

QUALITY AND PROTECTION	BIODIVERSITY AND CONSERVATION	MARINE AND COASTAL MANAGEMENT
<b>SPECIFIC LEGISLATION</b>		
<ul style="list-style-type: none"> <li>Waste Management Bill (2006)</li> <li>Environmental Impact Assessment Regulations (2006)</li> <li>Air Quality Management Act (2005)</li> <li>Air Pollution Prevention Act (1965)</li> </ul>	<ul style="list-style-type: none"> <li>Regulations for the Proper Administration of Special Nature Reserves, National Parks and World Heritage Sites (2005)</li> <li>Biodiversity Act (2004)</li> <li>Protected Areas Act (2003)</li> <li>World Heritage Convention Act (1999)</li> <li>National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004); Threatened or protected species regulations (2007)</li> </ul>	<ul style="list-style-type: none"> <li>Marine Living Resources Act (18 of 1998) and Amendment (2000)</li> <li>Regulations Regarding Activities in Various Sensitive Coastal Areas (Notices of 1996 and 1998)</li> <li>Antarctica Treaties Act (60 of 1996)</li> <li>General Policy for the Control of Off-Road Vehicles in the Coastal Zone (Notice 858 of 29 April 1994)</li> <li>Sea Fisheries Act (12 of 1988)</li> <li>Marine Pollution Act (Control) and Liability (16 of 1981)</li> <li>Dumping at Sea Control Act (73 of 1980)</li> </ul>
		<ul style="list-style-type: none"> <li>Dumping at Sea Control Act (73 of 1980)</li> <li>Sea Birds and Seals Protection Act (46 of 1973)</li> <li>Sea-Shore Act (21 of 1935)</li> </ul>

### 3.2 INTERNATIONAL CONVENTIONS APPLICABLE TO DEAT

South Africa has ratified a number of international environmental conventions, which require implementation by DEAT (see Table below). Where applicable, environmental management policies, legislation and programmes reflect the principles and targets reflected in these international agreements.

INTERNATIONAL CONVENTIONS RATIFIED/ACCEDED TO BY SOUTH AFRICA
<b>QUALITY AND PROTECTION FUNCTION</b>
<ul style="list-style-type: none"> <li>Agenda 21 – Rio Convention</li> <li>Convention for the Protection of the Ozone Layer</li> <li>Convention on Prior Informed Consent (PIC)</li> <li>Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and Disposals (Basel Convention)</li> <li>Kyoto Protocol</li> <li>Montreal Protocol on Substances that Deplete the Ozone Layer</li> <li>Persistent Organic Pollutants (POP's)</li> <li>United Nations Framework Convention on Climate change</li> </ul>
<b>BIODIVERSITY AND CONSERVATION FUNCTION</b>

<b>INTERNATIONAL CONVENTIONS RATIFIED/ACCEDED TO BY SOUTH AFRICA</b>
<ul style="list-style-type: none"> <li>• Biosafety Protocol</li> <li>• Convention on Biological Diversity (CBD)</li> <li>• Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)</li> <li>• Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)</li> <li>• Convention on Wetlands (Ramsar Convention)</li> <li>• United Nations Convention to Combat Desertification (UNCCD)</li> <li>• World Heritage Convention</li> </ul>
<b>MARINE AND COASTAL MANAGEMENT FUNCTION</b>
<ul style="list-style-type: none"> <li>• Agreement for the Implementation of the Provisions for UNCLOS Relating to Management and Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks</li> <li>• Antarctic Treaty</li> <li>• Convention on Biological Diversity in Marine and Coastal Habitats</li> <li>• Convention on Biological Diversity: Jakarta Mandate (CBD)</li> <li>• Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters (London Convention)</li> <li>• FAO Conduct of Responsible Fishing</li> <li>• MARPOL: Particularly Sensitive Sea Areas</li> <li>• Protocols under the Abidjan and Nairobi Conventions/ SADC Protocol</li> <li>• UNESCO: Biosphere Reserves</li> <li>• United National Law of the Sea Convention (UNCLOS)</li> <li>• World Heritage Sites</li> </ul>

#### **4. OVERVIEW OF CO-OPERATIVE GOVERNANCE ARRANGEMENTS FOR ENVIRONMENTAL MANAGEMENT FUNCTIONS**

This section provides an overview of institutional arrangements including structures, procedures and mechanisms implemented by DEAT to facilitate co-ordination and co-operation with national, provincial and local government departments and environmental stakeholders.

