

Legal compliance auditing and the 2014 EIA regulations

The 2014 Environmental Impact Assessment Regulations (as published in GNR 982 of 4 December 2014) holds an array of new substantive and procedural requirements for legal compliance audit reports compiled in terms of environmental authorisations issued under the Environmental Management Act 107 of 1998.

General requirements

An environmental audit report must be prepared by an independent person with the relevant environmental auditing expertise and provide verifiable findings in a structured and systematic manner. The independence and expertise of the auditor must be documented in the audit report.

Audit scope

All environmental authorisations, Environmental Management Programmes, and where applicable mine closure plans, will in future be subject to compliance auditing. Regulation 26 requires that an environmental authorisation must specify the frequency of the auditing of compliance with the conditions of the environmental authorisation and Environmental Management Programme (EMPr), and where applicable the mine closure plan. The holder of the environmental authorisation must ensure that compliance with the conditions of the environmental authorisation and EMPr and where applicable the mine closure plan is audited at specified frequencies. The holder must also submit an environmental audit report to the relevant closure plan for the period during which the environmental authorisation and EMPr, and where applicable the closure plan remain valid.

Audit objectives

Environmental authorisations, Environmental Management Programmes and where applicable mine closure plans must be audited to determine whether such EMPs and closure plans continuously meet mitigation requirements and address environmental impacts. The environmental audit report must provide findings on the level of performance against and compliance of an organization or project with the provisions of the requisite environmental authorisation or EMP, and where applicable the closure plan. It must also provide findings on the ability of the measures contained in the EMP, and where applicable the closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.

In addition, an audit report must contain a statement by the auditor on the ability of the EMP, and where applicable the closure plan, to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity on an on-going basis or the closure of the facility. Such a statement must also address the ability of the EMP, and where applicable the closure plan, to ensure compliance with the provisions of the environmental authorisation, the EMP, and where applicable the closure plan.

Where new impacts and risks that were not included and assessed in the original EIA occur as a result of undertaking the activity, the audit must also identify and assess these.

Audit criteria

The criteria that will be used during the audit will be the conditions of the environmental authorisation, including the requirements for the avoidance, management, mitigation, monitoring and reporting of the environmental impacts of the activity, in addition to those contained in the EMP and/or closure plan, where applicable, as well as the mitigation actions specified in the EMP and/or closure plan, where applicable.

Audit frequency

According to regulation 26, the frequency of the compliance auditing must be specified in the environmental authorisation, but may not exceed intervals of five years. The environmental authorisation must also specify the frequency of the submission of an environmental audit report to the competent authority, including the timeframe within which a final audit report must be submitted.

Status of audit reports

The format of audit reports is specified in the regulations. Regulation 26 requires that an environmental authorisation must contain a requirement that audit reports and all compliance monitoring reports must be made available to anyone, on request, for inspection and copying at the site of the authorised activity. The environmental authorisation must furthermore require the holder of the environmental authorisation to make the audit report available on a publicly accessible website, where the holder has such a website.

Regulation 34 stipulates that the holder of an environmental authorisation must notify all potential and registered interested and affected parties of the submission of an environmental audit report within 7 days of the date of submission of that report to the competent authority. The holder of the environmental authorisation must also immediately make such a report available to anyone on request, and on a publicly accessible website, where the holder has such a website.

Audit follow-up

Where the findings of the environmental audit report indicate that there has been insufficient mitigation of environmental impacts associated with the undertaking of the activity; or insufficient levels of compliance with the environmental authorisation or EMPr and where applicable the closure plan, the holder must submit recommendations to amend the EMPr or closure plan in order to rectify the shortcomings identified in the environmental audit report. This must be done when submitting the environmental audit report to the competent authority. The regulations require that such recommendations must have been subjected to a public participation process that was appropriate to bring the proposed amendment of the EMPr, and where applicable the closure plan, to the attention of all registered interested and affected parties, including organs of state which have jurisdiction in respect of any aspect of the relevant activity.

Conclusion

Following from the above it is clear that the 2014 EIA regulations require a judgement from auditors on the adequacy of the conditions contained within an EMPr or closure plan to address environmental impacts. Audits must not only evaluate the effectiveness of but also identify the shortcomings in the EMPr, and where applicable the closure plan. They must furthermore identify the need for any changes to the avoidance, management and

mitigation measures provided for in the EMPr, and where applicable the closure plan. Lastly, audits must also identify and assess any new impacts and risks as a result of undertaking the activity that were not included and assessed in the original environmental impact assessment.

Another important addition is the heightened level of transparency required for audit reports in so far as they now become a public domain document. The importance of public input into the amendment process of the EMPr, or where applicable the closure plan, is further emphasized by the public participation requirements for any new amendments to an approved EMPr, or where applicable the closure plan.

