NEXT GENERATION ENVIRONMENTAL IMPACT ASSESSMENT, PERMITTING AND ENFORCEMENT IN EL SALVADOR

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SUMMARY

Successive Ministers in El Salvador's Ministry of Environment and Natural Resources (MARN) requested a full review of environmental impact assessment (EIA), permitting and enforcement processes. The resulting road map for reform sets in motion a new vision, law reforms and implementation mechanisms that make full use of next generation technology. El Salvador's President will launch the program in November of 2014 inaugurating a process of engagement within governments at all levels, with investors, and with the public to prepare for full implementation next year.

Ten elements of the next generation reforms described below offer the potential to revolutionize the permit, EIA and monitoring/enforcement process through greater access, transparency, accountability and ultimately both improved environmental results and efficiencies:

1) Public access to the NEPAssist[1] GIS[2] web-based analytical application.
2) Autofill of permit applications with information from VIGEA-NEPAssist.
3) Online permit applications with built-in categorization and streamlined requirements.
4) Pre-construction permits for all impact levels beyond those requiring EIA.
5) Automated permits for lower level impact projects.
6) Municipal issued permit for low impact projects.
7) Public consultation in all permit issuance, not limited to EIA process.
8) Monitoring self-reporting formats issued with the permits for automated reporting.
9) Transparent, linked Web-based tracking and document access for permitting, EIA review. monitoring, complaints; and enforcement.
10) Compliance oriented enforcement authorities with new financial tools.

1   NEXT GENERATION REFORMS

1.1   Public access to the NEPAssist GIS Web-based analytical application

The United States Environmental Protection Agency (EPA) developed the NEPAssist application, a GIS-driven Web-based analytical tool to provide instantaneous access to distributed environmental, social and economic data via web services, spatial integration and analysis reports with answers to yes-no questions to help reviewers and preparers of EIA documents. El Salvador is one of seven countries with which EPA has shared the application for its use and adaptation to its own servers, design, data and analytical questions. It includes land use plan information and in a pilot region linked to zoning rules. El Salvador will launch public access to VIGEA, the name of the NEPAssist application given by MARN to help investors and their consultants as well as the public and other Ministries review and understand the context for proposed projects.

1.2   Autofill of permit applications with information from VIGEA-NEPAssist

For the first time, the NEPAssist application will be used to autofill the permit application. Categorization of whether a proposed project, activity or works has a low level impact (Group A), a moderate level impact (Group B.1) or requires an EIA (Group B.2) currently involves a complicated set of criteria including whether a proposed project: a) is located in a sensitive area, a risk area or involves hazardous materials, b) changes current land use, c) is significant in size or scope. NEPAssist is first and foremost a screening tool that can provide much of this information using available data from reliable sources. Users will be cautioned that the applicant is responsible for confirming the accuracy of the information in the field.

1.3   ONLINE PERMIT APPLICATIONS WITH BUILT-IN CATEGORIZATION AND STREAMLINED REQUIREMENTS

A priority of the reform program is the creation of a single online permit application form. There were 23 different permit applications and all applicants had to travel to San Salvador to handle the paperwork. Having an online form will enable investors to apply wherever they are in the country and speed processing of information. Other opportunities for streamlining the process were identified in the process of consolidating application forms.

1.4   Pre-construction permits for all impact levels beyond those requiring EIA

In El Salvador, the requirement for an environmental impact study (EIA) has been interpreted as the basis for a pre-construction permit. Even though low impact projects did not require submission of an application, investors have requested documentation from MARN to take to the bank as proof they did not need to do more. Further, if it was determined that an environmental management plan was sufficient and an EIA would not be required there was no permit and no further accountability. The EIA was therefore over-used in the absence of an alternative mechanism, resulting in unnecessary workload, cost and delays to gain the same results and there were no environmental protections for lower level projects since municipalities and others lacked capacity and permit programs.

1.5   Automated draft permits for lower level impact projects

Another feature of the reform effort will be automated permit generation for low impact proposal projects. This feature will ensure that MARN and the municipalities can deliver the permit quickly and efficiently. Autofill permits will include prepared auditable language associated with the type of measure that the applicant chooses to use to address sanitation, drinking water, solid waste and water runoff/sedimentation and erosion into water bodies. This will provide both consistency and flexibility.

1.6   Municipal permit issuance for low impact projects; Minister authority to further delegate

In El Salvador, municipalities have responsibility for environmentally-based land use plans and local permits but few have the capacity to carry out this function. The new system will provide the municipalities with automated permits for low impact issues noted above and can add provisions for other direct impacts at a local community level to address issues of noise, traffic, and compatibility with adjacent economic activities.

1.7   Public consultation in all permit issuance including those which did not involve EIA

Public consultation has been an opportunity only if an EIA is required and then only for 10 days after the EIA submitted to MARN was considered complete. In addition, the Terms of Reference issued by MARN required the consultant to conduct public scoping of issues. For the new permit system, public consultation would be offered by whichever authority was responsible for the permit issuance thereby increasing opportunities for a broader set of eyes and ears to hold both project proponents and government officials accountable.

1.8   Monitoring self-reporting formats issued with the permits for automated reporting

Permits generally include requirements for self-monitoring and reporting to support compliance with requirements. Plans for improved permit follow up include attachment of tailored standard forms for reporting. This will serve both to focus permit writing on the essential elements of required performance and also to ensure administrative data systems have the capability to utilize these reports for follow up enforcement actions where needed. It will eventually include the ability to report electronically. Automating submission of monitoring results helps with data integrity and enables the tracking systems to highlight problems like late or failure to submit monitoring reports, or to compare results to permitted levels of pollution etc.

1.9   Transparent, linked Web-based tracking and document access for permitting, EIA review, monitoring, complaints; and enforcement

An existing web based tracking system for the EIA permit process will be enhanced in several ways to provide: a) additional tracking for compliance monitoring and enforcement; b) the capability to post and access key documents such as permit applications, environmental management plans and environmental impact studies, c) support the generation of communications such as letters that could then be further tailored by the staff as appropriate. Most importantly, functions will

be linked for a given facility with common codes so that information could be shared from a point of entry service window, EIA review, submission of monitoring reports by the project proponent, follow up audits and inspections and citizen complaints.

1.10 Compliance oriented enforcement authorities with new financial tools

Enforcement has been stymied in El Salvador due to factors including: a) authorities geared to compensation for actual damage and harm, not compliance; b) permits lacking auditable conditions; c) a compliance process focused release financial guarantees following audits after construction without continued accountability during operation or closure. The environmental law reforms will include compliance oriented penalty authorities. Enhanced enforcement and compliance should also result from improved tracking and drafting of permit conditions, and inclusion of most projects in the system.

2   CONCLUDING REMARKS

Necessity is the mother of invention and perhaps there is no more need than the system of environmental governance that has been a fragmented set of failed handoffs from an environmental impact assessment to a permit to monitoring performance to enforcement to results. The introduction and use of new web-based tools has the potential for revolutionizing this process through greater access, transparency, accountability and ultimately both improved environmental results and efficiencies. At this writing El Salvador is several months away from realizing a first effort, but has set itself on the path to do so.

3   ENDNOTES

[1] The US EPA's NEPAssist application is a web-based analytical tool that uses a nonproprietary
software to facilitate the EIA review process and project planning as they relate to environmental considerations. NEPAssist accesses environmental data from the EPA's geographic information system databases and web-based services and provides immediate screening of environmental assessment indicators for geographic areas of interest, parameters, and assumptions defined by the user. Other countries adapt and customize NEPAssist using their own names, interface, and data sets. For more information, see http://www.epa.gov/compliance/nepa/nepassist-mapping.html.
[2] GIS is an acronym for "geographic information system," a technology-driven system for capturing and analyzing spatial and geographical data.