The Constitution has created the framework for environmental governance in South Africa, by:

- Creating the right to an environment that is not harmful to health and well-being.
- Balancing the right to have the environment protected, with an emphasis on promoting valid economic and social development.
- Allocating environmental functions to a wide range of government agencies, in all spheres.
- Requiring co-operation between government agencies and spheres.

A key objective of the National Environmental Management Act is to establish institutions that promote co-operative environmental governance, and procedures for coordinating environmental functions exercised by all organs of state.

As lead agent in environmental governance, DEAT is responsible for:

- Establishing national environmental norms and standards.
- Ensuring compliance with national policy, laws, norms and standards on environmental management.
- Establishing procedures to review the environmental impacts of all government policies, plans and programmes.

- Ensuring compliance with environmental norms and standards.
- Facilitating co-ordination of environmental functions of organs of state.

#### 4.1 STRUCTURES FOR COORDINATION AND COOPERATION WITH NATIONAL AND PROVINCIAL GOVERNMENT DEPARTMENTS

##### Directors-General Clusters

The main programmes of the Department are integrated into various Directors-General cluster programmes and priorities, which allows for the integrated implementation of DEAT programmes in clusters made up of national departments.

DG CLUSTER	INTEGRATED IMPLEMENTATION OF DEAT ENVIRONMENTAL MANAGEMENT PROGRAMMES IN CLUSTERS
Economic and Employment	<ul style="list-style-type: none"> <li>• Promulgation and implementation of the new EIA Regulations in terms of NEMA</li> </ul>
International Relations, Peace and Security (IRPS)	<ul style="list-style-type: none"> <li>• World Summit on Sustainable Development follow-up</li> <li>• NEPAD and SADC Environment Programmes</li> <li>• Transfrontier Conservation Areas</li> </ul>
Social Sector	<ul style="list-style-type: none"> <li>• Ensuring sustainable livelihoods</li> <li>• Integrated Sustainable Rural Development and Urban Renewal Programmes</li> <li>• Municipal Infrastructure Grant expenditure</li> <li>• Access to basic services (waste management – backlogs)</li> <li>• Coordination of environmental planning across the three spheres of government</li> </ul>
Governance and Administration	<ul style="list-style-type: none"> <li>• Local Government Focus               <ul style="list-style-type: none"> <li>- Local Economic Development (SRPP projects)</li> <li>- Project Consolidate</li> <li>- Improved Basic Service Delivery (waste management)</li> <li>- Support to Local Government</li> <li>- Credible Integrated Development Plans (IDPs) and implementation of five-year strategy for local government</li> </ul> </li> <li>• Organisation of State (Inter-governmental relations; integrated service delivery; Batho Pele)</li> <li>• Integrated monitoring and evaluation system</li> </ul>
Justice, Crime, Peace and Security (JCPS)	<ul style="list-style-type: none"> <li>• Compliance and enforcement of environmental laws</li> <li>• Trans-frontier Conservation Areas</li> </ul>

The need has been identified by DEAT for a Director-General Cluster that focuses on the environment to ensure integration of environmental issues into the policies and programmes of all three spheres of government.

##### Committee for Environmental Coordination (CEC)

The Committee for Environmental Coordination was established through Chapter 2 of NEMA and was intended to provide national and provincial government departments with a structure for co-ordination on high profile government initiatives including the National Strategy for Sustainable

Development, preparations for annual sessions of the United Nations Commission on Sustainable Development, and activities under various other international environmental instruments.

The CEC has not been functional since the end of 2004 for the following reasons:

- It has been experiencing difficulties regarding its strategic functioning. The committee's discussion items are not strategic and the agenda is often driven by DEAT, rather than by members of the CEC.
- The level of attendance at the CEC is mostly of lower ranks as opposed to Directors-General and Heads of Departments of relevant departments and provinces whose functions have managing and impacting effects on the environment.
- This led to a poor functioning of the committee often with no mandate for effective decision-making on issues of co-operative environmental management and that has led the committee to an information sharing session rather than a decision making body.
- Poor undefined relationship including links between CEC and the Cluster system has also emerged as a problem in uplifting the general strategic functioning of the committee.

A review of the CEC was commissioned in 2006 and the amendments of NEMA Chapter 2 are still underway to be approved by the Minister for submission to cabinet by July 2008.

The status of the CEC sub-committees is as follows:

- Law Reform sub-committee – functioning
- EIP and EMP sub-committee – functioning
- Biodiversity and Heritage sub-committee – has not functioned for the past two years

#### *Law Reform Sub-Committee*

The law reform sub-committee is required to give effect to the CEC's law reform function, and has adopted criteria, conditions and a process for referring legislation to the CEC in terms of sections 7(3)(h) and 24(4) of NEMA.

Important functions of the CEC in respect of law reform include:

- Section 7 (3) (h): Endeavoring to ensure compliance with the principles in section 2 by making recommendations, requiring reports from its members and advising government on law reform
- Section 24 (4): Evaluation of the regulations on impact management procedures, prescribed under section 24 (3) b) of the Act. The Committee's brief is described in section 24 (4).

#### *EIP/EMP Sub-Committee*

The EIP/EMP sub-committee gives effect to the CEC's environmental management and implementation plan function. It scrutinizes every EIP and EMP and makes recommendations to the CEC on adoption or the extent to which the EIP/EMP fails to comply with NEMA principles; the purpose and objectives of EIPs; and any relevant EMP. This sub-committee has developed guidelines for the evaluation of the content of EIPs and EMPs.

MINTEC

Interaction with the provinces takes place through the MINTEC and its working groups. Provincial departments also participate in a range of function specific structures and projects. MINTEC is a structure set up to facilitate co-ordination between the National Department of Environmental Affairs and Tourism, and Provincial Environmental departments.

Four Working Groups have been established under the Environment MINTEC as follows:

- Biodiversity and Heritage
- Impact management (including pollution and waste management)
- Sustainable development (including Agenda 21 implementation, environmental monitoring and reporting, and environmental capacity building)

Specific Environmental Management Function Structures

The following table provides information on the structures used by specific functions in DEAT to facilitate cooperation and coordination with national and provincial stakeholders in the implementation of environmental policies, legislation and programmes.

FUNCTION	STRUCTURES FOR ENGAGEMENT WITH NATIONAL AND PROVINCIAL DEPARTMENTS
<b>QUALITY AND PROTECTION</b>	
Environmental Impact Management	<ul style="list-style-type: none"> <li>• National departments:               <ul style="list-style-type: none"> <li>- Participation in the cluster system, with relevant task teams and working groups</li> <li>- Coordination forum with the department of Public Enterprises which is from an EIA perspective DEAT's main client (highest proportion of EIA applications)</li> <li>- Section 6 (NEMA EIA Regulations 2006) and other cooperation agreements with following national departments/State Owned Enterprises are in the process of being developed: Department of Minerals and Energy; Department of Water Affairs &amp; Forestry; and National Nuclear Regulator (NNR).</li> </ul> </li> <li>• National and Provincial departments:               <ul style="list-style-type: none"> <li>- Mining-EIA task team</li> </ul> </li> <li>• Provincial departments:               <ul style="list-style-type: none"> <li>- MINMEC, MINTEC and MINTEC working groups – especially Working Group 2 where EIM has a dedicated workplan</li> <li>- EIA Regulation implementation workshops. These are held with provinces on a quarterly basis to discuss implementation issues.</li> </ul> </li> </ul>
Air Quality Management & Climate Change	<ul style="list-style-type: none"> <li>• The National and Provincial Air Quality Officers Forum forms part of MINTEC Working Group 2; established in 2006 and meets quarterly.</li> <li>• Air Quality Coordinating Forum. An annual conference for national, provincial and local government officials dealing with air quality issues. Provides an opportunity for capacity building.</li> </ul>
Pollution and Waste Management	<ul style="list-style-type: none"> <li>• National Task Team in Human Settlement and free basic services coordinated by Departments of Housing and Water Affairs</li> <li>• Municipal Infrastructure Task Team coordinated by DPLG</li> <li>• Mintech Working Group II coordinated by DEAT</li> <li>• Expanded Public Works Programme</li> </ul>

FUNCTION	STRUCTURES FOR ENGAGEMENT WITH NATIONAL AND PROVINCIAL DEPARTMENTS
Regulatory Services	Consultation with provinces and other organs of state in which Environmental Management Inspectors are designated (SANPARKS, all provincial parks entities) take place in the Working Group IV: Compliance and enforcement.
<b>BIODIVERSITY AND CONSERVATION</b>	
Biodiversity Conservation & Resource Use	<ul style="list-style-type: none"> <li>Working Group 1 (WG1) (Biodiversity and Heritage) deals with biodiversity issues and is composed of officials of DEAT, provincial authorities responsible for biodiversity conservation and entities (SANParks and SANBI). This structure reports to MINTEC.</li> </ul>
<b>MARINE AND COASTAL MANAGEMENT</b>	
Integrated Coastal Management	<ul style="list-style-type: none"> <li>A National Coastal Committee is planned, not yet in place.</li> <li>Provincial Coastal Committees are in place in four provinces (Western Cape; Eastern Cape; Northern Cape; and KwaZulu-Natal) and meet quarterly. These Committees consists of DEAT, provincial environment departments, DWAF and Department of Agriculture.</li> </ul>
Monitoring, Control and Surveillance	<ul style="list-style-type: none"> <li>Operational commitments with SANDF (Airforce; SA Navy and SAPS involving the Waterwing and the Special Task Force)</li> <li>Operational commitments with SANParks; SARS; NPA and AFU</li> <li>Operational commitments with SAMSA</li> </ul>
Research, Antarctica and Islands	<ul style="list-style-type: none"> <li>Provides an internal service to Marine and Coastal Management and does not have formal structures for engagement with other national or provincial departments.</li> </ul>

#### Intra-departmental Cooperation

The '4-D' structure provides a forum for interaction between the Department of Environmental Affairs Director-General; Deputy Directors-General; and Chief Directors to discuss and make decisions on crosscutting policy issues.

#### **4.2 STRUCTURES FOR COORDINATION AND COOPERATION WITH LOCAL GOVERNMENT**

National and provincial departments address local government issues through the Governance and Administration DG Cluster. Some functions in DEAT have developed structures to engage with local government to facilitate cooperation and coordination in the implementation of specific environmental policies, legislation and programmes. The following table provides information on these structures.

FUNCTION	STRUCTURES FOR ENGAGEMENT WITH LOCAL GOVERNMENT
<b>QUALITY AND PROTECTION</b>	
Environmental Impact Management	<ul style="list-style-type: none"> <li>Currently no formal linkages with local government.</li> </ul>
Air Quality Management & Climate Change	<ul style="list-style-type: none"> <li>Air Quality Coordinating Forum. An annual conference for national, provincial and local government officials dealing with air quality issues. Provides an opportunity for capacity building.</li> <li>Provinces have Provincial Air Quality Officers Forums that engage municipalities in service delivery coordination and compliance monitoring.</li> </ul>
Pollution and Waste Management	<ul style="list-style-type: none"> <li>Currently no formal structure with local government for coordination.</li> </ul>

FUNCTION	STRUCTURES FOR ENGAGEMENT WITH LOCAL GOVERNMENT
Regulatory Services	<ul style="list-style-type: none"> <li>• Consultation on national environmental compliance and enforcement projects takes place jointly with provinces and municipalities on a project basis.</li> </ul>
<b>BIODIVERSITY AND CONSERVATION</b>	
Biodiversity Conservation & Resource Use	<ul style="list-style-type: none"> <li>• There are no formal linkages with municipalities; however, some programmes include officials of municipalities. The South African Local Government Association (SALGA) was one of the major stakeholder groups during the development of the National Biodiversity Strategy and Action Plan (NBSAP).</li> </ul>
<b>MARINE AND COASTAL MANAGEMENT</b>	
Integrated Coastal Management	<ul style="list-style-type: none"> <li>• The Marine Living Resources Act requires the establishment of Local Coastal Management Committees. Provincial MEC's are required to ensure this happens.</li> </ul>
Monitoring, Control and Surveillance	<ul style="list-style-type: none"> <li>• MOUs with Swellendam, Lamberts Bay and West Coast Municipalities to assist with enforcement functions</li> </ul>
Research, Antarctica and Islands	<ul style="list-style-type: none"> <li>• Provides an internal support service to Marine and Coastal Management and does not have formal structures for engagement with other national or provincial departments.</li> </ul>

#### 4.3 STRUCTURES FOR COORDINATION AND COOPERATION WITH NATIONAL ENVIRONMENTAL STAKEHOLDERS

##### National Environmental Advisory Forum (NEAF):

The National Environmental Management Act (NEMA) recognises the establishment of the National Environmental Advisory Forum (NEAF) as the National Environmental Advisory Forum that is established to advise the Minister on any matter concerning environmental management and governance, specifically the setting and achievement of objectives and priorities for environmental governance, and appropriate methods of monitoring compliance with the principles set out in section 2 of the Act. The Forum will also inform the Minister of the views of the stakeholders regarding the application of the principles set out in section 2 of the Act.

The role of NEAF is to:

- Inform the Minister of Environmental Affairs and Tourism (the Minister) of the views of stakeholders, and/or experts, regarding the application of the principles set out in section 2 of the Act;
- Advise the Minister on any matter concerning environmental management and governance, specifically the setting and achievement of objectives and priorities for environmental governance as well as appropriate methods of monitoring compliance with the principles set out in section 2 of the Act. A sub-committee of NEAF deals with air quality issues;
- On its own initiative, and after consultation with the Director-General, draw the Minister's attention to any matter concerning environmental management requiring attention; and,
- Consider any matter that the Minister may refer to the Forum.
- Provides an important vehicle for the engagement of the Minister with stakeholders on environmental matters.
- Provide possible solutions to environmental governance and management issues that may arise through their special expertise and knowledge.

- Advise the Minister on the development of environmental policies and legislation, international engagement issues and the application of the principles of Section 2 of NEMA.
- Influence and contribute to national positions with regard to international environmental agreements. These positions may form the basis of certain international negotiations.

The Forum consists of fifteen members appointed by the Minister and representing stakeholders from organised labour, organised business, non-governmental organisations and community-based organisations, and persons that have experience, expertise or skills necessary to enable the Forum to carry out its functions. Consideration was also given to the appointment of women and youth, and ensuring representation of vulnerable and disadvantaged persons.

#### 4.4 PROCEDURES AND MECHANISMS FOR CO-OPERATIVE ENVIRONMENTAL GOVERNANCE AND SUSTAINABLE DEVELOPMENT

The Department is implementing a coherent and strategic process of planning for co-operative environmental governance, and setting and monitoring of targets for sustainable development. Key components of this system include:

- Co-ordination of environmental functions across all spheres of government. This is achieved through the Environmental Implementation and Management Plans, provided for in chapter 3 of NEMA.
- Setting and monitoring of targets for sustainable development. The draft National Strategy for Sustainable Development is currently being prepared as part of South Africa's commitment to implementing the 2002 Johannesburg Plan of Implementation (JPOI). Sustainable development targets are monitored through the Annual Performance Report on Sustainable Development
- Integration of environmental targets in local government plans.
- Integrated environmental management.

##### 4.4.1 Co-ordination of Environmental Management Functions

The Environmental Implementation and Management Plans are central to the system that promotes co-operative governance. Their purpose is to co-ordinate and harmonise the environmental policies, plans and programmes of organs of state, and to provide a basis for monitoring performance on environmental sustainability targets.

