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EPR and Auditing Requirements
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TRANSITIONING FROM
POLLUTER PAYS TO
PRODUCER PAYS PRINCIPLE

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WHY REQUIRE AUDITS?

- Aligned with obligation to ensure producers are accountable for the operation and performance of EPR scheme
- Regulator and public oversight
 - Focus on transparency and accountability aims to eliminate potential for corruption, coupled with extensive and detailed reporting requirements
 - Prevent REDISA failures SAWIC / DFFE is the repository of information / audit
- Facilitates and improves compliance / implementation (all parties)
- Supports enforcement and reduces burden on enforcement officials
- Enables regulatory and system efficacy tracking
- May assist in preventing free-riding

AUDITS, MONITORING AND EVALUATION CONTEMPLATED IN THE EPR REGULATIONS

	Type	Frequency	Regulations
1	Internal <u>financial</u> audits	Bi-annually	5A(1)(b) or 5B(1)(b)
2	External <u>financial</u> audits by an independent financial auditor	Annually (submitted to DFFE within 60 days of audit finalisation)	5A(1)(d) or 5B(1)(d)
3	PRO interim <u>performance</u> report against individual targets	For period from date of commencement of June of calendar year (submitted within 4 weeks of conclusion of 6 months)	8(1)(a) as read with 8(1)(g)(i)
4	Annual <u>performance</u> audit report	Date of business commencement until December of calendar year (within 3 months of December year end)	8(1)(c) as read with 8(g)(iii)
5	Annual external <u>performance</u> audit	Annually (submitted to DFFE within 60 days)	8(1)(d)
6	Record and report	Annual	8(1)(e)
7	Regulator verification audits	Departmental discretion	8(1)(f)
7	Regulator performance reviews every 5 years	Every 5 years or as appropriate	9(1) and (2)

CONTENT OF AUDITS

- An annual external performance audit report must include (as a minimum):
 - Performance against the published targets;
 - i. Breakdown of the allocation of the extended producer responsibility fee;
 - ii. Performance on all finance matters;
 - iii. Governance report; and
 - iv. Number of jobs created.

[see Regulation 8(1)(d) and annexures to notices]

AUDIT REQUIREMENTS

- Prepare and provide the auditor with clear scope of work (consider Regulation 8(1)(c) as read with an appropriately amended version of Regulation 34 of the EIA Regulations as read with Appendix 7 of those Regulations)
- No clear guidance in EPR Regulations on qualifications and expertise of an auditor
 - recommend that the auditor should have auditing experience and an understanding of the waste sector and the EPR Regulations
 - must be independent
 - consider definition of *independence* in EIA Regulations for guidance

“independent”, in relation to an EAP, a specialist or the person responsible for the preparation of an environmental audit report, means—

(a) that such EAP, specialist or person has no business, financial, personal or other interest in the activity or application in respect of which that EAP, specialist or person is appointed in terms of these Regulations; or

(b) that there are no circumstances that may compromise the objectivity of that EAP, specialist or person in performing such work;

excluding -

(i) normal remuneration for a specialist permanently employed by the EAP; or

(ii) fair remuneration for work performed in connection with that activity, application or environmental audit;

OFFENCES TO NOTE:

Offences:

- NEMWA
- Regulation 12 as read with Regulation 13

...

67. Offences

- (1) A person commits an offence if that person-
- (a) contravenes or fails to comply with a provision of section 15, 16(1) (c), (d), (e) or (f), 20, 26(1), 43A, or any order under section 38(2) or (3) or a notice under section 17(2) or 18(1);

68. Penalties

- (1) A person convicted of an offence referred to in section 67(1)(a), (g) or (h) is liable to a fine not exceeding R10 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, in addition to any other penalty or award that may be imposed or made in terms of the National Environmental Management Act.

12. Offences *

- 1) A person commits an offence if that person contravenes or fails to comply with regulations 4(1) and (2), 5, 5A, 5B, 6, 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 7(7), 7A, 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d), 8(1)(e), 8(2)(a), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 9(3), 10 or 11 of these Regulations
- 2) A producer responsibility organisation commits an offence if that producer responsibility organisation contravenes or fails to comply with regulations 4(1) and (2), 5, 5A, 5B, 6, 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 7(7), 7A, 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d), 8(1)(e), 8(2)(a), 8(2)(b), 8(2)(c), 8(2)(d), 8(2)(e), 9(3), 10 or 11 of these Regulations."

13. Penalties

- 1) A person convicted of an offence under these Regulations is liable to:
 - a) imprisonment for a period not exceeding 15 years;
 - b) an appropriate fine; or
 - c) both a fine and imprisonment.

Disclaimer

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