

CHAPTER 7

MAINSTREAMING OF ENVIRONMENTAL AGENDA AND SELF REGULATION CULTURE IN EIA PROCEDURE

Self-regulation has been adopted by the Department of Environment (DOE) as a long-term goal to be achieved and a culture to be inculcated within the regulated sectors through mainstreaming of environmental agenda. Environmental mainstreaming has been integrated into all the recent regulations of the DOE. The implementation of environmental mainstreaming to promote and instil self-regulation in industrial pollution control has been translated into regulatory requirements on performance monitoring of pollution control measures, scheduled reporting, record keeping, competent persons, and involvement of environmental professionals playing specific roles. This approach to pollution control is a win-win concept which has shown to accrue positive results in optimal operation of pollution control systems (PCSs), prevention of PCS failures, cost savings in PCS operation, systematic management of performance monitoring data and improved regulatory compliance on a sustained basis. On a wider perspective, self-regulation which complements the existing command and control approach of the DOE, would result in cultivating environmental ownership and excellence in environmental commitment from the regulated sectors.

The EIA procedure, a preventive strategy of the DOE also needs to embrace the environmental mainstreaming and self-regulation goal in order to enhance its effectiveness in mitigating the adverse impacts from development projects on the environment at every stage of the EIA procedure. Self-regulation culture in EIAs means that the Project Proponent will be charged with full responsibility and accountability for taking environmental friendly options and instituting effective pollution prevention and mitigation measures (P2M2) and self-

demonstration of regulatory compliance of the EIA procedure at all stages of project implementation. From business perspective, self-regulation is a potent business strategic tool where positive image of good governance and corporate social responsibility could be portrayed to the public, enhancing the public's acceptance of an EIA project. Additionally, self-regulation would also result in reducing snapshot enforcement inspections currently practiced by the Department of Environment, whose inspectors find it impossible to be constantly involved in inspecting the EIA projects in every phase of its implementation. Taking into consideration of the current scenario in Malaysia, Guided Self-Regulation (GSR) adopted by the DOE would require the project proponents to undertake several actions that are necessary to make way for the mainstreaming of environmental agenda in the EIA projects.

This chapter is dedicated to the discussion of the roles, functions and core duties of the various players involved in a development project: the Project Proponent, the EIA Consultant, and the Environmental Officer (EO). The implementation of the guidance provided in this chapter would result in mainstreaming the environmental agenda into the EIA project management decision making process as well as into the day to day management of project implementation, paving the way for excellence in environmental regulatory compliance. The guidance is also intended to cultivate self-regulation by promoting the practice of quality control and performance monitoring of EIA projects as a routine activity at every stage of the EIA procedure including pre-submission, during submission and post submission of EIA Report.

7.1 General Considerations

Legal responsibility rests on the shoulders of the Project Proponent hence he shall be totally committed towards ensuring regulatory compliance of his project with the EIA procedure at all stages of project planning and implementation. The

Project Proponent is the key driver for ensuring the success self-regulation approach in environmental management through the mainstreaming of environmental agenda throughout his project implementation phases. The project proponent shall ensure top-down organizational commitment to environmental regulatory compliance to all personnel, at all levels of the organization, including the registered EIA consultant, the EO, the contractors, and other parties involved in the project implementation.

To exercise quality control and ensure regulatory compliance, the following general considerations shall be taken:

- a) In a situation where the service of an EIA consultant firm is required, the Project Proponent may appoint a DOE-registered EIA consultant firm to provide advice on the EIA procedure and to act on his behalf for communication with the DOE. The consultant firm is composed of EIA team members who are registered with the Department of Environment. The members comprise various EIA subject matter consultant (SMC) who are relevant to the project proposal.
- b) During the stage of pre-submission of EIA Report, the Project Proponent is responsible to ensure a proposed project is screened to determine whether an EIA is necessary, since the project may fall under a 'prescribed activity' classified either under the First Schedule or the Second Schedule of the Environmental Quality (Prescribed Activity) Environmental Impact Assessment Order 2015. The screening process is also important to decide whether an EIA Report needs to be submitted to the respective DOE State Office for First Schedule activities or to DOE Headquarters for Second Schedule activities. In case of Second Schedule activities, public display of EIA Reports is mandatory.

In performing the screening process, the project proponent is advised to appoint a DOE-registered EIA consultant to determine the EIA scoping for the project proposal. The Project Proponent is also required to ensure the adequacy of the scope of the EIA studies. The scoping process is important to decide on the coverage and boundary of the EIA studies to ensure that significant environmental issues are adequately assessed and reported in the EIA Report. Any inadequacies in treating the significant issues may jeopardize the timing of EIA Report approval. The Project Proponent is required to obtain prior endorsement from the DOE for the Terms of Reference (TOR) for the preparation of EIA Report. Among others, The TOR will comprise the following: intention and brief description of the project proposal, scoping (coverage of the EIA studies), study methodology, sampling details (frequency, parameters, and locations), technical personnel, and study schedule. The TOR will also state the number of hardcopy EIA Reports to be submitted to the Department of Environment. The TOR is subject to comments and endorsement from the EIA Technical Review Committee (EIATRC) prior to EIA Report Preparation.

In the course of EIA Report preparation, the Project Proponent shall take into consideration of the alternatives, demonstrate commitment to ensuring the successful conduct of the EIA study and implementation of measures to mitigate the significant impacts as recommended by the EIA Consultant. This is accomplished by allocating sufficient funds for the above purposes. The funds shall cover the cost required for all activities associated with the EIA study, and preparation and implementation of environmental management plan (EMP) and pollution prevention and mitigation measures (P2M2).

- c) In the conduct of EIA study, a comprehensive site survey and investigation of the existing site conditions shall be made to provide crucial data of the study area which are necessary for planning considerations, formulating scope of work, and ensuring effective selection and design of pollution prevention and mitigation measures (P2M2).
- d) During the stage of submission of EIA Report of a Second Schedule activity, the Project Proponent shall be present with the EIA Consultant team members to defend the EIA Report in a public display which will be arranged by the EIA Consultant in consultation with the DOE. During this stage the Director General of Environment Malaysia will finalize decision on the EIA Report.
- e) During project implementation, wherever necessary, consideration shall be made by the Project Proponent to appoint a consultant to supervise the implementation of pollution prevention and mitigation measures (P2M2).

Specific considerations which shall also be taken into account during each stage of project implementation are enumerated below.

7.2 ROLES AND CORE DUTIES OF DIFFERENT PLAYERS IN EIA PROJECT IMPLEMENTATION

The Project Proponent

The Project Proponent (PP) is not only legally responsible for ensuring regulatory compliance, but is the driver for mainstreaming the environmental

agenda in all stages of project implementation. The major roles and responsibilities of the PP include the following:

- (a) Formulating an Environmental Policy (EP) of the company with respect to the EIA project, which shall be communicated to the stakeholders, consultants, contractors and other parties involved in the project planning and implementation.
- (b) Establishing an organizational structure which clearly shows the emplacement of a Registered EIA Consultant and an Environmental Officer (EO), where they are charged with specific responsibilities to ensure environmental aspects are taken into consideration, and pollution prevention and mitigation measures (P2M2) are integrated into every stage of project planning and implementation.
- (c) Allocating sufficient funds for all steps in the EIA process and every stage of project planning and implementation with itemized budget required for water quality monitoring, air quality and noise monitoring, for comprehensive site survey and investigation of the specific existing site conditions, for implementation of Environmental Management Plan (EMP) including temporary pollution prevention and mitigation measures (P2M2). P2M2 shall be those which can be described as state of the art technologies, best available technologies (BATs), or industry best practices.
- (d) Appointing an Environmental Officer (EO), at the stage of post submission of EIA Report to be charged with responsibilities to execute environmental quality control and performance monitoring functions during the construction and operation phases of the

project implementation. Service of an EO can also be obtained from an Environmental Officer Service Provider. Service of EO from EO service provider is allowed during the construction stage only. However, at the operational stage, the Project Proponent shall employ his own EO.

