provides in-depth discussion on Environmental Impact Assessments (EIAs), including governing legislation, the process, principles and stakeholders in EIAs and opportunities for community engagement. This should be read together with this guide by anyone wanting more in-depth information on EIAs.

Quick guide symbols

We are using a number of symbols in this guide to make it easier to find your way around the document:



Checklist



Ideas for debate and lobbying



Take note items to ensure your participation and rights are upheld



Tips and Tools to help you be active!

Getting started

Our personal health and well-being are closely related to the health and functioning of the environment around us. However, our environment can no longer satisfactorily provide for our needs. We feel unsafe and the soil, air and water we rely on are polluted. Development choices – in the form of individual projects – and the processes that drive our economy are at the heart of this increasing degradation. While the bigger picture issues, such as the values in our society and the economic system, drive development, most of us become interested in environmental issues when we are confronted by a particular development that threatens to compromise our quality of life.

You might already be living near to a polluting factory, or may find out about a problematic new

development in your area when you see a notice on the fence of a plot of land, see an advert in the newspaper, or when you see surveyors out with their dumpy levels or contractors setting up camp.

Bottom line: a development is already causing or is likely to cause you harm. What can you do about it?

The following are the main components in any ‘campaign’ to challenge a development or activity that causes problems. You always need to start by ‘getting the facts’ but once you decide to take further action you will be involved in cycles of activity that involve all of these components.



In order to protect communities from being exposed to the kind of pollution that comes from the Mondi factory (pictured here), it is important and necessary for the public to become actively involved in investigating and, where necessary, opposing proposed industrial activities.

1. Get the facts

The first step in any campaign is to find out what is going on. It is important to conduct accurate research so that your actions and statements about the problem have a sound footing. Getting the facts wrong can cost you your campaign as you will lose credibility with potential allies.

You can gather information by:¹

- Visiting the site to make your own observations. If possible take a photographic record and speak to people in the area about what they have noticed.
- Speaking to the company or the developer. Ask them what they are doing, why the problem exists, and whether they plan to fix the problem. If the development is new you may be referred to an Environmental Assessment consultant handling public participation for the company. (Further explanation included later).
- Contacting the elected councillor for the area. Find out if she/he knows about the project, what information they may have and what their position on the project is.
- Contacting officials in your local Municipality in relevant departments (e.g. Water, Environment, Health, Development Planning, etc.). If the development is causing pollution, find out who has responsibility for the issue and what information they have about it. Find out from the Planning Department what approvals they require for that land, and how the development fits into the overall planning framework for the area.
- Checking with the Provincial Government if an Environmental Impact Assessment application process has been initiated or approved in the past. If the issue has national importance, contact the national Department of Environmental Affairs. If an EIA is underway, ask for the contact details of the consultant handling the EIA and find out at what stage in the EIA process the application is. If the activity is already approved, find out what the conditions were for approval and if this includes an Environmental Management Programme. (See the chapter on EIAs in

South Africa for information on what these are).

- Visiting your local or regional library to see if they have any information (such as local press clippings) on the issue.
- Searching the internet for media articles on the development. From this you may find further information on what is happening, who is responsible and whether other groups have the same concerns as you. If the company is a multinational or international company, search for similar types of developments in other countries and see what praise or criticism communities over there have. If the development involves a technological process, try to find out more about the technology itself – where does it come from, what problems have other people experienced with it and what pollutants are likely to result from its use.
- Contacting union organisations if the company is operational – perhaps workers and/or their families are being affected if they live nearby.
- Seeking out experts to help you research more detailed information and analyse technical documentation. Ask for help from relevant departments at your local university – they often have students who are willing to assist as part of their practical training. Academics may also be willing to help, especially if this can contribute to their own research papers, and you benefit by having credible experts.

2. Plan your campaign

Once you have collected some basic information about the development and who is involved, you can decide whether it is worth trying to improve the situation. If the answer is yes take a little time to plan your next steps.

A good campaign planning process should include the following steps:

- Decide on your campaign aim and objectives – what are you trying to achieve through your campaign? Try to make your objectives SMART: Specific, Measurable, Achievable, Realistic and Time-specific.
- Identify your target group – who are you trying to influence through your campaign to achieve the change that you are looking

¹ Earthlife Africa. Practically Green Manual. (unpublished resource)

for? There will probably be several different groups you are trying to influence for different reasons, from mobilising supporters to holding decision-makers accountable. Who are your target groups and what will make them listen to you?

- Develop key messages that the campaign communicates – the basic facts will stay the same but you should adapt your message to suit the different audiences you are trying to influence.
- Outline activities - the actions or steps you need to take to achieve your objectives. When listing your activities consider the steps you need to take to influence each of your target groups. How will you mobilise public support? What will you do to lobby decision-makers? How can you influence the developer to act responsibly, etc?
- Agree on tactics – what is the strategy you are using to achieve your objectives. Tactics are informed by your values and morals so it is good to discuss these if you are working in a group so that you agree on how you will go about things upfront!
- Identify the resources you need and where you could access these – many people will

be willing to donate materials or time to a good cause so you don't necessarily need money to achieve your aims.

- Identify potential allies and how to approach them for assistance.
- Develop a media strategy – for example, which media are you targeting, what are your key messages, when are you staging media events or issuing media releases?
- Draw up a programme – identify key events and develop time frames for your activities.

3. Mobilise support

A key component of all campaigns is networking and mobilising support for your issue. Who are the potential allies in your campaign? Think about who else is affected by the issue or the development and what information you can give them to ignite their self interest. Allies don't have to be people or organisations you always agree with. Often different sectors or organisations can unite around a common problem even if they disagree on many other issues. Be careful, however, not to team up with groups whose approach and values are so different from yours that working together with them may compromise your integrity.



Public meetings can help raise public awareness and mobilise support

4. Raise public awareness

The easiest ways for community groups to raise awareness is by getting their issue into the mainstream media. In addition to traditional media like TV, the radio and print media there are also many electronic media that you can use including self-publishing through Blog sites and Social Networking applications.

Raising public awareness is the best way to put pressure on government and the company so that they will take action.

Most community groups can't afford to pay for adverts so you need to think of ways to interest journalists and their editors in your story. Start creating a database of media contacts, especially those people who show a personal interest in your issue.

Ideas for getting your story out in public and into media include:

- Organise a public information table in a central place in your community such as a local shopping centre – make sure that you have permission from the management – or set up in public space.
- Hold a public talk or debate.
- Research and print information leaflets to hand out.
- Create a website using free website tools on the internet.
- Use free internet applications to set up information networks to share with interested people.
- Send out a media release – keep this short and to-the-point but cover Who, What, When, Where and Why? Include quotes from someone in your group. The more your release resembles a media article the more likely it is that it will be published as is.
- Write a letter to the editor of your local paper.
- Submit an Opinion Editorial to your local paper – this is a commentary piece that allows you to present an in-depth or complex analysis of a situation without being mediated by a reporter.
- Organise a media conference where you invite reporters to a presentation – make this as convenient as possible and prepare

a media pack of information in advance. Media packs should contain a copy of your media release, a concise summary of the issues and your viewpoints, pictures that can be used and any relevant background reading that provides a more in-depth understanding of the issues.

- Organise a media event to generate publicity. The best events use creative ways to make the point and capture the imagination of public and reporters. If your event makes for interesting photos you are more likely to get good coverage. For example hold a vigil, organise a mock court hearing, give the company a mock award, do a banner drop in a prominent public place, or create a public spectacle using street theatre, dance or music.
- Organise a mass march or picket to highlight your protest. The right to picket and gather in protest is enshrined in the Bill of Rights.² However, you will need to notify the police if there will be more than fifteen people at the protest event. After notifying the police you will be invited to a 'Section 4' meeting to discuss your plans. You will need to explain how many people you expect and how they will arrive at the protest; who will be responsible; how many marshals there will be and how they will be identified; and what people will carry (you are not allowed weapons). If you are told at the Section 4 meeting that you may not hold the protest then you have the right to seek relief at the Courts.
- Use non-violent civil disobedience – this is conscious disobedience of the law in order to demonstrate injustice, but without resorting to force or violence.

5. Reflect on progress and fine-tune your plans

At periodic intervals in your campaign reflect on the progress you are making. Analyse what is working and what isn't and fine-tune your plans accordingly. Celebrate your achievements as this gives you the energy to continue. Don't be afraid to make mistakes as this is the best way to learn.

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Section 17 of Chapter 2 of the Bill of Rights

The Environmental Impact Assessment Process

What is an Environmental Impact Assessment?

An Environmental Impact Assessment (EIA) is a methodical process that is used to identify the possible effects a proposed development or activity will have on the environment, assess their importance and establish the possible ways in which any negative impacts of the proposed activity can be avoided or lessened.

The EIA process is the primary instrument used by government to decide whether a particular proposed development should be allowed and, if so, how any unavoidable negative impacts that arise can be minimised or managed.

Environmental Impact Assessments and our Rights

The Bill of Rights in Chapter 24 of the Constitution gives all South Africans the right to:

- an environment that is not harmful to their health or wellbeing; and
- have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development while promoting justifiable economic and social development.

The 'environment' is defined in the broadest sense and includes all aspects of the world around us, including the:

- geographical
- physical
- biological
- social
- economic and
- cultural environments.

Several pieces of environmental legislation are intended to ensure these rights through measures to manage the environment and environmental impacts. The key law in this regard is the **National Environmental Management Act (107 of 1998)** (NEMA).

Environmental Management Principles

Chapter 1 of NEMA outlines a number of principles that apply to all parts of South Africa and all parts of the government that may affect the environment. These principles provide a general framework and guidelines for any decisions regarding the environment and provide many important safeguards to our rights including:

- a cautious approach that avoids taking risks;
- transparency and open access to information;
- strong emphasis on equity, environmental justice and the need to put people at the forefront of concerns;
- avoiding environmental damage and, where this isn't possible, minimising and remedying impacts;
- that those responsible for harm must pay for the cost of preventing or remedying it;
- that environmental management must be integrated and requires inter-governmental coordination;
- participation in decision-making by all affected people, taking into account different needs, values, cultures and forms of knowledge and particularly ensuring the participation of disadvantaged and vulnerable people; and
- the need to build environmental awareness and knowledge to enable participation by everyone.

Chapter 5 of NEMA focuses on 'Integrated Environmental Management' and in Section 23 outlines objectives to achieve this. Section

24 focuses on implementation and it is here that Environmental Authorisations based on Environmental Impact Assessments are outlined as the means by which environmental management objectives can be realised. NEMA has undergone many revisions and in 2004 Section 24 was amended and substantially expanded.

Section 24(5) of NEMA makes provision for the Minister to publish further Regulations prescribing detailed requirements for the EIA process. The latest version of the EIA Regulations published in the Government Gazette came into effect on the 2nd of August 2010.

Many communities and NGOs are critical of the EIA process as the majority of EIA processes do not result in decisions that effectively protect our environmental rights. Most applicants, and the consultants that they hire, approach EIAs as a prescribed checklist to satisfy the minimum requirements to get the go-ahead for their development. What is needed, however, are processes that enable the critical analysis of spatial inter-relationships, technical issues and socio-economic relationships to make the best decision for the environment and society.

Environmental Management Frameworks (EMFs)

A frequent criticism against EIAs is that they only look at the individual development and ignore the development's contribution within the broader context to cumulative pollution loads and impacts.

Amendments to sections 24 (2) and (3) of NEMA allow the Minister and MECs to identify specific geographical areas where the sensitivity or particular environmental context warrants the compilation of spatial data and detailed environmental information to guide decision-making. Section 5 of the amendments allow for the Minister and MECs to make regulations on 'Environmental Management Frameworks' as part of the environmental management tools for these areas. Thus, in 2010 a new regulation on Environmental Management Frameworks was published with the amendments to the EIA Regulations.

The onus is on the Minister or MECs to initiate the process for an EMF in a particular area, which must include analysis of the need for an EMF, analysis of the status quo in the area, formulating

a desired future state for the environment in the area and an action plan on how to achieve this. The EMF Regulations strongly emphasise public participation in developing the EMF. The information in the EMF, whether about the physical or cultural or other environments, is primarily collated in the form of spatial mapping against which individual projects can be assessed.

Although an EMF appears to be aimed at guiding development in areas where the environment has special attributes that need protection, the context for requiring an EMF includes the need for cooperative governance and pressures from development in the area. Perhaps the Minister should be lobbied to initiate EMF processes in areas which need management not because of their special value, but because of the dire need to curb cumulative pollution impacts.

Environmental Impact Assessment and Management Strategy for South Africa (EIAMS)

In 2006 the Department of Environmental Affairs (DEA) commissioned a ten-year review to study the efficiency and effectiveness of the EIA process. The review concluded that despite the long time-frames and high cost of EIA processes, a number of problems were preventing the EIA process from being an effective tool for environmental management to avoid environmental degradation and support sustainable development. The DEA's key concern is that the EIA process shouldn't be relied on as the only environmental management tool and that other strategic planning processes should also be used. Civil society is concerned that although the EIA process is flawed, it remains one of the few means by which the public can still actively participate in environmental decision-making.

The findings of the review were presented at a "Ten Years of EIA in South Africa Conference" in 2008. The conference agreed that the DEA would initiate an Environmental Impact Assessment and Management Strategy for South Africa (EIAMS). "The purpose of the EIAMS process is therefore to **facilitate a participatory process in order to compile a strategy that gives effect to the objectives of integrated environmental management** as contained in Section 23 of NEMA **within the context of the principles of**

sustainable development (Section 2 of NEMA).”
1

Three main themes were identified for the strategy, namely:

- Governance and Administration
- Capacity, Skills and Transformation
- Impacts and Instruments

Eleven specialist reports were commissioned to investigate particular problem areas under each theme, including issues of public participation and the empowerment of marginalised communities.

These will be open for public comment and then combined into theme reports by September 2011. More information, including summaries and the full reports, can be downloaded from <http://www.custodianproject.co.za>.

Hopefully the EIAMS process will lead to a more inclusive and holistic approach to environmental management. Until such time as reforms are put in place, affected communities must understand and push the limits of the current EIA processes to force authorities to make the best decisions for our communities and the environment.

The EIA Process in South Africa

Before unpacking the EIA process it is useful to learn the terms that our law uses to describe the different elements of an EIA, which invariably are also used whenever you receive any information about EIAs from the consultants, developer or government.

Key Terms

‘Competent Authority’ – this is the government representative or department that is responsible for making a decision on whether to give the go-ahead to a particular EIA application. Depending on the nature of the activity being proposed this could be the Minister of the Environment, Minister of Mineral Resources or Provincial environmental department.

‘Applicant’ – this is the developer or person making the application requesting approval or ‘Authorisation’ of a particular activity or development.

‘Environmental Assessment Practitioner’ (EAP) – is the consultant who the developer hires to coordinate EIA processes including facilitating public participation, research and specialist inputs and writing and submitting the EIA reports to the Authority. The law now requires that an EAP is registered with a registration body approved by the Minister of the Environment. The Environmental Assessment Practitioners Association of South Africa (EAPASA) is in the process of becoming

the registration body. Before the EAPASA was formed some EAPs registered with the South African Council for Natural Scientific Professions.

‘Interested and Affected Party’ (usually referred to as an I&AP) – is anyone who is affected by a proposed development. In order to be able to give your input or written comment on any of the documents prepared during an EIA you need to be *registered* as an I&AP in that EIA process – which means that your name and contact details are included in a list kept by the EAP. Any government departments that are part of the decision-making process are also included as I&APs.

You become a registered I&AP by:

- participating in any meetings or responding in writing during the public participation process of an EIA;
- writing to the Environmental Assessment Practitioner and asking to be registered as an I&AP at any time, including after the public participation process is finished.

‘Authorisation’ is the term used for the approval given by the Authority. Authorisations are not only for new developments. Authorisations are also issued to approve a change or even suspend an existing environmental authorisation, or to change an authorised Environmental Management Plan.

The rest of the terms used in EIA will become clearer as we unpack the different EIA processes and steps.

The two main EIA processes and when these are applied

As mentioned earlier, Environmental Impact Assessment involves a methodical process of consultation and scientific analysis to identify the potential harm or benefit a proposed activity will have on the environment in order to decide whether the activity should go ahead and, if so, what measures need to be put in place to manage its impact. In South Africa the Environmental Impact Assessment Regulations (2010) describe two types of process – a simpler process and a more in-depth one that includes consultation and analysis. Which one is used depends on the danger that the proposed development poses to the environment and the complexity of analysing this impact.

In summary there are two main assessment processes:

1. **A basic assessment:** this is for developments that are considered to have a lesser environmental impact where decision-making requires less research and information gathering.
2. **A Scoping and Environmental Impact Assessment:** this “full EIA” is for developments which could have a more serious impact on the environment because of what (e.g. a hazardous process) or where they are (e.g. in a protected area). This is divided into two parts:
 - a) Scoping to identify the issues, impacts and possible alternatives which need further studies and analysis,
 - b) Environmental Impact Report which studies and assesses the issues, impacts and alternatives identified in Scoping. A key element of this report is an ‘*Environmental Management Programme*’ which outlines the processes that will be put in place to prevent and manage damage to the environment should the application be approved.

Whether a development requires an authorisation based on a ‘Basic Assessment Report’ or a ‘Scoping and Environmental Impact Report’, and which authority must be approached for an authorisation, is determined according to lists published by the Minister of Environment (or MECs) in the Government Gazette.

Currently three lists apply, published by the Minister in June 2010³:

List 1: activities requiring a Basic Assessment Report

List 2: activities requiring a Scoping and Environmental Impact Assessment Report

List 3: activities in particularly sensitive or protected environments for which different Provinces require a Basic Assessment Report

These lists are not cast in stone, however, and the decision-making authority can, in response to a written request, allow applicants to only produce a Basic Assessment Report if the Authority is able to make a decision based on this information or require a full EIA if a Basic Assessment Report would not contain sufficient information to reach a decision.



Because business does not always have a community's best interests at heart it is important to engage with the EIA processes from the start. The medical waste incinerator that was proposed for Shongweni Landfill site was stopped because of public participation.

³ NEMA (107/1998): Environmental Impact Assessment Regulations, 2010: Listing Notice 1: List of activities and competent authorities identified in terms of sections 24(2) and 24D (Gazette No 33306 – Regulation 544), Listing Notice 2 (Gazette No 33306 – Regulation 545), and Listing Notice 3 (Gazette No 33306 – Regulation 546).

One EIA process for all environmental approvals

The latest amendment to NEMA broadened the meaning of an 'environmental authorisation' to include authorisations required under NEMA and other environmental management acts. In other words, if a development is a listed activity according to the EIA regulations and also requires a waste management licence,⁴ atmospheric emissions licence,⁵ a mining authorisation or any authorisations in relation to coastal management, only one EIA process must be used for all of these even though different government departments may review the information for approval.

If a developer wants to do the same kind of development in several different places they can apply for permission for all of these to fall under one EIA process. However, if they are given permission for a single EIA process they still have to assess the impact of the development in each place.

