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# Environmental Compliance Best Practice for “Tricky Activities”

GEMS Environmental Compliance-ESDM Training Series  
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# “Tricky activities” . . .

## For many projects/activities:

- ❖ Categorical exclusions do not apply, even if the activity is of the right general type
- ❖ USAID shares or has indirect responsibility for adverse impacts—but very limited control over the actors directly responsible.

**Getting mitigation for these “tricky activities” right is critical to achieving ESDM and minimizing USAID’s liabilities.**

Policy development & implementation ▪  
credit enhancement ▪  
SME support ▪ trade promotion ▪ value-chain strengthening ▪  
etc.



# . . . can be a headache

**Problem:** Resolving determinations and conditions for these “tricky activities” can take time, and lead to frustration and increased transaction costs on the parts of missions and partners.



**But . . .**  
difficulties can be minimized or eliminated when a few basic “tricky activity principles” are understood.

## This session:

Explores these principles with mini-case studies based on actual programs/IEEs

Illustrates emerging best practice/Agency expectations.



# Case 1: Policy implementation and institution strengthening

## The project:

**Building government capability to transparently manage natural resources**

## Context:

High-level policy commitment to increased extraction to fund national (re-)development

## Components:

### 1. Senior LT technical expert:

- advise the ministry of mining/minerals/energy on mineral concession best practice
- assist with concession negotiations as requested,
- supervise nat'l cadastre implementation and legal reform work and production of new regulations.
- Initially will have co-signature authority on concession awards.

2. Complementary STTA for expert review of draft regulations and specific concession agreements.

3. Complementary training for ministry staff

## The ESDM/ env compliance issue

Reg. 216 provides for a categorical exclusion for “education, technical assistance or training programs, **except to the extent such programs include activities directly affecting the environment**”\*

*Should the Catex apply?*

\*text in red applies to all activities considered for categorical exclusion

## Case 1:

# Policy implementation and institution strengthening (cont'd)

# No!

### The IEE found:

“The significant and often irreversible adverse environmental impacts of mining expansion and the substantial influence that the project will have over the policies under which and the process by which this expansion occurs render the TA ineligible for a categorical exclusion.”

### However, the IEE noted. . .

1. the policy decision to expand and promote the mining sector comes from the highest levels of the national government not the project.
2. the project is intended to strengthen environmental safeguards as compared to mining expansion undertaken without USAID assistance.

### Result:

ND w/conditions intended to “maximize the project’s greening influence on mining expansion to the fullest extent practicable.”

- Full harmonization of all products/guidance with national env. requirements (or accepted env. management good practice, where requirements are lacking)
- Systems of monitoring and enforcement to fully integrate environmental requirements pertaining to licenses, concessions and regulations
- USAID-funded outside review of concession applications and investment plans to include expert reviews of EIAs, EMMPs. Where deficient, a recommendation of remedy or rejection is required.



# Case 2: Policy implementation and institution strengthening

## The project:

**Streamlining business start-up and permitting approvals for land use changes**

## Context:

MCC Threshold project designed and implemented by USAID

## Components:

- Put in place administrative structures/procedures needed to implement reforms already adopted by national government; capacity building support to government departments involved
- Public awareness campaigns
- Establish one-stop licensing centers and start to migrate application processes online
- Provide business development services via one-stop centers
- Public awareness and how-to guides



**The same ESDM/  
env compliance issue**

Reg. 216 provides for a categorical exclusion for “education, technical assistance or training programs, **except to the extent such programs include activities directly affecting the environment**”\*

*Should the Catex apply?*

\*text in red applies to all activities considered for categorical exclusion

## Case 2:

# Policy implementation and institution strengthening (cont'd)

**No!** (but a slightly harder call)

### The IEE found:

The project has the “potential for significant environmental impacts deriving from the enterprise creation, land development, construction and/or overall private sector expansion it is intended to stimulate.”

### However, the IEE noted. . .

“it is not possible to predict the particular enterprises and land development activities that will result, nor in most cases will it be possible to ascertain whether a particular enterprise would have been launched or a particular land development undertaken in the absence of the project . . . This significantly limits USAID’s direct responsibilities for these impacts and the range of feasible actions to address them.

### Result:

ND w/conditions

“The project implementer must develop for COR and REA approval a strategy for:

- Informing licensees/permittees of environmental compliance obligations under national law at the time of license/permit award
- Incorporate and promote cleaner production approaches in TA for enterprise efficiency and good management
- Include screening for environmental compliance and for enterprises that represent high environmental risks.

# Case 3:

## Credit enhancement/private sector support

### The project:

**Enhancing credit availability to SMEs and strengthening agro-processing**

### Vehicle:

**DCA Loan Portfolio Guarantee for \$13mn SME loan program by a commercial bank**

### Components:

- Make local currency loans available to SMEs under more favorable terms than are currently available from commercial financial institutions.
- