

Abstract Title: Compliance and Enforcement of EIA and EMMPs in Asia

Peter King

Abstract Summary Statement: Outlining the value of AECEN in ensuring compliance and enforcement of EMMPs and mitigation measures in EIAs in Asia.

Abstract: This paper explains the work of the Asian Environmental Compliance and Enforcement Network (AECEN), its Environmental Impact Assessment (EIA) compendium, and why it is important for compliance and enforcement of mitigation measures outlined in EIAs. The challenges of maintaining such a network will also be addressed along with the benefits that accrue to government agencies belonging to the network.

A. Introduction

The purpose of this paper is to explain the importance of compliance and enforcement of mitigation and monitoring measures outlined in EIAs and how a regional EIA network like the Asian Environmental Compliance and Enforcement Network (AECEN) could strengthen national capacities.

AECEN is a regional network of environment agencies dedicated to promoting improved compliance with environmental legal requirements in Asia through regional exchange of innovative policies and practices (AECEN 2016a). AECEN members are national or sub-national environment agencies in Asia responsible for the development and/or implementation of environmental policies and laws. Members presently include 20 environmental agencies from: Cambodia, India, Indonesia, Japan, Korea, Lao PDR, Malaysia, Maldives, Mongolia, Nepal, People's Republic of China, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, and Viet Nam (as of May 2015). The Institute for Global Environmental Strategies (IGES) Regional Centre in Bangkok provides the Secretariat.

B. Compliance and Enforcement of Environmental Pollution Control Practices

The primary focus of AECEN is compliance and enforcement of environmental pollution control. The preferred operational modality is South-South cooperation; twinning more developed government agencies pursuing “good” practices with developing countries seeking to improve their compliance and enforcement practices. Some examples (AECEN 2016b) include:

1. To strengthen policies and practices on soil contamination monitoring in Da Nang and other hotspots, Viet Nam's Ministry of Natural Resources and Environment (MoNRE) and the Korea Ministry of Environment (KMOE) established an AECEN twinning partnership. Through technical exchange and targeted training, the partnership enabled transfer of knowledge and expertise leading to the development of technical guidelines on soil contamination monitoring, as well as enhanced technical capacity.
2. To better manage industrial pollution, the Department of Natural Resources and Environment (DONRE) of Ho Chi Minh City, Vietnam requires industrial enterprises to self-monitor pollution discharges and report to DONRE, but enforcement remains a major challenge. AECEN facilitated a twinning partnership between DONRE and the

Department of Environment, Climate Change and Water (DECCW) of New South Wales, Australia. Based on experience and good practices shared by Australia, DONRE drafted an improved, standardized self-reporting form and guideline for wastewater discharge for use by priority industries in HCMC.

3. To strengthen domestic inspection capacity, AECEN established a twinning partnership between the Indonesian Ministry of Environment (MOE) and the Singapore National Environment Agency (NEA). MOE and NEA engaged in gap analysis, policy formulation and technical training activities on inspection and investigation with assistance from the Indonesian Center for Environmental Law and the Singapore Environment Institute. As a result of the twinning partnership, Indonesia incorporated new inspection procedures and requirements based on Singaporean practice into amendments to the Environmental Management Act of 2009.

AECEN has also been instrumental in setting up Compliance Assistance Centers in Thailand, Philippines, and India, with assistance provided by Hong Kong, and replicating early success in the Philippines. AECEN also helped to establish the Asian Justices Forum on Environment and “green benches” in several countries, with assistance from Australia and ADB. To promote knowledge management and dissemination, AECEN conducts regional forums on compliance and enforcement issues. AECEN provides an Award for Outstanding Service and Commitment by a Woman, which recognizes women who have demonstrated leadership, commitment and service in the field of compliance and enforcement.

C. Compliance and Enforcement in Environmental Impact Assessment

From some perspectives, a network dealing with compliance and enforcement of environmental pollution control may not seem a likely candidate for strengthening EIA implementation in Asia. Even within national environmental agencies, pollution control and EIAs are handled by different departments. However, AECEN takes the view that the best practice to comply with environmental pollution regulations is to ensure that pollution never happens, or is minimized, through improved project and facility design. The time to achieve this outcome is at the project feasibility and EIA stage and to ensure that appropriate mitigation measures are built into the environmental management and monitoring plans (EMMPs).

AECEN’s rapid assessment of EIA practice in Asia and Europe (USAID 2009) resolved that in line with AECEN’s overall objectives and the identified gaps in EIA performance in the region, a new round of capacity building should focus on strengthening EIAs, with priority given to more effective implementation of the EMMPs. Hence, emphasis should be given to: (i) formulation of cost-effective EMMPs; (ii) review and approval of EMMPs; (iii) incorporation of EMMPs into contractual obligations; (iv) routine supervision of EMMPs; (v) periodic inspection of EMMP progress; (vi) post-project EIA/EMMP completion reports; (vii) lessons learned from completed EMMPs; and (viii) incorporation of lessons learned into subsequent EIAs.

In June 2010, AECEN and ADB conducted a Regional Workshop on “Environmental Impact Assessment (EIA) in Asia: Good Practices and Capacity Needs” at the ADB Headquarters in Manila. The workshop brought together senior environment agency officials and technical experts from 20 countries, along with representatives from multilateral development banks (MDBs), bilateral agencies and international experts in EIA. ADB and USAID provided funding support for the workshop. The main objectives were to: (i) take stock of advances and status of EIA practices in Asia; (ii) provide an update on recent advances in EIA applications and

initiatives for strengthening of country safeguards systems by the MDBs; and (iii) identify key challenges for capacity development to achieve improved application and compliance of EIA in the region. The U.S. Environmental Protection Agency (EPA) also provided a technical session on the implementation of EIAs for workshop participants. EIA practitioners exchanged ideas and identified capacity innovations and best practices in EIA that have emerged in the region. Participants also shared experience on new approaches and systems that are being developed to ensure compliance with EIA legislation, especially with regards to the implementation of EMMPs following EIA approval. Based on the outcome of the workshop, AECEN, with support from USAID, launched a new multi-year initiative to strengthen capabilities in implementing EIA across Asia and the Pacific.

Using the preferred South-South cooperation modality, AECEN assisted in strengthening the implementing capacity of EIA in Sri Lanka and Lao PDR through a bilateral twinning arrangement with Japan as a mentoring country. The Japanese Association of Environment Assessment acted as the mentor with technical assistance from the consulting company, ERM, in association with the Ministry of the Environment, Japan. The twinning arrangement provided mutual hands-on learning opportunities among the government officials in charge and experts in the field and delivered tangible outputs that are beneficial to mentee countries. The outcomes were (i) increased capacity of EIA implementation in priority sectors in terms of the government officials' capability to instruct project proponents to prepare appropriate EIA preparation documents (terms of reference etc.) and to evaluate EIA reports prepared by the project proponents; and (ii) increased exposure to, and understanding of, the newer technologies that Sri Lanka and Lao PDR will need for their future industrial development.

From 2012, AECEN has maintained a clearinghouse on regional EIA information. The compendium includes laws and regulations, news from local and regional media, documents, case studies, and relevant links to other resources on the internet. The compendium aims to be a centralized place to access regional EIA resources to facilitate project formulation with development partners and South-South twinning partnerships for institutional strengthening through sharing best practices in EIA implementation. The compendium consistently shows that community resistance to projects is one of the most reported problems associated with EIAs and EMMPs. A brief sample of recent news articles (AECEN 2016c) shows:

1. A Thai-backed cement factory under construction in Mon State, Myanmar is on track to begin operations in mid-2016, despite ongoing opposition from locals over the presence of a coal-fired power plant on the site. Locals from nearby villages contend they were not consulted before a coal-fired power plant was built on the site to power the cement plant. The company said that an EIA was conducted in 2013 and submitted to the Myanmar Investment Commission.
2. Bukit Antarabangsa Task Force 850 is protesting the proposed development of a high-rise office, condominium blocks and a shopping mall with a 3,200-bay car park in Ampang, Selangor, Malaysia. The Traffic Impact Assessment and the EIA reports used data in both assessments from 2014. Protesters claim that not only is the data outdated, it is also not valid as the assessments were done on a public holiday.
3. Residents affected by Xayaburi Dam on the Mekong River appealed to the Administrative Court Monday against five Thai government agencies that backed the building of the dam. The appeal called for the court to reverse its previous verdict by making the defendants - Electricity Generating Authority of Thailand, National Energy

Policy Council, Energy Ministry, Natural Resources and Environment Ministry and the Cabinet - adhere to relevant laws. They want state bodies to complete environmental studies, health and social impact reviews, and arrange proper public hearings before purchasing any power from the Xayaburi Dam.

4. Kaohsiung, Taipei residents and environmentalists protested a proposed freeway project ahead of its environmental review, saying the freeway would be situated on an active fault line and demanded that the review be halted until a complete geological survey has been completed. Environmental groups paralyzed the review process using a series of procedural strategies and the review committee meeting was later suspended with no outcome agreed.
5. The Government of Myanmar announced late last year that it had awarded the tender for the Kyaukphyu special economic zone to a CITIC-led consortium, consisting of six Chinese firms and one Thai company. The announcement came less than a week after more than 107 Rakhine State civil society groups met at a three-day forum, and demanded that the project be suspended. That forum objected to a lack of transparency in the tender selection process and demanded more consideration for the welfare of local people.

D. Conclusions

An unbiased review of the EIA-related news articles in the AECEN EIA compendium would indicate that a significant problem remains with implementation of EIA procedures in the Asian region. In too many domains, EIAs and EMMPs are seen as a regulatory step that is completed as a “check the box” minimalist effort, preferably done in secret. There is minimal compliance and enforcement and inadequate accountability. AECEN believes that stronger compliance and enforcement of the original intent of the EIA process—that is, to achieve a better project design and implementation outcome—needs to be adopted throughout Asia.

Stronger compliance and enforcement can be achieved through (i) increased public participation at all stages of the EIA process; (ii) empowerment of locally affected people in the decision making process and involvement of them in baseline data collection and monitoring of the EMMPs; (iii) increased independent and transparent review by impartial experts of the EIAs and EMMPs; (iv) mandatory inclusion of the relevant provisions of EMMPs in construction contracts and operational permits; (v) publicized post-project implementation reports by the project proponent on implementation of the mitigation measures included in the EIAs, comparing the anticipated impacts documented in the EIA with actual outcomes; and (vi) adequate financial provision for the above measures in the project budget.

A project bond equivalent to the anticipated “worst case” environmental outcome of the project should be lodged with a local bank. Project proponents must be held accountable for the actual environmental outcomes of the project and it should not be assumed that an EIA or EMMP can solve all environmental problems. Compliance and enforcement of all environmental laws and regulations must be the equally weighted counterparts of the preparatory actions provided by EIAs and EMMPs.

AECEN remains ready to continue strengthening the capacity of developing countries in compliance and enforcement at all stages of project planning, construction, implementation, and decommissioning. A dedicated Asian network on EIA, possibly as an Asian chapter of IAIA,

may make more sense, however, than AECEN continuing this work. We hope that more participants from IAIA-associated organizations will join us in establishing such a network. The usual challenge of maintaining such a network is a lack of core funding for the secretariat and project funding for the South-South twinning, but additional resources to make such a campaign successful should be available.

References

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