

# **A Governance/Environmental Management Perspective on strengths and weaknesses of single environmental systems**

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# Introduction (1)



## Prof. L Kotze PhD Study (2005)

- **Legal Framework for Integrated Environmental Governance in South Africa and the North-West Province**
- **Principal objective:**
  - ★ to investigate possible solutions to address the problem of fragmentation and
  - ★ to propose a more sustainable strategy to achieve integration of currently fragmented environmental governance efforts in South Africa and the North-West Province



# Introduction (2)

- 🌐 Investigated integrated approaches to environmental governance in the international sphere by way of a comparative study to ascertain whether established solutions for integration of governance efforts are available in practice
- 🌐 **Recommendations:**
  - 🐟 **Short-term scenario**
    - ★ Optimising the existing regime
  - 🐟 **Medium-term scenario:**
    - ★ Procedural integration
  - 🐟 **Long-term scenario:**
    - ★ Establishing a one-stop shop



# The Dutch approach (1)



## Overview

- The Netherlands experienced fragmentation of its environmental governance regime with various challenges essentially resembling those of SA
- Various integration reforms were initiated in the Netherlands by way of their Environmental Management Act, 1993 (EMA)
  - ★ based on the EU Integrated Pollution Prevention and Control Directive (1996) which provides a broad framework for a more integrated environmental governance effort by
    - ➔ establishing integrated authorities and other institutions,
    - ➔ integrated procedures,
    - ➔ integrated legislation, and
    - ➔ utilising various other innovative mechanisms to achieve more streamlined and sustainable governance



# The Dutch approach (2)



## Recommendations

- **Consolidate all the procedural and substantive aspects relating to environmental authorisations**
  - ★ that are currently regulated by various environmental media-specific and sectoral acts, into a single Act;
- **Establish a single, integrated authorisation in terms of this Act,**
  - ★ which applies to all aspects of all environmental media;
- **Remove procedural and substantive mandates from current environmental departments,**
  - ★ and establish a single regulatory authority that is responsible for the execution of this Act;
- **Clearly delineate the relationship and establishing cooperative strategies**
  - ★ between the central authority and other environmental departments in the South African governance sphere;



# The Dutch approach (3)

- ✦ **Establishing support structures for this authority,**
  - ★ such as a comprehensive structure of commenting authorities, to assist the authority in its governance of procedural and substantive issues relating to the environment; and
- ✦ **Utilise more innovative mechanisms to create alignment alongside an integrated authority and Act,**
  - ★ including, general rules, general authorisations, 'umbrella' authorisations and notifications of environmentally-friendly changes to installations,
  - ★ all of which demand fewer requirements and resultant administrative burdens in terms of which
  - ★ industrial installations which have an exemplary record in environmental performance,
  - ★ may be authorised in a more streamlined and time-efficient manner.



# The Finnish approach (1)

Integrated environmental management: on-stop shop



## Overview

- 🐟 **Finland comprehensively revised the legal structure on which its pollution regulation regime is based in 2000**
  - ★ based on an the EU Framework Directive that provides for Integrated Pollution Prevention and Control (IPPC)
- 🐟 **New regime provides for**
  - ★ an integrated environmental authorisation for polluting activities,
  - ★ integrated authorisation procedures and institutions,
  - ★ which result in a more integrated and efficient governance regime.



# The Finnish approach (2)

Integrated environmental management: on-stop shop



## Recommendations

- SA must take cognisance of the various drawbacks inherent to the current fragmented regime
  - ★ should consider addressing fragmentation both in a substantive & procedural sense when embarking on its own reform initiatives
- abolish the multitude of acts currently available for pollution regulation
  - ★ establish a single act that deals with pollution of all environmental media
- establish an integrated authorisation that covers all pollution aspects in an integrated fashion
- abolish the various procedures and processes
  - ★ together with the plethora of authorisations and create a co-ordinated administrative procedure to streamline and fast-track decision-making.





# The Finnish approach (3)

- **address institutional fragmentation by**
  - ★ **either establishing clearly delineated roles, responsibilities and mandates of the various authorities,**
    - ➔ **accompanied by practical procedures for cooperation and coordination, or**
  - ★ **abolishing all existing institutions and**
    - ➔ **creating a single integrated environmental lead agent which will solely be responsible for regulating pollution**
- **consider establishing a specialist scientific authority (as in Finland)**
  - ★ **that can provide technical assistance and expertise to both government departments and industry**



# The Finnish approach (4)

- **consider providing clear guidelines to authorisation applicants**
  - ★ as to what information should be included in applications
- **establish mechanisms similar to the Finnish Monitoring & Environment Loading computer-based Data System**
  - ★ for internal administrative use to facilitate task management and electronic document management and
  - ★ use by various other interested and affected parties for operative monitoring of the authorisation procedure



# Recommendation: One-stop shop

Integrated environmental management: on-stop shop

- 🌍 **Repeal all sectoral legislation,**
  - 🐟 including provisions relating to procedural and substantive aspects
- 🌍 **Establish an integrated act that provides for all environmental governance aspects,**
  - 🐟 both in a procedural and substantive sense;
- 🌍 **Comprehensively reforming the current environmental administration**
  - 🐟 by abolishing all existing environmental governance structures and authorities to provide for a single integrated environmental lead agent responsible for the entire environmental governance effort.



**Governance/Environmental  
Management Perspective**



# "SA One environmental system" (1)

Integrated environmental management: on-stop shop

 **Minister announced one system**

 **Aligned time frames**

 **Reduced**

 **Aligned processes**

 **Implemented by 3 authorities**

 **DEA, DMR, DWS**



# "SA One environmental system" (2)

## Implementation challenges – co-operative governance

### Day timeframes

#### ★ NEMA

- calendar days
- 300 = 10 months

#### ★ NWA

- working days
- 300 = 13+ months

### Water use

#### ★ DMR application form

- Applicants are required to apply for the necessary water use licence and any other authorisations or licences ... as required by the relevant legislation.
- Upon acceptance of an application for a right/permit in terms of the MPRDA, applicants will be required to provide evidence ... that a water use licence has been applied for.



# "SA One environmental system" (3)

## Application processes

### ★ NEMA EIA regs

→ An application for an environmental authorisation may only be submitted after the acceptance of an application for any right or permit in terms of the MPRDA (2002);

### ★ DMR application form

→ This application must be submitted through the SAMRAD online application system of the Department of Mineral Resources under “Other documents to upload”.

→ The RM will respond to the application & provide the reference and correspondence details of the Competent Authority in the event that the application for a right or permit is accepted, together with the date by which the relevant environmental reports must be submitted.

→ Notwithstanding anything that may appear to be stated to the contrary in the acceptance letter, the timeframes are in fact aligned and the prescribed timeframes for the submission of documents as regulated by the NEMA regulations must be strictly adhered to.



# "SA One environmental system" (4)

## Application processes

### ★ Despite reduction in timeframes

→ Government officials are increasing the complexity of EIAs;

- » Having contradicting interpretations & implementation of EIA process
- » Requirement to submit comments from all relevant stakeholders – 15 stakeholders listed – 5 national & 2 provincial depts, local & district municipalities, 5 parastatals & government agencies & 2 NGOs
- » Requirement to include 9 sectoral plans with EMPr
- » Data must be mapped at scale of 1:10 000





# "SA One environmental system" (5)

## 🐟 Application fee

- ★ Payment before the MPRDA application has been accepted

## 🐟 Application (form) detail

### ★ DMR

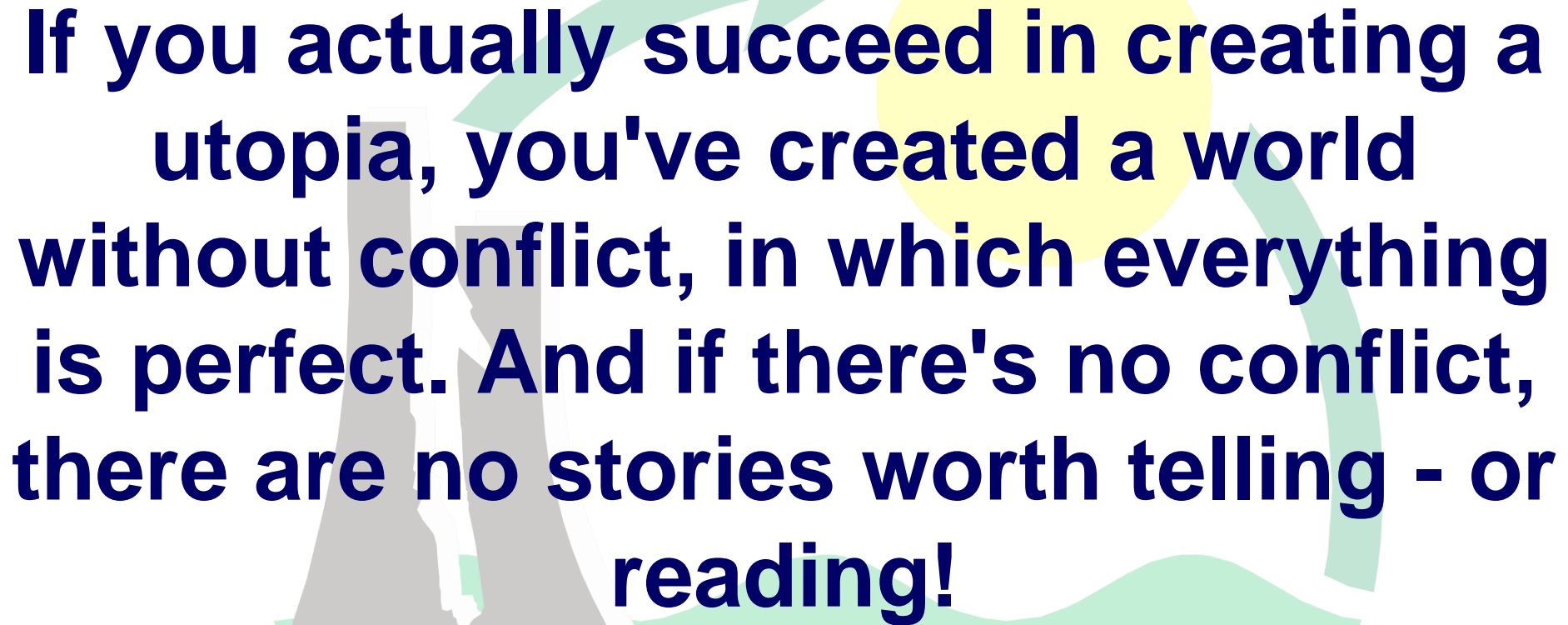
- ➔ For consultation purposes, provide a high level approach to the management of the potential environmental impacts of each of the activities applied for (concept EMPr).
- ➔ In the space provided under each heading below, please provide a high level description of the plan for closure and the information that will be provided in the draft EMPr accompanying draft basic assessment report or environmental impact reports going forward (draft mine closure plan).



# Recommendation: One-stop shop

Integrated environmental management: on-stop shop

- 🌐 **Repeal all sectoral legislation,**
  - 🐟 including provisions relating to procedural and substantive aspects ✓
- 🌐 **Establish an integrated act that provides for all environmental governance aspects,**
  - 🐟 both in a procedural and substantive sense; X
- 🌐 **Comprehensively reforming the current environmental administration** X
- 🌐 **Establish mechanisms similar to the Finnish Monitoring & Environment Loading computer-based Data System** X



**If you actually succeed in creating a utopia, you've created a world without conflict, in which everything is perfect. And if there's no conflict, there are no stories worth telling - or reading!**

Veronica Roth



# Are we creating Utopia?

- 🌍 **Definitely maybe.....**
- 🌍 **But complexities and conundrums  
still exist**
- 🌍 **We still have stories to tell.....**



# Case Study

- 🌐 **HCRW incinerator**
- 🌐 **Authorised under NEMAQA, NEMA and NEMWA as well as Gauteng HCRW regs**
  - 🐟 **NEMWA amended list of activities GNR 718 to GNR 921 (Removal of inter alia incineration as listed activity)**
  - 🐟 **Understood that this would be regulated under NEMAQA GNR 893 Cat 8**



# Case Study

- 🌐 **DEA responds with request for WML**
- 🌐 **Same activities and impacts being regulated under differing authorisations and by different departments.**
  - 🐟 **NEMA= construction and impacts form AEL process**
  - 🐟 **NEMAQA= AEL process**
  - 🐟 **NEMWA= treatment (incineration) and construction**



# So what now?

- 🌍 Perhaps the greatest utopia would be if we could all realize that no utopia is possible; no place to run, no place to hide, just take care of business here and now.

🐟 Jack Carrol



# So what now?

Integrated environmental management: on-stop shop

- 🌍 **Play the game not the man**
  - 🐟 **Plan for the most unlikely eventualities**
- 🌍 **Be prepared to be frustrated in terms of seeking the one stop shop solutions.**
  - 🐟 **Eg Sec 24G alignment**
- 🌍 **Intentions are often forgotten with a strong reliance on a strict and literal reading of the law**





PEOPLE



PLANET



PROFIT



GOVERNANCE

training solutions  
for a  
sustainable future

Questions?



**CEM**  
Centre for Environmental Management