

Briefing

Environmental management regulations on mining

In this month's mining briefing we look at the environmental management regulations in the mining sector in Tanzania. This briefing will focus on:

1. The importance of the environmental management regulations
2. The role that the National Environmental Management Council (the **NEMC**) plays in promoting the enforcement of the environmental management regulations and safety in mining
3. The importance of the Environmental Impact Assessment (**EIA**) in a mining project

Legal basis

The Mining Act 2010 (the **Mining Act**) governs the mining industry in Tanzania.

In relation to the management of the environment, the Mining Act is supported by the Environmental Management Act, 2004 (the **EMA 2004**) and the various environmental management regulations. These include the Environmental Impact Assessment and Audit Regulations, 2006 (the **EIA Regulations**), the Mining (Environmental Management and Protection) Regulations, 1999 (the **EMP Regulations**) and the Mining (Safe Working and Occupation Health) Regulations, 1999 (the **SWOH Regulations**), which set out specific rules on the procedure for an EIA, the management and protection of the

environmental and the health and safety of workers and the public on mining sites respectively.

The Regulations

The EIA Regulations set out the specific procedure that needs to be followed when submitting an EIA prior to commencing work on a project. In determining whether a full EIA is required, the first schedule to the EIA Regulations contains the classification details for Type A and Type B projects.

Type A projects will be deemed to have a significant adverse impact on the environment and will require a full EIA to be conducted.

Conversely, Type B projects are those that are deemed unlikely to have a significant impact on the environment and, as a result, will only require a preliminary EIA. During the screening process following the submission of a project brief, the NEMC will determine whether a project should be classified as Type A or Type B.

The EMP Regulations provide for the sustainable management of the environment in a mining site. As will be discussed below, the EMP Regulations set out the importance of including the EIA and the

Environmental Management Plan (**EMP**) in all mineral rights applications for special mining licences, mining licenses and gemstone mining licences. Furthermore, the EMP Regulations provide for specific mine closure procedures upon completion of a mining project to ensure that the closure of mines is done with the least possible negative impact on local communities.

The SWOH Regulations relate to safety precautions that must be observed while on a mine site. Section 19 of the SWOH Regulations provides that no person, in or about a mine, should cause or permit any other person to use anything which is unsafe, to work in a place which is unsafe and to do any act which may cause undue risk to any person. Furthermore, section 48 of the SWOH Regulations provides that the manager of the mine must take all reasonable and practicable measures to ensure that the workplace is free of potentially hazardous agents and conditions which adversely affect the safety, health or well-being of workers and the public.

The role of the NEMC

The NEMC was established in 1983 when the Government of Tanzania (**GoT**) enacted the National Environmental Management Act No. 19 of 1983 (the **EMA 1983**). The establishment of the NEMC was in response to the need for such an institution in Tanzania to oversee environmental management issues.

The EMA 2004 repealed the EMA 1983 re-establishing NEMC to give it the mandate to undertake a variety of activities in the promotion, enforcement and monitoring of environmental impact assessments, in the facilitation of public participation in environmental decision-making, and in raising environmental awareness and collecting and disseminating environmental information (section 17 of the EMA 2004).

Much of the environmental degradation in mining sites is caused by the use of mercury which pollutes water sources and has an adverse effect on the health of the workers and the community at large. To minimise pollution arising from the mining sector, the National Environmental Policy, 1997, provides for the following:

- (a) That the overall project cycle of mining (including reclamation and restoration of land after use) is to be adequately managed to minimise adverse environmental impacts
- (b) That mining discharges to ground and water is to be controlled
- (c) That preventative and clean-up measures for accidents are to be formulated and implemented
- (d) That air pollution from mining areas are to be controlled
- (e) That strict regulations are to be put in place to control the use of mercury in mining activities
- (f) That regular and periodic environmental audits are to be maintained to ensure the adoption of environmentally sound practices in mining operations

Furthermore, section 12 of the EMP Regulations provides that no licensee is to cause or knowingly permit any unauthorised pollution from a mine. In the event that this occurs, section 13 of the EMP Regulations provides that the licensing authority should direct the mine to implement a program of action within a specified period, and to observe certain conditions during that period so as to prevent any further occurrence of unauthorised pollution. If such conditions are not adhered to the licensing authority has been granted power under section 14 of the EMP Regulations to impose more stringent standards and criteria so as to protect the environment.

The NEMC requires mining companies to adhere to the abovementioned policies and regulations. In its implementation of these policies the NEMC continues to promote public awareness on the importance of mitigating the effects of damage to the environment.

The Environmental Impact Assessment (EIA)

An EIA is a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment (section 2 of the EIA Regulations). An EIA is carried out in order to ensure that the likely effects of new developments are taken fully into account before the development is allowed to go ahead.

An EIA is conducted under the provisions of the Mining Act, the EMA 2004 and the EIA Regulations with overall management by the NEMC. Under section 81 of the EMA 2004 any person, being a proponent or a developer of a project, such as a mining project, to which an EIA is required by law must undertake, at his own cost, an EIA study.

An EIA covers the period commencing at the initial concept of the project and runs through implementation to completion. Once the EIA has been completed, section 33 of the EIA Regulations provides that the minister responsible for matters relating to the Environment will review the EIA and make a decision stating whether the EIA is approved, not approved, or approved subject to the developer meeting specified conditions. Subsequently, section 34 of the Regulations provides that where the minister approves an EIA he will issue an EIA certificate.

It is important to note that a permit or licence issued by the Minister for Mining (the Minister) in relation to a mining project in accordance with the law shall not in itself entitle the developer to undertake the project or activity without an EIA certificate issued under the EMA 2004.

Section 4 of the EMP Regulations provides that an EIA must accompany all applications for special mining licences, mining licences, and gemstone mining licences. As such, the applicant will have to submit for approval an Environmental Management Plan (**EMP**), which takes proper account of the EIA, to the Minister.

Section 6 of the EMP Regulations provides that where it appears to a licensing authority that an applicant for a special mining licence, a mining licence, or a gemstone mining licence has not included an EIA and an EMP with his application then the Minister will notify the applicant within three weeks of his application that an EIA or EMP has not been included.

Following such a notification, if the applicant does not comply with the requirement the application will be rejected at the end of the three week period.

Mining Events in Tanzania Tanzanian Explorers Club

The Tanzanian Explorers Club (**TEC**) is for people working in, or affiliated with, the Tanzanian mineral exploration sector and provides an informal environment to facilitate networking within the industry and information sharing between key participants in the Tanzanian mining sector. If you are interested in joining the next TEC meeting please email Clyde & Co's mining team to find out further details.

Contact us

This monthly briefing is prepared for clients and contacts of Clyde & Co operating in the mining sector in Tanzania. We aim to keep our clients abreast of developments in the sector as they happen and if you have any questions on the issues raised above please contact us using the details provided:

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Conclusion

As can be seen, the GoT has ensured that environmental policies and regulations are enacted for the prevention, reduction, control and elimination of damage to the environment. The EIA is particularly important as it provides a mandatory procedure to be followed before the implementation of a project that could potentially cause an adverse effect to the environment. Likewise, the NEMC continues to promote the minimization of risk from the generation, management, transportation, handling and disposal of hazardous wastes in mining sites in Tanzania providing for more stringent consequences when environmental procedures are not followed.