- (e) Establishing a project Environmental Performance Monitoring Committee (EPMC) to monitor the environmental performance, effectiveness of pollution prevention and mitigation measures (P2M2), and status of regulatory compliance of the project. The EPMC shall be represented by all relevant parties involved in project implementation and chaired by a senior member representing the Project Proponent. The chairman who shall be formally appointed by the Project Proponent shall be responsible for ensuring the decisions of the meeting are responsibly executed. The EPMC shall meet at a minimum, once in a quarter and the minutes of the meeting shall be maintained.
- (f) Setting up a “mini laboratory”, wherever appropriate, to facilitate the implementation of environmental performance monitoring program. This mini laboratory shall be adequately equipped with relevant resources including staff and portable analytical testing equipment.
- (g) Ensuring the Environmental Management Plan (EMP) including temporary and permanent pollution prevention and mitigation measures (P2M2) are implemented and maintained according to industry’s best practices.

The Environmental Consultant

The registered EIA Consultant is the key person who is entrusted with the responsibilities for ensuring environmental impacts from a project are correctly identified, assessed, and mitigated. The roles and core duties of the EIA Consultant include the following:

- Preparing the Terms of Reference (TOR) for EIA study of a project proposal.
- Performing quality control (QC) to ensure the quality of EIA Report meets the requirements* of DOE and hence, is fit for submission.
- Preparing and defending the EIA Report of a project.
- Setting up Public Display and Engagement Meetings.
- Preparing the Environmental Management Plan (EMP).

(Note: * The requirements refer to all requirements on EIA procedure stipulated, mentioned, and discussed throughout this EIA Guideline).

The Environmental Officer (EO)

The Environmental Officer (EO) is the main project personnel responsible for ensuring regulatory compliance at the project implementation stage (post submission of EIA Report). The roles and core duties of the EO include the following:

- (a) Implementing the environmental management plan (EMP), and installing the temporary and permanent pollution prevention and mitigation measures (P2M2).
- (b) Preparing Environmental Performance Monitoring Document (EPMD). PMD describes in detail how EIA approval conditions are going to be complied and how performance monitoring* of the various pollution prevention and mitigation measures (P2M2) will be

conducted to ensure the optimal functionality of the P2M2 is maintained. The details shall include, among others: performance monitoring equipment/instruments, sampling protocols and analysis, monitoring parameters, sampling frequency, preventive and corrective maintenance procedure for the P2M2, discharge compliance, record keeping, etc. EPMD also includes compliance monitoring (CM) and impact monitoring (IM) wherever relevant.

(* Note: Performance monitoring in this context refers to the monitoring of certain characteristics that would indicate that a P2M2 is functioning in an optimal manner. It also includes the preventive and corrective maintenance of the P2M2 to maintain their optimal performance. P2M2 refers to all measures to prevent and mitigate pollution such as IETS, APCS, STS, and includes temporary pollution prevention and mitigation measures).

- (c) Performing or supervising the conduct of performance monitoring (PM) program as specified in the PMD.
- (d) Preparing Performance Monitoring Report (PMR). PMR discusses the results of the performance monitoring conducted as described in the PMD. Wherever relevant, PMR shall include data interpretation and assessment of the effectiveness of the pollution prevention and mitigation measures (P2M2) by making comparison of the performance monitoring parameters with their recommended ranges (or standards). Statistical techniques and graphical presentation of the performance monitoring parameters should be used wherever appropriate. PMR shall also make some definitive conclusions on the overall performance of the P2M2 and suggest improvement measures to be taken if necessary. PMR shall be submitted to the Environmental Performance Monitoring Committee

(EPMC) as established by the Project Proponent for the EIA project and maintained for the inspection of the DOE officers.

- (e) Communicating the status of environmental regulatory compliance of the project during construction and operation phases to the Project proponent.
- (f) Maintaining a detailed record of major upset conditions encountered, if any, for the duration of the project construction and operation phases. The date of occurrence, nature and causes of upset conditions, and the corrective actions taken shall be recorded. Upset conditions refer to failures of pollution prevention and mitigation measures (P2M2) which result in noncompliance with the EIA approval conditions or discharge/emission standards, or pollution that affects the immediate neighbourhood or seriously threatens the environment or public health and safety.
- (g) Acting as an environmental advisor to the Project Proponent in advising him to undertake additional efforts, if any, to further ensure effective implementation environmental management plan (EMP) including temporary pollution prevention and mitigation measures (P2M2) on a sustained basis.