Scheduled departments and provinces whose activities impact on the environment, or whose activities involve the management of the environment gazetted their First Edition EIPs/EMPs between 2001 and 2003:

Departments Impacting on the Environment	Date Gazetted
Agriculture	15 May 2002
Defence	16 February 2002
Environmental Affairs and Tourism	28 March 2002
Housing	16 March 2001
Land Affairs	July 2000
Trade and Industry	28 March 2002
Transport	13 Décembre 2002



Water Affairs and Forestry	14 December 2001
<b>Departments Managing the Environment</b>	<b>Date</b>
Environmental Affairs and Tourism	28 March 2002
Health	March 2003 (adopted). Date of gazetting was never provided to DEAT)
Labour	27 May 2002
Land Affairs	July 2000
Minerals and Energy	23 February 2001
Water Affairs and Forestry	14 December 2001
<b>Provinces</b>	<b>Date</b>
Eastern Cape	26 September 2003
Free State	13 December 2002
Gauteng	22 February 2002
Kwa Zulu Natal	July 2004
Mpumalanga	1 November 2001
North West	10 April 2003
Northern Cape	23 February 2001
Northern Province	15 May 2002
Western Cape	4 November 2002

It took a period of three years for the submission, review and gazetting of twenty EIPs/EMPs by the CEC EIP/EMP Sub-Committee.

Some departments and provinces are in the process of preparing their second edition EIMPs. Guidelines were developed by DEAT to facilitate the development of these plans.

In terms of the National Environmental Management Act No. 107 of 1998, section 16, DEAT is required to monitor compliance by national departments and provinces to their EIPs or EMPs. These organs of state are required to report annually to the DG of DEAT and the CEC within 4 months of the end of its financial year on the implementation of its adopted EIP or EMP

In addition, each provincial government must ensure that each municipality within its province complies with the relevant provincial EIP. Municipalities must adhere to the relevant provincial EIPs and EMPs and the principles contained in section 2 in the preparation of any policy, programme or plan, including the establishment of integrated development plans and land development objectives

Annual Reports on progress made in implementing these plans were provided by all Departments and provinces, where required, for the 2002/03 and 2003/04 financial years. Only four Annual Reports were submitted for the 2004/05 and 2005/06 financial years: Western Cape, North West, Trade and Industry and Land Affairs. Some departments have completed the implementation of their first edition EIPs/EMPs and have nothing further to report; they are in the process of preparing their second edition plans. For other departments and provinces, one of their main challenges in submitting annual reports is limited capacity and high staff turnover and loss of institutional memory about the purpose and content of EIMPs. DEAT has agreed to provide technical assistance to provincial departments to prepare their Annual Reports, where required.

#### **4.4.2 Setting Targets for Sustainable Development and Monitoring Performance**

In 2006, a draft Strategic Framework for Sustainable Development in South Africa was developed by DEAT. The purpose of this Framework is to make known South Africa's (including government, business and civil society) vision for sustainable development and to indicate its intended interventions to reorientate South Africa's development path toward sustainability.

The framework does not present detailed strategies or actions but rather proposes a framework that includes a national vision, principles, trends, strategic priority areas and a set of implementation areas that will enable and guide the development of a national strategy and action plan.

It describes in broad terms how the existing activities of government and its social partners will be strengthened, refined and realigned in a phased manner to achieve inter-related sustainable development goals relating to the economy, society and the environment, and how governance systems will be capacitated to facilitate this process.

#### **4.4.3 Integration of Environmental Targets in Local Government Plans**

All spheres of government are responsible for environmental management functions. Local governments' role in this respect is described in both the Constitution and the Municipal Systems Bill as providing environmentally sustainable service delivery and promoting a safe and healthy environment within the municipal area. In practice, this means that local government is responsible for:

- Implementing the environmental policies, plans and programmes of national and provincial government.
- Ensuring alignment between local government Integrated Development Plans (IDPs) and Provincial Environmental Implementation Plans.
- Ensuring that IDPs comply with NEMA principles.

In 2003 DEAT developed a toolkit to assist local governments to integrate sustainability issues, including Agenda 21, into the IDP process. This toolkit was piloted in three municipalities to assess implementation requirements and identify gaps. However, the Integrated Development Planning (IDP) hearings held by the Department of Provincial and Local Government (DPLG) highlighted the lack of the incorporation of environmental issues into the IDPs as well as some of the key problems and challenges faced by municipalities in environmental management and local economic development.

The environment sector, through MINTEC, has started to develop a common approach to address some of the critical and immediate issues that were raised during the hearings. Apart from the more immediate interventions identified through the IDP hearings, and the subsequent Municipal Izimbizos that are being held across the country, this process also highlighted the following issues: