

BERTHS 203 TO 205 EIA EXPANSION - ENVIRONMENTAL MONITORING COMMITTEE (EMC)

EMC Terms of Reference

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Draft

Prepared for: Transnet



Environmental, Social and OHS Consultants







P.O. Box 1673
Sunninghill
2157

147 Bram Fisher Drive
Ferndale
2194

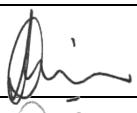

Tel: 011 781 1730
Fax: 011 781 1731
Email: info@nemai.co.za

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Client:	Transnet			
		031 361 1698		237 Mahatma Gandhi Rd, DURBAN, 4001
		031 361 1799		P.O. Box 72501 PARKVIEW 2122
		Andre.Ras@transnet.net		
Client Representative:	Andre Ras			

Prepared By:	Nemai Consulting			
		+27 11 781 1730		147 Bram Fischer Drive, FERNDALE, 2194
		+27 11 781 1730		
		nickyn@nemai.co.za		
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Authorisation	Name	Signature	Date
Author:	D Naidoo		04/05/15
Reviewed By:	D Henning		07/05/15

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List of Abbreviations

DEA	Department of Environmental Affairs
DWS	Department of Water and Sanitation
EA	Environmental Authorisation
ECO	Environmental Control Officer
EIA	Environmental Impact Assessment
EIR	Environmental Impact Report
EMC	Environmental Monitoring Committee
EMPr	Environmental Management Programme
IAP	Interested and Affected Party
NEMA	National Environmental Management Act
NGO	Non-Governmental Organisation
ToR	Terms of Reference

Definitions

Environmental Control Officer	The environmental practitioner tasked with monitoring compliance with the EMPr during the construction phase of a project.
Interested and affected parties (IAPs)	Individuals, communities or groups, other than the proponent or the authorities, whose interests may be positively or negatively affected by a proposal or activity and/or who are concerned with a proposal or activity and its consequences. These may include local communities, investors, business associations, trade unions, customers, consumers and environmental interest groups. The principle that environmental consultants and stakeholder engagement practitioners should be independent and unbiased excludes these groups from being considered stakeholders.
Environmental Authorisation (EA)	The EA is the written decision issued by the environmental authority after the conclusion of the EIA process. The EA contains information explaining the written approval or rejection of a particular project. If approval is granted, the EA contains the conditions under which the project should be implemented.
Stakeholders	A sub-group of the public whose interests may be positively or negatively affected by a proposal or activity and/or who are concerned with a proposal or activity and its consequences. The term therefore includes the proponent, authorities (both the lead authority and other authorities) and all IAPs. The principle that environmental consultants and stakeholder engagement practitioners should be independent and unbiased excludes these groups from being considered as stakeholders.
Invited Observers	Invited Observers are individuals who have a role during the construction and/or implementation of the Project from the Client and the Contractor's Team. The details of the invited

	observer must be forwarded and approved by the Chairperson before the inaugural meeting of the EMC. The invited observer has no voting rights.
Invited Guests	Invited guests are individuals identified by Chairperson to attend the EMC on a once off basis. A member organisation may choose to invite a guest to the EMC but the attendance of such an individual is dependent on approval by the Chairperson. The invited guest must play a contributing role to the EMC such as a guest speaker on environmental issues and has no vested interest in the project.

1 INTRODUCTION

On 21 January 2015 the Department of Environmental Affairs (DEA) granted a positive Environmental Authorisation (EA) for the proposed Deepening, Lengthening and Widening of Berths 203 to 205 at Pier 2 Container Terminal, Port of Durban, KwaZulu-Natal Province (NEAS REF: DEA/EIA/0000988/2012; DEA REF: 14/12/16/3/3/2/275) in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Refer to Annexure 1 for a copy of the EA.

The EA states that Transnet must establish an Environmental Monitoring Committee (EMC) with clear Terms of Reference (ToR). Hence, this document is developed in line with Clause 41 of the EA.

Nemai Consulting was appointed by Transnet as the interim Environmental Control Officer (ECO). Therefore all compliance functions, in relation to the EA, will be executed by Nemai Consulting until the permanent ECO is appointed.

is there any specific reference to the EMC in the Appeal decision - and hence should the appeal decision be referenced here?



2 ESTABLISHMENT AND SCOPE OF RESPONSIBILITY

The EMC is constituted in terms of Clause 41 of the EA issued by DEA on 21 January 2015 authorising the construction of Berths 203 to 205 Expansion Project. The EMC's mandate is confined to reviewing monitoring information on compliance of the construction of expansion of Berths 203 to 205 against the EA and the EMPr as specified in:

- EA - DEA ref. NEAS REF: DEA/EIA/0000988/2012; DEA REF: 14/12/16/3/3/2/275 dated 21 January 2015
- Final EIA Report Submitted to DEA;
- Final EMPr approve by DEA in terms of clause 12 of the EA.



3 PRINCIPLES FOR EMC FUNCTIONING

1. All discussions relating to tasks and functions of the EMC shall be transparent.
2. All stakeholders and IAP's represented within the EMC shall act in an accountable and responsible manner.
3. The EMC shall promote the participation of key IAPs, particularly disadvantaged stakeholders.
4. All proceedings of the EMC shall be recorded and, if required, made accessible to a wider audience.
5. All parties shall have access to information relating to the work of the EMC to facilitate decision making.
6. Good faith, common understanding and a collaborative spirit shall underline all proceedings within the EMC.
7. All matters referred to the EMC for attention shall be addressed and resolved timeously.
8. Any conflict of interest/duties in terms of the role of members of the EMC in the project shall at the time be duly declared by those concerned.

4 ROLE AND PURPOSE OF THE EMC

The role and purpose of the EMC as outlined in Clause 41.4 of the EA is as follows:

- To monitor and audit compliance to the conditions of the EA, environmental legislation and an approved EMPr;
- To make recommendations to the Director: EIA on issues related to the monitoring and auditing of the activity implementation to advise the Department on issues related to non-conformance reports (NCR) raised against the holder of the authorisation by the ECO;
- The EMC must decide on the requirements for membership should a need arise to review the constituency of the EMC. Any changes must be communicated to the Department;
- The EMC must take care of the performance monitoring of the ECO in terms of implementation of the conditions of the EA under the auspices of the EMC Chairperson since the ECO has to report to the EMC; and
- The EMC, in conjunction with the ECO and Transnet must maintain a complaints register.

5 COMPOSITION OF THE EMC

The Functionaries of the EMC appointed to ensure its effectiveness are the Chairman and the ECO. The Chairman and the ECO are independent and perform special functions as described in this document. The EMC shall comprise mandated representatives of IAPs. The following stakeholder groups will be represented on the EMC as per Clause 41.1 of the EA:

- The Chairperson;
- The relevant authorities whom have jurisdiction over the Port of Durban;
- Representatives of the public;
- Representatives of Statutory Bodies;
- Representatives of Non-governmental Organisations (NGO's);
- ECO; and
- Transnet.

To ensure an effective committee the EMC shall not comprise more than **30 members**. Should the need arise for more representatives to be appointed or co-opted the Chairperson has the discretion to do so in consultation with DEA.

All members are required to appoint a secundus from their respective constituencies and to notify the Chairperson and Secretariat accordingly.

Invited Observer status shall be afforded to Transnet and the Contractor on condition that the Chairperson and the ECO are informed before the inaugural meeting of the EMC. The invited observer shall discuss the reasons and purpose for wanting to be part of the EMC. The invited observer has no voting rights.

A quorum shall be 50% of the membership organisations of the EMC.

6 MEMBERSHIP REQUIREMENTS


1. Each member shall be nominated by his/her respective organisation and appointed by formal written invitation to serve as such.
2. Members shall be required to terminate membership and be replaced if, unless exceptional circumstances are the cause, they fail to attend three consecutive meetings.
3. Members may resign by submitting their notice to the Chairperson in writing.

4. Members will be required to devote adequate time to EMC affairs and be available to interact with members of their constituencies to communicate and report upon the work being performed by the EMC.

7 DECISION MAKING PROCEDURES WITHIN THE EMC

1. Wherever possible all issues shall be debated until consensus is reached.
2. Where consensus cannot be reached the issues of disagreement shall be recorded in writing and referred to the authorizing authority (DEA Impact Evaluation) for consideration provided that the referral is preceded by a vote taken at the meeting in question and the result submitted together with details of the dispute in question.
3. Each organisation has 1 vote.


8 MEETINGS

1. The EMC shall meet on a quarterly basis as per Clause 41.1.8 of the EA.
2. In the event of an unusual incident occurring relevant to the scope of the EMC any member of the EMC may request an emergency meeting after consultation with the Chairperson or ECO or Transnet representative. possibly worded "the chairperson, ECO and Transnet representative"
3. The EMC will deal with the following matters at  scheduled meetings in accordance with the under mentioned standard agenda format:
 - Welcome, roll call of attendance, adoption of minutes of previous meeting.
 - Matters arising;
 - Outcome of remedial action stemming from any previous non-compliance incidents (ECO);
 - Outcome of action taken in respect of complaints registered on site and raised by the ECO at a previous meeting (ECO); and
 - Outcome of action taken in respect of complaints raised by members at the previous meeting.
 - A report by Transnet on implementation progress and preview of following month work schedule.
 - A report by the ECO on:
 - compliance monitoring (structured in accordance with sub group topics);

- on-site complaints register entries;
- recommended remedial action in respect of any non-compliance issues; and
- bi-monthly report.
- Any amendments required to the EMPr's.
- Written reports and/or complaints received from members of the public.
- Issues of concern to EMC members submitted in writing by members and circulated for members' information.
- Report back on matters arising from other meetings.
- Any other business.
- Confirmation of date, time and venue of next meeting.



9 ROLE OF THE CHAIRPERSON

Are the responsibilities aligned to those in the IEM Information series 21?

1. The Chairperson shall ensure the orderly conduct of EMC meetings.
2. The Chairperson must ensure that the EMC functions in accordance with the conditions of the EA, adheres to the EMC ToR, performs its role and responsibilities in terms of the EMPr with due diligence and advances the responsible implementation of the Project in the most productive way.
3. The Chairperson shall be unbiased in all deliberations of the EMC.
4. The Chairperson shall be the spokesperson for the EMC.
5. The Chairperson shall ensure that all meetings of the EMC whether scheduled or ad hoc meetings are duly constituted in accordance with these ToR's and strictly adhere to the procedures laid down.
6. The Chairperson shall work together with the ECO to schedule meetings, draw up agendas, produce accurate minutes, disseminate agendas and other materials, handle public enquiries and complaints in the most efficient manner, ensure that all appropriate information pertaining to the EMC is secured and, when required, meet with Transnet to resolve any issues pertaining to the functioning of the EMC.
7. The Chairperson will endeavour to chair all EMC meetings in such a way that the interests of the project and all stakeholders are at all times optimally accommodated in an atmosphere conducive to creative interaction and that meetings are optimally productive.
8. The Chairperson may resign from office after serving  notice period of 30 days.
9. The Chairperson shall apply conflict resolution measures when parties within the EMC fail to agree.



what about the Chairman's report?

10 ROLE AND DUTIES OF THE ENVIRONMENTAL CONTROL OFFICER IN THE EMC


1. The role and function of the ECO is to: 
 - Conduct independent monitoring and auditing;
 - **Regularly** monitor and review the progress towards achieving the specific strategies, objectives and performance targets of the EMPr;
 - Independently verify that mitigation measures and conditions in the EMPr are being applied;
 - Conduct site inspections as per the EMPr requirement and issue inspection reports;
 - Review monitoring data and evaluate against performance targets;
 - Independently monitor the functionality of the extended sandbank against the Baseline Monitoring Data;
 - Provide independent  reporting to DEA and the **KwaZulu-Natal Provincial Authorities** and to the **ECM** on compliance to the EA and EMPr;
 - Act as the Secretariat for the EMC and provide logistical and organisational support to the EMC;
 - Prepare minutes of EMC meetings and distribute to members;
 - Provide independent professional advice to the EMC in the execution of its functions; and
 - Inform decision-making authorities and the EMC when there is non-compliance with conditions of approval.
2. As an independent Consultant, the ECO is not responsible for:
 - EMPr implementation;
 - Primary environmental data collection, monitoring and analysis except for the monitoring of the extension of the central sandbank; and the monitoring protocol that the ECO will implement should be named and referenced here (ie CSMP)
 - Resolving IAP complaints.
3. The ECO is not accountable for the implementation of the EA and the EMPr and is also not linked to the project authorities, Engineering Consultant and/or Contractor.

11 RESPONSIBILITIES OF EMC MEMBERS

1. As the Implementing Agent for the project Transnet shall strive to ensure that:
 - All conditions specified in the EA and EMPr's are adhered to;

- Provide **sufficient** resources for the effective functioning of the EMC as set out in EA Clause 41, assisted by the ECO;
 - Provide for the costs associated with the efficient functioning of the EMC (EA Clause 41.5);
 - Ensure that all complaints directed to Transnet are referred to the EMC via the  .
2. It is envisaged that the DEA represented on the EMC shall: IEM Series 21: pg 11
 - Oversee the fulfilment of all EMC commitments specified in the EA and EMPr's;
 - Provide guidance on the functioning of the EMC if required to do so;
 - Evaluate and act upon all reports and correspondence received from the Chairperson.
 3. The receiving members (being members other than DEA and Transnet) on the EMC shall strive to ensure that the following:
 - The provisions of the National Environmental Management Act (Act 108 of 1998) (NEMA) are met;
 - Provide insights based on local knowledge;
 - Maintain consistent communication with their respective constituencies over progress in implementation of the project and communicate all decision taken at the EMC back to their constituencies; and
 - Inform the EMC of any issues or concerns expressed by members of their constituencies.
 4. Specialists represented co-opted on the EMC shall provide specialist services/guidance as might be requested of them or which the EMC deems is in the interests of fulfilment of the EA conditions and EMPr.
 5. Government Organisation excluding DEA shall provide guidance to the EMC were necessary.

12 ACCOUNTABILITY

1. All Members of the EMC are accountable to their constituencies and for keeping constituents fully informed of EMC proceedings.
2. Participation by any member shall not be interpreted as a waiver of that person's right to challenge, in his/her personal capacity, any issue outside the forum of the EMC.
3. The EMC shall report to the DEA on all matters pertaining to compliance, the primary source being the minutes of meetings as well the  report of the ECO, the external audit report and any other relevant issue. (3) needs clarity: The chairman's report? The ECO Report?

4. Transnet is responsible for the management of all activities and actions of contractors on site, as specified in EA and EMP. 

13 ADMINISTRATION

1. The ECO shall provide a Secretariat function and shall ensure that the necessary administrative and logistical support services are undertaken including the following:
 - Chairperson's correspondence and general administrative arrangements as required which shall include organization of EMC meetings in consultation with the Chairperson.
 - Maintaining all EMC records.
 - Drawing up and distribution of agendas and notices of EMC meetings, 14 days in advance, in consultation with the Chairperson, taking minutes at meetings attending to general correspondence and preparing any other documents on behalf of the EMC.

14 AMENDMENTS

1. These terms of reference may only be amended by prior notification and after discussion at a quored EMC meeting.
2. The amended ToR must be approved by DEA before it is implemented.

ANNEXURE 1: Environmental Authorisation

ANNEXURE 2: Membership Details

ANNEXURE 3: CV of the Chairperson

ANNEXURE 4:

Letter from Chairperson to DEA