The Environmental Impact Assessment Regulations also detail the key steps to be used in other related authorisation processes:

Amendment processes:

The regulations describe processes to initiate changes to the environmental authorisation or Environmental Management Programme on the part of the Authority or by written application by the holder of the Authorisation. In all of these the Authorities can require a public participation process if the Authority believes that the amendment is a substantial change. For details of these processes please refer to Chapters 4 and 5 of the Environmental Impact Assessment Regulations (2010).

Exemptions:

An Applicant can make a written request to the Authority for permission to not comply with any provision of the NEMA, the EIA Regulations or the National Environmental Management: Air Quality Act, (2004), National Environmental Management: Integrated Coastal Management Act

(2008) and National Environmental Management: Waste Act (2008). This action is on condition that:

- there will be no significant negative impacts on the environment or the rights of I&APs, and/or
- that particular requirement of the law cannot be implemented in practice.

Appeals:

Any affected party can contest a decision made in terms of a Basic Assessment, Scoping and Environmental Impact Assessment, Amendments or Exemption process through an 'appeal' to a higher authority which, depending on the case, could be an MEC or the Minister.

The diagrams following on the next pages unpack the components of the environmental assessment process in more detail, showing the opportunities for participation by affected and concerned people (highlighted in green).



Youngsters in south Durban participate in training about spatial development.

4 In terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)

5 Licence in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)



People can and do participate in the EIA process in many ways, and can be approached formally...

or informally...



can listen...

or act!



The EIA Process Step-by-Step and your role and rights

Basic Assessment Process

1 EAP submits Application Form and Declaration of Interest to the Authority

2 EAP conducts a **Public Participation Process**

- Notifies all potential I&APs (see box below on Giving Notice)
- Opens and keeps a Register of I&APs
- Makes information containing all relevant facts on activity available to I&APs
- All potential I&APs have reasonable opportunity to comment

3 EAP considers comments, assesses impacts, etc to produce a **Draft Basic Assessment Report**

- Public comment on Draft Report.

5 EAP submits **Final Basic Assessment Report** to the Authority

- See Contents of Basic Assessment Report in box below – it must contain all the information the Authority needs to consider the application and make a decision.

6 Authority acknowledges application

7 Authority *rejects* OR *accepts* Report

If *rejected* the Authority can:

- Ask for additional information
- Require specialist reports
- Suggest or comment on alternatives
- OR Require a full Scoping and Environmental Impact Assessment Report.



14 days



30 days

8 EAP submits an **Amended Basic Assessment Report**.

- Public can comment on Amended Report.

9 Authority accepts Report

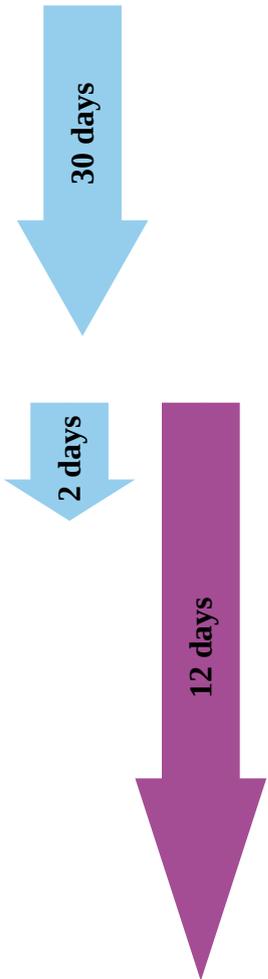
10 Authority makes **Decision to Approve or Refuse** – can be approved in part and with conditions

11 **Authority notifies the Applicant** in writing, including:

- name and contact details of person/s granted exemption;
- description of the activity or alternative which has been authorised;
- description of the property/s on which the activity will take place; and
- description of any conditions to the authorisation and Environmental Management Programme.

12 Applicant notifies I&APs of decision

- Must also notify I&APs of opportunity to appeal the decision (See Appeal process)



Scoping and Environmental Impact Report (EIR) Process

There are two main processes involved:

A. Scoping

① EAP submits Application Form and Declaration of Interest to the Authority.

② EAP conducts a **Public Participation Process**.

- Notifies all potential I&APs (see box below on Giving Notice)
- Opens and keeps a Register of I&APs
- Makes information containing all relevant facts on activity available to I&APs
- All potential I&APs have reasonable opportunity to comment

③ EAP considers comments, assesses impacts, etc to produce a **Draft Basic Assessment Report**.

④

- Public comment on Draft Report.

⑤ EAP submits **Final Basic Assessment Report** to the Authority.

- See Contents of Scoping Report in box below – it must contain all the information to properly understand the nature of the issues identified during Scoping. The Plan of Study for the EIA will include terms of reference for Specialist Studies that will be done as part of the EIR.

⑥ Authority *rejects*, asks for *amendments* OR *accepts* Report.

- Report may be rejected if it doesn't contain required information or hasn't followed guidelines for a Scoping Report.

⑦ EAP submits an **Amended Scoping Report/ Plan of Study** for EIR.

⑧ EAP submits an **Amended Basic Assessment Report**.

⑨ Authority *accepts* Report and instructs EAP to proceed with tasks in the plan of Study of the EIR.



30 days

B. Environmental Impact Report

EAP proceeds with tasks as per 'Plan of study for EIA':

① EAP commissions **Specialist Reports** or **Processes**.

- See Contents of Specialist Reports in box below

② EAP/Specialist prepares **Draft Environmental Management Programme**.

③ EAP conducts a **Public Participation Process**.

- Notifies all potential I&APs (see box below on Giving Notice).
- Provides a Background Information Document (BID) with basic information and location of proposed activity.
- Continues Register of I&APs.
- Provides Draft Environmental Impact Report (including EMPr and specialist studies).
- Collates comments from I&APs and the response to these.

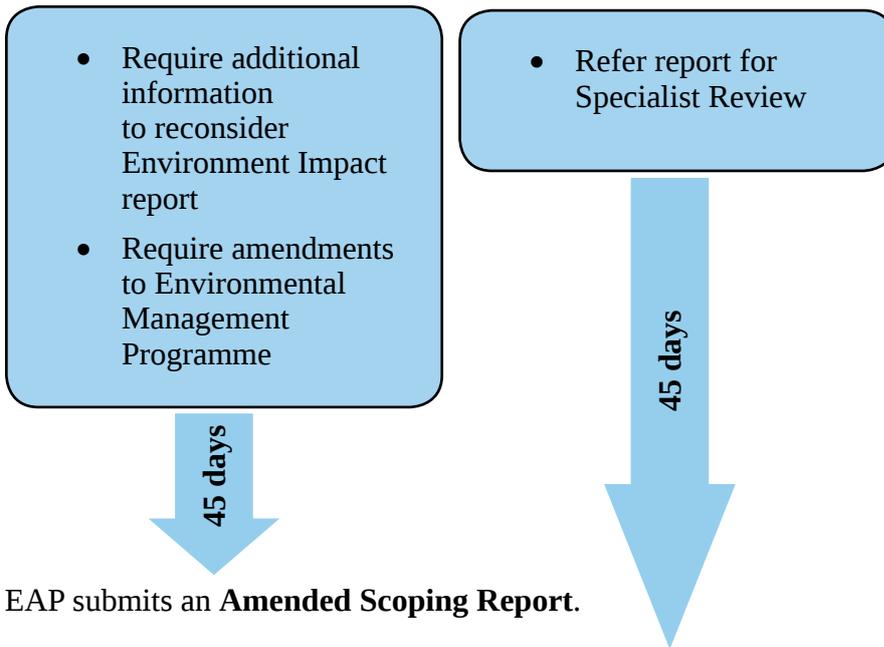
④ EAP considers comments, assesses impacts, etc. to produce an **Environmental Impact Report**.

⑤ EAP submits five copies of **Environmental Impact Report** to the Authority.

- See Contents of EIA Report in box below – it must contain all the information the Authorities need to consider the application and make a decision.

6 Authority **rejects**, asks for **amendments** OR **accepts** Report.

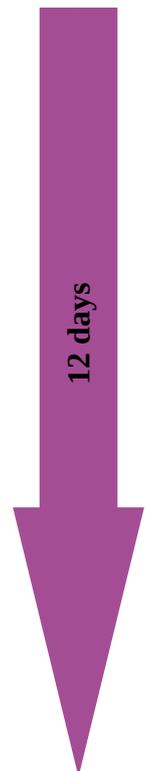
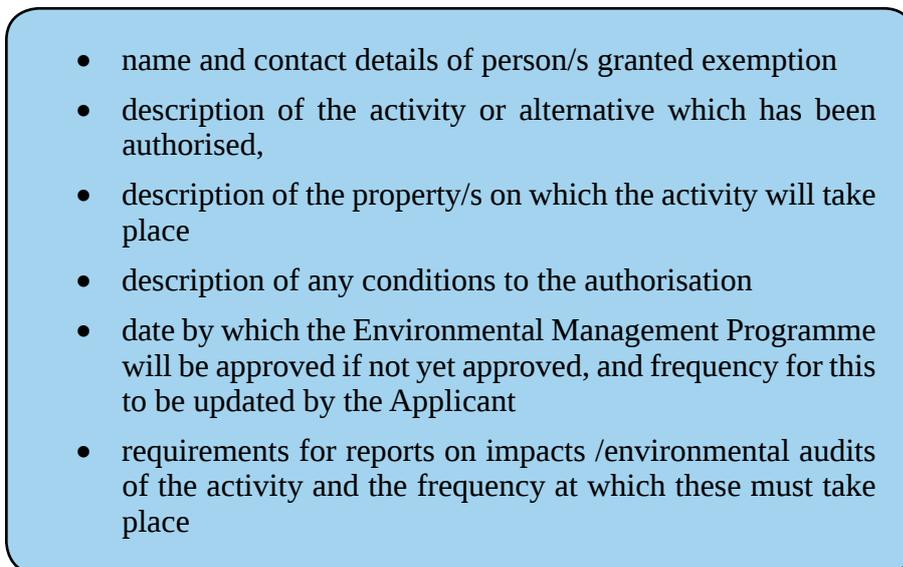
If rejected, the Authority can:



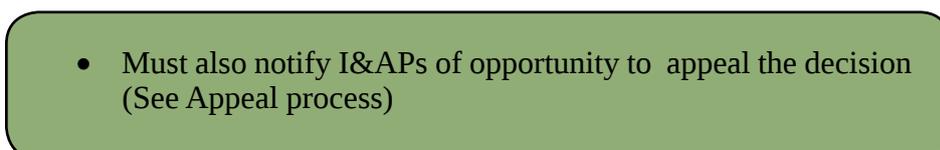
7 EAP submits an **Amended Scoping Report**.

8 Authority makes **Decision to Approve or Refuse** – can be approved in part and with conditions

9 **Authority notifies the Applicant** in writing, including:



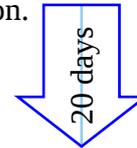
10 Applicant notifies I&APs of decision



Appeal Process

The Appeals process is as follows:

- 1 Authority makes a **Decision to Approve or Refuse** an application.



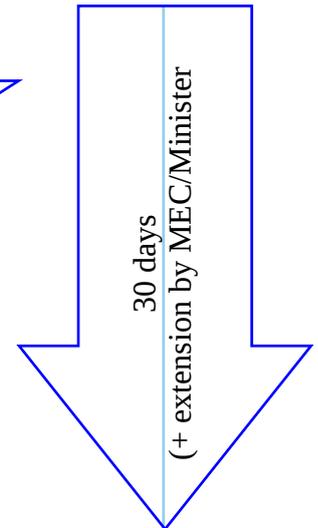
- 2 **Appellant** (Applicant or I&APs opposing the decision) **lodge intention to Appeal**



- 3 Appellant Gives notice of appeal to other parties:

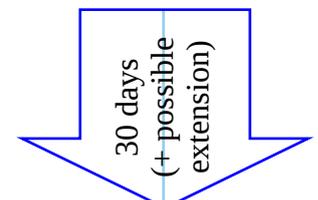
- If appeal by Applicant - notify I&APs of where Appeal submission can be viewed.

- If appeal by I&APs - notify applicant of where Appeal submission can be viewed.

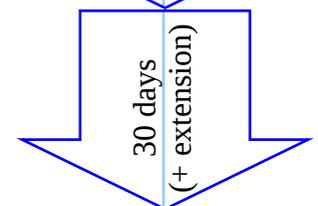


- 4 **Appellant submits written Appeal** Documentation

- Grounds for appeal
- Supporting documentation
- Proof of notifying other parties



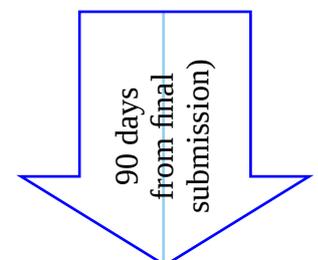
- 5 Submission of **Responding statement** by other parties



- 6 Submission of **Answering statement** by Appellant

- 7 Minister can appoint an independent **Appeal Panel** to make recommendations on any part of the Appeal

- If the panel introduce new information the Appellant and Respondents can respond to this.



- 8 MEC/Minister or designated Authority makes a **Final Decision**

- Notify parties in writing with reasons

Exemption process

- 1 EAP gives notice to the Authority and all other I&APs of the intention to apply for an Exemption.

This must describe:

- Provisions for which exemption is being applied
- How comments should be submitted, to whom and the date by which these should be sent

- 2 EAP submits application for Exemption to the Authority, including:

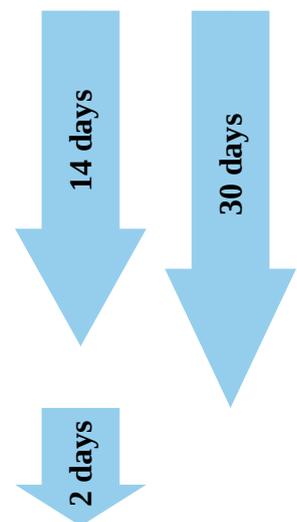
- Reasons for exemption application.
- Supporting documents which should include potential consequences of the exemption on the environment and I&APs.

- 3 Authority acknowledges application and may request extra information

- 4 Authority makes decision to *approve* or *refuse*

- 5 If approved, Authority issues **Exemption Notice**.

- states name and contact details of person/s granted exemption
- which provisions the exemption covers,
- any conditions, and
- time period during which the exemption applies.





Contents of Basic Assessment Report

- Details of the EAP and their expertise
 - Description of proposed activity
 - Description and map of the site or route where the activity will take place or coordinates of the area of ocean if the site is at sea
 - Description of the environments that may be affected
 - Motivation for carrying out the activity
 - Description of possible feasible and reasonable alternatives
- Details of the Public participation process including the steps taken to notify I&APs and proof of this
 - Register of I&APs
 - Any comments or representations on the application or Basic Assessment Report and the EAPs response to these
 - Minutes of meetings with I&APs
- Analysis of the pros and cons for the environment and community of proposed activity and alternatives
 - Description and analysis of environmental impacts:
What, how bad, how long will it last, how likely is it to occur, will it get worse over time, will irreplaceable resources be lost, can the impacts be reversed or lessened
 - Proposed ways to manage or mitigate (lessen) the impacts
 - Recommendations made by any specialists
- Legislation that has been considered
 - Description of the things that the EAP assumed / gaps in information
 - Any other info required by Authorities
 - **The EAPs opinion on whether the activity should go ahead or not and any conditions on going ahead**
 - **Draft Environmental Management Programme**



Contents of Specialist Reports

- Qualifications and declaration of independence of Specialist
- Scope and purpose of report
- Methodology used to prepare the report
- Assumptions and gaps in knowledge
- Description of findings and expected impacts on proposed activity and alternatives
- Recommendations for mitigating impacts
- Description of consultation process and copies of comments



Contents of Scoping Report

- Details of the EAP and their expertise
- Description of proposed activity
- Description and map of the site or route where the activity will take place or coordinates of the area of ocean if the site is at sea
- Description of the environments that may be affected
- Motivation for carrying out the activity
- Description of possible feasible and reasonable alternatives
- Legislation that has been considered
- Details of the Public participation process including the steps taken to notify I&APs and proof of this
- Register of I&APs
- Any comments or representations on the application or Basic Assessment Report and the EAPs response to these
- Minutes of meetings with I&APs
- Analysis of the pros and cons for the environment and community of proposed activity and alternatives
- *Plan of study for Environmental Impact Assessment*



Contents of Draft Environmental Management Programme (EMPr)

- Details of the EMPr Expert and their expertise
- Detailed description of the parts of proposed activity covered by the EMPr
- Information on proposed ways in which the identified environmental impacts can be lessened or managed across the whole life cycle of the activity (planning, construction, operation, closure and environmental rehabilitation) and who will be responsible for this
- Description of how pollution and environmental damage will be stopped or controlled
- Processes for managing pollutants including water treatment, and ecological and environmental damage
- Description of how environmental management standards will be met
- Measures to restore the environment affected by the activity to a natural or rehabilitated state
- Description of funds for rehabilitation
- Time periods in which the EMPr will be implemented
- Environmental awareness plan describing how employees will be informed of how their work can create risks for the environment and how to avoid this
- Closure plans and objectives and how this complied with legislation (if applicable)



Contents of Environmental Impact Assessment Report

- Details of the EAP and their expertise
- Description of proposed activity
- Description and map of the site or route where the activity will take place or coordinates of the area of ocean if the site is at sea
- Description of the environments that may be affected
- Motivation for carrying out the activity – need and desirability
- Description of possible feasible and reasonable alternatives
- Details of the Public participation process including the steps taken to notify I&APs and proof of this
- Register of I&APs
- Summary of comments and issues raised by I&APs and the EAPs response to these
- Minutes of meetings with I&APs and copies of comments
- Analyses of the pros and cons for the environment and community of proposed activity and alternatives
- Methodologies used to assess environmental impacts
- Description and analyses of environmental issues and their significance
- Summary of findings and recommendations of Specialist Reports
- Descriptions and analyses of each potentially significant environmental impact:
What, how bad, how long will it last, how likely is it to occur, will it get worse over time, will irreplaceable resources be lost, can the impacts be reversed or lessened
- Proposed ways to manage or mitigate (lessen) the impacts
- Description of the things that the EAP assumed / gaps in information
- Any other info required by Authorities
- Copies of Specialist Reports and Reports on specialised processes
- **The EAP's opinion on whether the activity should go ahead or not and any conditions on going ahead**
- **Environmental Impact Statement: summary of key findings and comparative assessment of positive and negative implications of proposed activity and alternatives**
- **Draft Environmental Management Programme**

Why bother?

Phew! Now that we have gone through all the basic processes relating to EIA and know what is supposed to be found in the various reports, you are probably wondering if it is worth the effort. And if you have already been involved in an EIA process you probably found it to be a pretty unsatisfying experience, where you were overwhelmed with technical documents and no-one seemed to take your comments seriously.

Despite the flaws in the EIA process and frustration you may feel, it is important to engage in EIAs because:

- this remains one of the few opportunities for the public to directly influence localised decision-making;

- by raising concerns the conditions attached to an approval will be more stringent;
- participation in EIA provides an opportunity for community members to deepen their environmental knowledge;
- if one doesn't follow due process and take up the opportunities provided to raise concerns it is very difficult later to legally challenge the decisions that are made.

In this context it is useful to seek opportunities to push the boundaries to make participation in the EIA process more meaningful. The following section highlights some of the issues that you, the Interested and Affected Party, should keep an eye on to ensure that your environmental rights and rights to participate are upheld.



If nobody bothered to engage with EIAs projects like the proposed medical waste incinerator at Shongweni Landfill might well just be rubber stamped and the community would be exposed to a cocktail of pollutants over which they would have no control

Things to watch out for when participating in Environmental Impact Assessments

Keeping track of the process



At the beginning of any EIA process, ask the EAP for their plan of the process so that you can be proactive in mobilising your community and can prepare to comment on documents and follow up on decisions. Often the notice about decisions, called the 'Record of Decision' (ROD) isn't sent to I&APs in time by the EAP and the community miss the deadline to notify the Authority of the intention to appeal – don't rely on the EAP, rather follow up on the decision with the Authority yourself.



If you are involved in a controversial EIA where there is a very adversarial relationship between the Applicant/EAP and affected communities consider looking for pro bono legal assistance to keep a watching brief on the process, including checking that due process is followed, substantial information is provided, comments are taken into account and decisions are made in a transparent way. If there is no-one in your community prepared to assist, you can contact NGOs that provide legal assistance. (See Resources at the back of the booklet).

Participation by all

All potential interested and affected people must be informed about a proposed development and be given an opportunity to comment on the application. Many EIA consultants rely on written materials, usually in English, to both notify and inform the public about proposed developments. The minimum requirements for alerting people who may be affected by a development are described below under 'Giving notice to I&APs'. However, these are the minimum that is expected and the Guideline on Public Participation suggests that the EAP actively identifies stakeholders through social profiling, using databases to identify local organisations and community groups as well as referrals by key stakeholders.

The EIA regulations make specific mention in several places that reasonable effort must be made to include potentially affected people who are illiterate, or have a disability or any other disadvantage, in the participation process.

For example:

- Alternative methods must be used to give notice to disadvantaged and illiterate people (see below)
- When people are unable to make written comments, alternative methods for recording their comments must be provided for.⁶
- In the case where the applicant is seeking permission for a development on someone else's land the landowner/s must be informed. If someone for any reason cannot understand a written notice the applicant has a duty to find an alternative way to inform the owner/s.

⁶ Reg 57(2) of the Environmental Impact Assessment Regulations (No R543 June 2010)

The Guideline on Public Participation advises EAPs to take local language and culture into account and suggests several ways for sharing information about the proposed development including capacity building using Participatory Learning and Action (PLA) methods so that I&APs are able to participate effectively.

Over and above the EAP or Applicant's responsibilities to facilitate the participation of disadvantaged participants, Regulation 70 requires that the Authorities help anyone who is illiterate, has a disability or any other disadvantage to comply with the EIA regulations.

Typically, the EAP will hold a public meeting to present the proposed project and answer questions, after which I&APs are expected to make written submissions with their comments and concerns. Usually the public meeting is the first time that most people really find out what the project is about and there is insufficient time to process the information and raise concerns. Large public meetings can also intimidate people who aren't comfortable talking in a big group.



Make sure that the EAP includes presentations and translations in local languages and that the presentation is accessible to the community. For example, PowerPoint presentations are often used but can be difficult to understand..

The imperative in the Regulations to include "disadvantaged" people provides a space for community groups to push consultants (and the applicant) for other forms of information exchange that will better help communities to understand what the activity entails and how they might be affected:

- Ask for information documents to be translated into the local languages of the area
- Request a site visit to the location of the proposed project and any alternative sites and get to know the area.
- Request 'focus group' meetings, which are smaller meetings with only your group or organisation, where you make your comments directly and request detailed information about the development. Request

that the developer/applicant is also there so that they can answer questions directly.

- The EAP might arrange an 'open day' where they have displays about the project, and the relevant people who have worked on the development on hand to answer questions. The SDCEA do not find these as useful as focus group meetings as open days tend to just display what the company wants one to see and don't allow for detailed questioning.
- Ask for the EAP to meet with marginalised groups in your community in a venue and at times that are appropriate to the group (For example, most public meetings are in the early evening when parents, especially women, are busiest attending to children and can't attend).
- Although there are disadvantages with public meetings, make sure that full public meetings are held so that the project is discussed transparently in an open forum. Advocate for the meetings to be held in venues that are accessible to the majority of affected people and in several local areas if necessary.



Pressure the EAP to hold meetings in each area that could be impacted by the proposed activity so these are accessible to the community. If they insist on a large public meeting in a central place, request that transport is organised from the different areas to the central venue.



Be aware of corrupt relationships between the Applicant and influential or vocal community members, who may be lavishly entertained in one-on-one meetings or promised personal or community benefits in exchange for support of the proposed development.



Tips for the Public meeting

- Help to raise awareness about the meeting so that relevant community stakeholders turn up. The SDCEA makes use of flyers, phone calls to residents associations and religious groups, and email alerts. You could also make use of social networking applications on the internet and cell phones to spread the word.
- Make sure that all sectors of civil society are alerted and will be represented at the meeting – include residents, informal businesses, unions, community organisations, non-government organisations and faith groups, etc.
- Organise a preparatory meeting before the Public meeting held by the EAP to share information, understand sectoral concerns and agree on common strategies and demands.
- Organise participation at the meeting so that a range of people are ready to ask questions and raise issues of concern.
- Be clear and direct in your comments and questions: stick to the topic, ask direct questions informed by the research you have done and be clear about your demands.
- Respect other people's points of view – the more issues that surface, especially during scoping, the more thorough the EIA will be.
- Take your own record of the meeting including filming, taping and photographing the meeting as proof of the issues that were raised.
- After the meeting the register and minutes should be sent to you. Check your contact details and ensure that the official minutes accurately reflect what the community said as these minutes are sent to the Authority. If the consultants taped the meeting you can also ask for a copy of the transcript.

Giving notice to I&APs

According to the EIA Regulations, any part of an EIA process, exemption application, etc. that requires that interested and affected parties are 'notified' means that the following forms of notification must take place:⁷

1. **Notice boards** of not less than 46cm x 60cm must be hung in a publically visible place on the fence of the proposed site of the activity and any proposed alternative sites for the duration of a commenting period. The board should state that an application has been made, whether a Basic Assessment or Scoping process is being used, the nature and location of the activity, where further information can be found and how and to whom submissions can be made.

2. Give a written notice to:

- The owner or person in control of the land if not the applicant
- People occupying the site and proposed alternative sites
- People owning and/or occupying land alongside the site and proposed alternative sites
- The Ward Councillor for the area
- Any ratepayers organisations representing the community of that area
- The Municipality controlling the area
- Any government departments which have jurisdiction over any part of the activity
- Anyone else required by the Authority

7 Reg 54 of the EIA Regulations 2010

Case Study: Transnet New Multi-Products Pipeline from Durban to Gauteng 2010

Transnet applied for approval to construct a new 750km pipeline from Durban to Johannesburg to transport various refined fuels from the oil refineries to Gauteng. Currently the reef is supplied by an existing pipeline running through the north western suburbs of eThekweni. Due to an outcry in response to leaks by high income areas on the pipeline route it was proposed that, rather than increasing the capacity of the existing line, the pipeline upgrade follow a new route, south of the city.

The SDCEA campaigned against the construction of a new line because the servitudes and infrastructure already exist along the current route and thus it appeared that the re-routing is a case of environmental racism. The new route extends through the most populated areas of south Durban; however, it seems that wealthy land owners have had more influence than poor black communities in the south. South Durban already has fifteen pipelines, which have a history of leaks and explosions, running through the area. The pipeline upgrade also encourages increased consumption of fossil fuel products, at a time in history when we need to find alternatives for fossil fuel consumption.

Transnet claimed community buy-in after deals were struck with local leadership. Not satisfied with the EAP's reassurance that the new pipeline route was supported, SDCEA staff walked the route that the pipeline would take. In doing so they found that the pipe would run through residential areas, cutting through peoples' yards and food gardens. Clearly, if any of the typical pipeline problems arose, these people would be at high risk, but no-one knew about the plans. Transnet began excavation work on the pipeline over the objections of affected communities in Clairwood, Merebank, Umlazi, Mbumbulu, KwaMakhutha and Adams Mission. Tragically, the pipeline claimed its first victims in September 2010 when two children fell into the water-logged trenching and drowned.

3. Place an advert:

- a) **in one local newspaper for activities within a municipality** or
- b) if the activity will have an impact beyond the local area, **place an advert in at least one provincial or national paper** used to advertise EIA related matters

(The regulations give the option of advertising in an official gazette used to advertise EIA- related matters but no such government publication exists currently.)

4. **Alternative methods**, agreed to by the Authority, for people with disabilities, illiteracy or any other disadvantage who want to participate.



Be on the lookout for adverts and notices in your area. In eThekweni, small adverts are usually placed in the section on town planning in the larger circulation daily papers (e.g. Mercury and Daily News).



Push the EAP to place additional notices, especially for public meetings, where the majority of your community is likely to see these.

You can also use these ways to mobilise your community yourself and encourage them to register and participate in the process. For example:

- Go door-to-door
- Print flyers
- Sizeable adverts in a local tabloid newspaper. Often if the development is likely to be a hot issue, community newspapers are happy to run a story for you.
- Adverts or interviews on local radio stations which broadcast in local languages.
- Posters and notices at shopping centres and churches.



Official notices and ‘Background Information documents’ are often written in a way that is difficult to understand and doesn’t clearly state why local people should be interested in the issue. If possible write your own information summary or flyers that unpack what the proposed development will entail and explain how this could affect people.



Provide the EAP with the additional information they need to improve the reach of the public participation process.

For example the SDCEA provides:

- the contact details of potential I&APs in the community that should be consulted, such as rate payers organisations, community groups, NGOs, faith organisations, etc.
- information to the EAP on where to distribute notices and how many printed leaflets are needed for each area.

Access to information and your right to comment

EIA Regulation 54 (7a) requires that all the relevant facts about an application are made available to I&APs.



You must register as an I&AP to be kept informed about the EIA. Although the Regulations direct the EAP to give all potential I&APs an opportunity to participate, after the initial notifications the consultant has no obligation to inform the general public about what is going on.

Registration as an I&AP also has drawbacks – if you register, but don’t become involved the Applicant can then claim that the affected community participated but didn’t have any objections.

Registered I&APs, however, have several rights of access to information in the EIA process including the right to:

Case Study: N2 Toll Road EIA

The South African National Roads Agency Ltd applied to upgrade the existing coastal roads and build a new link between Port St John’s and Port Edward to create a highway between Durban and East London. Part of the deal involved private sector financing in exchange for the rights to collect toll fees.

The SDCEA, with the ANTI-Toll Alliance – Upper South Coast, campaigned against the toll road due to the impacts the toll will have on the livelihoods of communities along the route, including south Durban residents who will pay toll fees as part of their daily commute.

The SDCEA realised the importance of involving as many stakeholders as possible and used multi-lingual pamphlets, the media and one-on-one meetings to forge alliances in sectors that wouldn’t normally join an environmental campaign. The strategy involved ‘personalising’ the campaign; explaining how the toll road will impact on each sector’s livelihoods as well as the bigger context for the development. Though the toll road was touted as bringing tourism into the Eastern Cape, in reality, it will create easy access for the extraction of resources from planned mining developments. The campaign brought together urban civic associations, rural communities, an affected business park, taxi associations and church leaders in a united front.

The toll road was given a positive ROD, which was appealed by the civil society coalition objecting to the toll road. At date of writing the Minister had not yet heard the appeal, and it appears that the public outcry has succeeded in halting the toll plans. The mining projects, which would have provided trucking income to the toll, have also been stopped by the Minister of Mineral Resources.

- be notified that Basic Assessment, Scoping, Specialist, Environmental Impact reports and amendments are available for comment
- comment on all written reports submitted to the Authority by an EAP or Applicant, provided that this is done within the time frames approved by the Authority. EAPs must make all draft reports available to registered I&APs for comment, after these have been submitted to the Authority.
- comment on a final report, but these comments are sent directly to the Authority and must be copied to the EAP.⁸
- access minutes of meetings held between Authorities and the developer or EAP concerning the process that must be followed to comply with the Act and regulations.
- be notified on the decision made by the Authority to give a project the go-ahead or not and the reasons for the decision
- be notified about the Appeal process



Despite these rights, actually getting the information in your hands can be a tricky task. Typically, I&APs are posted a copy of the 'Background Information Document' (BID), which is a summary of what the project is about and not sufficient information for meaningful comment. After this, the EAP makes the larger documents such as the Basic Assessment Report, Scoping and Environmental Assessment Reports available at a venue the public is expected to get to themselves – usually at a public library in the area. Documents, especially with Specialist Reports attached, can be very large. More organised EAPs will make these available to I&APs for download from the internet, but this limits the accessibility of the document to the elite few who have computers and internet access.

Push the EAP to provide printed copies for your group to circulate for comment and to place these in other accessible community venues.

⁸ Reg 56 of the Environmental Impact Assessment Regulations (No R543 June 2010)



You might not always know what to ask for but if you think that there is important information that you don't have, don't be scared to request this from the EAP. The applicant might not have all the information about potential impacts and this then needs to be studied as part of the impact assessment process. Information that the SDCEA routinely asks for includes:

- Full disclosure of the chemicals that will be used in a process so that the consequences of a spill or leak as well as the long-term cumulative impacts of the chemicals can be researched.
- How many jobs will be created under normal operating conditions? Jobs during construction are often used to boost the job creation figures and make it appear that many more jobs will be created. Also check what the hiring policy of the company is to see if it is likely that jobs will benefit the local community.
- Distance of dangerous processes from the site boundary and the nearest community.
- The existence of emergency plans in case of an accident.

Some information about the development might need to be investigated as part of the impact assessment process. For example, you may want to know how a proposed development will affect traffic in your area.



The quality of decision-making will depend on the quality of information produced during the EIA process.

- If necessary, contest the experts appointed to carry out specialist studies to ensure that they are both credible and unbiased.
- Push for social impact studies. Otherwise EIAs tend to only look at scientific issues.



Beware when the Applicant says that information can't be revealed as it forms part of 'Confidential Business Information' (CBI) or the activity falls under the National Key Points Act,¹ as this usually indicates that there is some negative impact that is being covered up.

¹ An Apartheid era Act that protected industries and installations seen as key to security and the economy from any scrutiny. Currently this Act has been used to restrict access to the Durban harbour.



Don't rely on the EAP as your only source of information as they will often downplay anything negative. Do your own research to fill in gaps in information. For example, if a new technology or process is being proposed, find out:

- the name of the equipment and where it is patented so that you can find out more about it. Sometimes old or dangerous technologies are sold to developing countries when these can't be used in the countries of origin.
- where else the process or technology has been used and use the internet to network with communities that live there to find out what their experience is.



Your comments must be acknowledged and responded to by the EAP. Usually this is done by including them in a 'Comment and response Report' that is submitted to the Authority as part of Basic Assessment and Scoping & Environmental Impact Reports. This can be frustrating as the EAP summarises the comments and gives the impacts a rating which often doesn't correspond with the importance the community attaches to the issue.



If a consultant ignores your input you are entitled to submit your comments and any additional information on issues that you think are important directly to the Authority. You could also request to view the file submitted by the EAP to check that all the information was included. When you do so, declare any personal interest you may have in the outcome of the decision and send a copy of your comments to the EAP.¹

¹ Reg 56 of the Environmental Impact Assessment Regulations (No R543 June 2010)

Time frames

In terms of the regulations, any time period is counted from the day after the first date given to the end of the last day of the time period (up to midnight), but any public holidays during this time are not counted as days. If the last day falls on a weekend or public holiday the period is extended to the next normal working day.⁹

Some companies run processes over the end of year holiday period when people may not see adverts or have time to comment. The Regulations require that public participation processes do not run in the period from the 15th December to the 2nd January unless there are exceptional circumstances, and this is approved by the Authority.¹⁰ Any time periods for EIA processes running over the end of year must be extended by the number of days falling between the 15th December and 2nd January.

⁹ Reg 1 (2 -5) of the Environmental Impact Assessment Regulations (No R543 June 2010)

¹⁰ Reg 54 (8) of the Environmental Impact Assessment Regulations (No R543 June 2010)

Case Study: Mondi Multi-fuel boiler construction

In 2003 Mondi planned to build a new multi-fuel boiler plant at its paper mill in Merebank. Mondi justified the boiler construction as a means to reduce pollution from the plant. The SDCEA sought out its own independent expert to examine the EIA data, who found that, in addition to increased vehicle traffic, carbon emissions would increase by 50% through the greater amounts of coal required by the boiler. The area's residents suffer from far higher than normal levels of respiratory illness such as asthma due to the polluting industry in south Durban.

Before the EIA process had concluded, however, the SDCEA heard that the Provincial Department of Agriculture and Environmental Affairs (DAEA) had given Mondi an Exemption without even informing I&APs. The SDCEA sought legal help. A Legal Resources Centre representative asked to inspect the file at the DAEA and found no records of the Exemption application or agreements. It appeared that an off-the-record deal had been struck.

The SDCEA, with the LRC's help, lodged an Appeal to the Exemption decision on the grounds that the then Provincial Department of Agriculture and Environmental Affairs had acted illegally and had selectively assessed the impacts while ignoring significant pollution, noise, and socio-economic impacts. They had also allowed Mondi to add land-use changes into the EIA after the scoping process so that I&APs had no basis on which to comment. Alternative options for reducing the pollution impact by installing air pollution filters and changing fuel sources had not been explored, which indicated that Mondi's motives for the development were not honest.

The case was heard in the Durban High Court which ruled that the Exemption granted was not valid.



Mondi polluting the air in South Durban

Time for the public to comment

Time frames for the public to comment on documents are not defined in the Regulations. However, the Guideline on Public Participation published by the Department of Environmental Affairs¹¹ says that I&APs must be given reasonable opportunity to comment and a minimum of forty days to comment on draft Basic Assessment, draft Scoping and draft Environmental Assessment Reports. Any notices to I&APs must clearly state the time frame in which to comment.

Often in an EIA process, lengthy technical documentation is produced. It can take a community group some time to read through this, research what is presented and discuss what the implications could be for the community before writing a response.



Write to the EAP/applicant to motivate for extensions of time to properly analyse and comment on documents. If you request additional information make sure that the information arrives well before the comment deadline.



If the EAP/applicant is unwilling to extend the timeframes, you can contact the Authority, which can instruct them to provide longer time frames.

Time for Authorities to consider applications and make decisions

The time that the competent authority has to make decisions on the documents submitted to them is shown in the diagrams for each process. There is an automatic extension of sixty days if the following time frames are not met: accepting and then making a decision on a Basic Assessment Report; making a decision on a Scoping or Amended Scoping Report; and accepting and then making a decision on an Environmental Impact Report. Once this has lapsed the Authority must use the available information to make its decision within 30 days.

Authorities must notify the applicant of their decision within two days. The applicant (who will usually use the EAP) must notify I&APs of the outcome and reasons for the decision, as well as their right to appeal, within twelve days of the decision being made. They must also advertise the decision in all the same newspapers used in the public participation process, with information on where to find the reasons for the decision and notify I&APs that they have a right to appeal.

If you object to an application in relation to any mineral extraction process (including mining, prospecting, reconnaissance, exploration, production or a related activity) the EAP must refer these to the Minister of Mineral Resources as well as the competent authority. These, in turn, are referred to a regional mining development and environmental committee which has forty-five days to make written recommendations to the Minister.

Government departments, other than the Competent Authority, which also administer laws related to the Application, must be given an opportunity to comment on documents in the EIA process. The Department of Water Affairs has sixty days to comment if the application is for waste management activities, for which they must also issue a record of decision in terms of the Waste Management Act, 2008.¹² Other departments have forty days to comment, after which it is assumed that they have no comments.

¹¹ DEA (2010), Public Participation 2010, Integrated Environmental Management Guideline Series 7

¹² in terms of section 49(2) of the National Environmental Management: Waste Management Act, 2008

Bias or incompetence of Environmental Assessment Practitioners

The EAP must have the necessary expertise and knowledge of the legislation to carry out the project. He/she must also be independent and objective in carrying out the EIA process and must give both the applicant and the authorities all information that is relevant to the application, even if it is negative to the applicant.¹³

Often communities feel that EIA practitioners are biased in favour of the developer and do not seriously respond to community inputs. If this is the case, the EIA Regulations make provision for biased practitioners to be removed from the process!



If you have evidence that the EAP managing a process or any of the people undertaking specialist studies and reports are biased or lack the expertise to carry out the work, you can send the decision-making authority a written letter with the evidence. The authority must then investigate the matter and if bias or incompetence is found they can:

- Refuse to accept any reports prepared by the practitioner
- Require the applicant to pay to have any parts of the work redone
- Require an independent review of suspect work at the cost of the applicant
- Require the applicant to take any other action the authorities think is necessary to fix the problem
- Request that the applicant inform anyone registered as an I&AP of decisions by the Authority in relation to this, including if the process is suspended.¹

¹ Reg 18 of the Environmental Impact Assessment Regulations (No R543 June 2010)



Collusion and pro-developer bias on the part of government and consultants has concerned many community groups that have participated in EIA processes. For this reason the SDCEA and other community environmental organisations are lobbying for:

- An ombudsman with whom complaints about unfair process can be lodged.
- An Environmental Assessment Practitioners' roster from which the I&APs could make a first selection of impartial EAPs, rather than the Applicant being in the position to influence the consultant by both choosing and paying the consultants.
- An Environmental Impact Assessment fund established through fees paid by the Applicant but which is administered by government to pay the EAP.

Alternatives to the proposed development

EIA Reg 22 (4) requires written proof of an investigation into alternatives and a motivation for the opinion that no reasonable or feasible alternatives exist.

If the Authority reviews all the information and finds that one of the proposed alternatives is better than the process or site, etc. proposed in the original application, the Authority can approve the alternative without the need for a new EIA process.

¹³ Reg 17 of the Environmental Impact Assessment Regulations (No R543 June 2010)

Case Study: HOSAF Fibres

In 2003 KZN Department of Agriculture and Environmental Affairs authorised an expansion at a major south Durban polluter, textile company Hosaf Fibres, after only the initial scoping phase of an environmental impact assessment had been conducted. The SDCEA appealed the decision with the help of the Legal Resources Centre, as well as arguing for an independent EAP to be appointed rather than the local consultant who was biased towards the company.

The SDCEA, together with partners like groundWork, also sought independent technical advice.

The expansion required more energy resulting in powering up Hosaf's coal-fired boilers to full capacity, which needed 50% more coal to be burnt at the plant. The SDCEA initiated its own campaign to involve people living on the fence-line in monitoring of pollution incidents as well as statistics of respiratory diseases and cancers, which are abnormally high in Hime Street, Wentworth, which is a residential area on the fence-line of the plant. The results were presented as evidence of the harm the factory was causing to the health of the neighbouring community. Sadly this included the death of the secretary of the neighbouring school from asthma.

With the spotlight on the company and immense pressure from fence-line communities, the parties entered into a long negotiation process resulting in a 'Good Neighbour Agreement'. The SDCEA agreed to raise complaints through a forum and withdraw the appeal on condition that Hosaf Fibres agreed to emissions monitoring and an Environmental Management Programme if pollution impacts had worsened.

Through the process Hosaf Fibres was forced to improve the quality of coal it burnt, switch its heavy fuel requirement to Kerosene and eventually convert to cleaner gas burners.



The Minister can...

The Minister of Environment and, in the case of mining applications, the Minister of Mineral Resources, can intervene in development processes to place moratoriums on development or require additional opinions and research before decisions are made. The onus is on the affected communities to raise awareness and lobby the Ministers for action.

For example, a huge public outcry following a campaign using mainstream and social networking media has resulted in a general moratorium on shale gas mining in the Karoo until the Minister of Mineral Resources has conducted an independent investigation.

With enough pressure, the Minister can also hold public hearings in affected communities to hear their concerns firsthand before making a decision on an application or Appeal.

Monitoring ... and suspension of an authorisation

Remember that the approval of an application is not the end of the issue. Once the development goes ahead and begins operation it will be important to monitor its impact. Check that any conditions of the Authorisation and the Environmental Management Programme are being adhered to. While you may not have access to pollution-testing equipment, etc., request access to monitoring reports sent to the Authority.

If you have reason to believe that the operations at the site are negatively impacting your community or the environment, lobby the competent authority to take action!

The Authority can require that the person/company carry out, at their own cost, an environmental audit of any part of the activity that the Authority is concerned about. They can also demand that this report is compiled by an independent person approved by the Authority.¹⁴

¹⁴ Reg 69(2) of the Environmental Impact Assessment Regulations (No R543 June 2010)

The Authority has the power to suspend an Authorisation if:

- Conditions of the Authorisation are not being met
- There is existing or potential harm to the environment or human rights
- An authorisation was fraudulently obtained or applicants lied about information



The effectiveness of post-approval monitoring and control of impacts will depend to a large extent on the strength of the Environmental Management Programme that is approved by the Authority, as this sets the conditions under which the developer must operate.

Make sure that the EMP includes monitoring of emissions related to the development, including:

- Water pollution
- Fugitive air pollution emissions – unintended or irregular emissions that escape from leaking pipes, vents, etc
- Smoke-stack emissions
- Fence-line pollution – what neighbours actually experience drifting over from the development

Monitoring committees

In instances where the development is likely to cause ongoing negative impacts, community feedback and early warning is crucial. In this case, push for a monitoring committee to be established as part of the Environmental Management Programme, which includes representatives from government and affected communities. The issue of monitoring committees and community liaison committees can be quite controversial. In the past, some dangerous industries have bought the participation of community representatives who would support the industry's operations. Community representatives need to be trustworthy, nominated through a democratic process and there should be a mechanism for relaying community issues to them and for them to report back.



Generally, service on a monitoring committee is voluntary. Many feel, however, that the polluter should pay for the transport costs and time community members give to monitoring committee work, if this can be done in a way that wouldn't corrupt the participation of representatives.



The recent Environmental Management: Air Quality Act gives communities an opportunity to hold the Municipality accountable for ensuring that industry is compliant with air quality standards and hopefully this will motivate local governments to be more proactive in EIA processes.

Case Study: Bulbul Drive Hazardous landfill site, Chatsworth

The Bulbul Drive landfill site was opened in 1990 in Chatsworth; an area created by the Apartheid government to relocate people of Indian origin who were forcibly removed to clear the way for industrial development south of the harbour.

Chatsworth residents immediately objected to the imposition of the hazardous waste site, and this developed into a long-running campaign as the toxic fumes worsened causing chronic respiratory illnesses and cancers. In 1997 a portion of the landfill collapsed and the site was closed for a year. Spearheaded by the Silverglen Civic Association, other civic groups, and environmental organisations like groundWork and SDCEA, joined the campaign to put pressure on the government and the operating company to close the dump. Authorities promised the community that the landfill would be closed in five years. However, in a series of subsequent applications, Wasteman attempted to expand the dump, arguing for a closure date as late as 2021! In 2001, the community lobby thwarted Wasteman's plans to build a medical waste treatment facility and the incinerator technology, which had already been bought, was taken to Shongweni. In 2008 the community had to engage in yet another EIA process for a landfill gas-to-energy plant.

Throughout these challenges the community kept up the pressure through participation in the EIA processes, the landfill monitoring committee, as well as by initiating a public campaign to raise the issue in the media through petitions, protest and making use of social networking tools.

The running of the Monitoring Committee was a contentious issue, as Wasteman appointed an incompetent and biased facilitator. Monitoring committee members insisted on the appointment of an alternative facilitator, this time through an open selection process with the whole committee choosing the most qualified and unbiased person in response to applications received through an advertised process.

Vigilant community members also kept an eye on the site to ensure that the company followed the law and complied with permit conditions, reporting on truck traffic and illegal dumping incidents, especially concerning medical waste. In February 2011 one of these watchful neighbours reported unscheduled excavation on the site and tipped off the "Green Scorpions", South Africa's environmental crimes investigation unit, which conducted a raid on the site.

By March of 2011, community activists celebrated as the operating company, Wasteman, made an announcement that they will close the landfill by mid-November.

Don't lose sight of the bigger picture

There are a number of disjunctures between the EIA process and the objective of making environmentally sustainable decisions.

A consistent concern is that the EIA process only looks at the impacts of that individual development, and doesn't sufficiently address the development's contribution within a broader context. For example, a particular project may seem to have a small impact but could be a catalyst development that enables further projects with a far greater impact. (See the N2 Toll Road case study as an example). Individual EIAs seldom address cumulative pollution impacts and, in hot spot areas such as the south Durban basin, the addition of even a small chemical load into an existing chemical soup could result in a host of unpredictable mixes and impacts.

Another concern is the concurrent competencies of the various spheres of government in relation to local developments. Although local government develops the spatial frameworks that define the type of development that should take place in an area, in reality decisions to pursue key developments that shape the future environment and development path are often made at a political level. The new King Shaka airport and the nuclear reactor programme are examples of developments that were promoted politically by national or provincial government over the objection of local government departments. Provincial or National government authorise an EIA but the impacts often require a local government response, and important issues fall through the cracks as a result. The absence of an Emergency Plan in the event of a disaster in south Durban is an example.



Despite the large number of emergencies that occur at many of the facilities in south Durban, there is no emergency plan in place, which means that people are lost and afraid when disasters like the fire pictured above. Involvement in the EIA process can help to see that such plans exist.



Within this political and decision-making context it is important not to become bogged down in the nitty gritty of the EIA process; keep sight of the bigger picture and broaden your campaign to fit the context:

- Unpack how your issue fits into the broader development paradigm, and how your particular struggle might relate to problems that other communities are experiencing in other parts of your city, country or the region.
- Put pressure on the political decision-making process by networking with communities and organisations that empathise with your problems, locally and internationally, to support you in your campaign and to build a coalition around common issues.
- Where necessary lobby the departments in national and local government that need to have an input, for example, Health, Water and Environmental Health, etc.
- Contact the relevant Parliamentary Portfolio Committee and request an opportunity to brief them on your issue.
- Use the media – including TV, print media, radio, web blogs, internet-based news networks, social networking sites, internet petition networks, etc – to build public support for your issue nationally and internationally. Public opinion can influence government as well as companies, especially if they have a public image to maintain with customers and shareholders.

Case Study: Kusile Power Station

In 2010 Eskom approached the World Bank for a 3.75 billion dollar loan, the majority of which will be used to continue building the Medupi Power Station in Lephalale in Limpopo near to the Waterberg coalfields. Medupi will be the 4th largest coal-fired plant in the world and is planned as six units with a total capacity of 4800MW.

The SDCEA joined a coalition of organisations vehemently campaigning against the loan. South Africa is already twenty times more carbon intensive per unit of GDP than the USA, and the additional carbon load from Medupi will make us one of the world's biggest polluters. Eskom and Government claimed that the power station is essential for economic growth to support job creation for the poor. In reality, only thirty-eight industrial corporations, using 40% of South Africa's energy, stand to benefit from the world's cheapest electricity, priced below production cost, while poor communities in south Durban and elsewhere face cut-offs and exorbitant threefold price increases by 2012.

Key environmental organisations, including Earthlife Africa, the SDCEA and groundWork, drew the connections between poverty and the huge debt South Africans would share in repaying, adding to the burdens of climate injustice which are felt more heavily by the poor. Media attention on the issue revealed potential benefits to the ANC through its investment company, Chancellor House, having a shareholding in Hitachi, which was awarded the contract to build boilers for both the Kusile and Medupi power stations. Sixty-five South African and ninety-nine international community-based organisations, NGOs, citizen groups, social movements, environmental groups, academic institutions and trade unions were mobilised to oppose the loan. Networks in the USA rallied to support the South African campaign and organised for representatives to go on a speaking tour in the USA ahead of the World Bank's vote on the issue in Washington. Although the bank approved the loan, the publicity generated in the USA and the pressure brought to bear by international partners resulted in the USA, the UK and the Netherlands abstaining from the vote on environmental grounds.

Resources

Copies of laws

The easiest place to access South African legislation is to download it from the website www.polity.org.za

Government Departments

- National Department of Environmental Affairs
Directorate: Environmental Impact Evaluation
Telephone: 012 310 3230
- KwaZulu Natal Department of Agriculture and Environmental Affairs
Environmental Services
Telephone: 033 355 9100

Legal assistance

- Centre for Environmental Rights has a *Promoting Participation* programme focused on assisting civil society organisations (CBOs) in effective participation in environmental licensing and other decision-making processes, particularly environmental impact assessment (EIA) processes
<http://cer.org.za/programmes/promoting-participation/>

8A Sussex Road, Observatory, 7925, South Africa
Telephone: 021 447 1647
Fax: 086 730 9098
Email: info@cer.org.za

- **Legal Resources Centre**

National office

15th and 16th Floor, Bram Fischer Towers, 20 Albert Street, Marshalltown, Johannesburg
P O Box 9495, Johannesburg 2000
Tel: 011 836 9831
Fax: 011 834 4273

Durban

N240 Diakonia Centre, 20 Diakonia Ave (St Andrews Street), Durban 4001
Tel: 031 301 7572
Fax: 031 304 2823

- **Lawyers for Human Rights**

Environmental Rights Project
Pretoria Office and Law Clinic
Kutlwano Democracy Centre, 357 Visagie Street, Pretoria 0002
Telephone: 012 320 2943
Fax: 012 320 2949 / 320 7681

Hotlines

National Environmental Crimes & Incidents Hotline (24 hours): 0800 205 005

Annex 1:

List of Environmental Impact Assessment processes the SDCEA has engaged in from 2006 - 2010

2006

- N2 toll Road in South Durban (SAN rail) 2006 Proposed
- Installation of an elemental sulphur based plant nutrient facility in Umbogintwini (Chemical Initiatives) 2006
- Dube Tradeport Proposed Airport Project (ACSA) 2006
- Rezoning of Umbogintwini Golf Course to develop a multi-use complex and external Road upgrade (Arbor Town) 2006
- Small Craft Harbour at Vetch's Pier (Brink & Associates) 2006

2007

- Proposed Ashgate Drive Petrol Station in Umbogintwini 2007
- Extension of Berth 10, Island View Port of Durban (Transnet) 2007
- Gas Pipeline at Island View (IVS) 2007
- Teakwood Road Sasol gas Pipeline (Isolyte) 2007
- Proposed Harbour Widening Project (Transnet) 2007
- Proposed upgrade of bay and link road between Edwin Swales and Bayhead Road (Transnet) 2007
- Proposed increase of carbon Dioxide Storage System at Prospecton (SAB) 2007
- Island View Storage Expansion (IVS) 2007
- Proposed Inwabi-link Road Development (Municipality) 2007
- Installation of an additional Monobloc line and new aerosol filling line (DivFood) 2007

2008

- Container Terminal Expansion (Transnet) 2008
- Solvent Recovery unit Installation (Barloworld Plascon) 2008
- Expansion of the Formaldehyde plant at Umbogintwini (Resinkem) 2008
- Vehicle Staging Area at Isipingo (Transnet) 2008
- Flammable liquid Store , Durban Harbour (Transnet) 2008
- New Multi-products Pipeline (Transnet) 2008 - 525km fuel pipeline from Durban to Heidelberg.

2009

- Proposed Fire Fighting Infrastructure at Berth 9 (IVS)
- Durban Central Beachfront Upgrade (eThekweni Municipality)
- Durban Harbour Sand Hopper Reclaim and Bypass Distribution System for Transnet
- Proposed Urban Development Framework Plan Upgrade for Part of the Umlazi Area (eThekweni Municipality)

- N2 Wild Coast Toll Road (eThekweni Municipality)
- Transnet New Multi - Products Pipeline (NMPP), Durban to Gauteng
- Installation of a New Solvent Recovery Plant at Plascon SA, EIA DM/0002/08, South Coast Road, Mobeni (Plascon)
- Proposed Anaerobic Digester (AD) Gas Conversion to Electricity at the SAB Prospecton Brewery, South of Durban, DM/0017/09 (SAB)
- Proposed Installation of New Aboveground Storage Tanks at ICI Dulux (PTY) LTD, Umbogintwini (Dulux)
- Construction of a New Lead Recycling Plant at 245 Lansdowne Road, Jacobs. DM/0184/08 (Associated Additives)
- eThekweni Promenade Extension and Beach Node Developments (eThekweni Municipality)
- Proposed Anaerobic Digester Gas Conversion to Electricity at the SAB Prospecton Brewery, South of Durban (SAB)
- Proposed Extension of a Sasol Gas Pipeline to Toyota Motors, Joyner Road, Durban. DM/0038/09 (Toyota)
- Report for Easigas LPG Storage Facility Upgrade Portion 3 of Portion 1 of Inhlalanzi, No 17391, South Durban Basin. DM/0070/09 (Easigas)
- Report for the Proposed Installation of two Aboveground Storage Tanks at Amalgamated Bulk, Clairwood (Amalgamated Bulk)

2010

- Nodal Development at Isipingo Beach DM/0191/08
- Proposed upgrade of Nitrogen Storage Facilities at Engen Refinery (Engen)
- Proposed Access Road and Signalised Intersection at Lot 401 and Solomon Mahlango Drive, Durban (Transnet)
- Proposed Effluent Treatment Facility upgrade, SAPREF Island View Depot Durban. Reference Number DM/WML/0003/09 (SAPREF)
- Sentrachem Development proposal (Sentrachem)
- Basic Environmental Assessment for the construction of staff facilities at Pier 1, Port of Durban (Transnet)
- Proposed Barrackpur Road emergency stormwater upgrade project, Merebank, KwaZulu-Natal (eThekweni Municipality)
- Proposed Phoenix Project at Island View (Chevron)
- Proposed above ground storage of dangerous goods by Bastec (Pty) Ltd at a site in Umbogintwini Industrial Complex, Dickens Road, eThekweni Municipal area (Bastec)

(Endnotes)

- 1 Department of Environmental Affairs. <http://eiams.environment.gov.za/home/> Accessed 10 May 2011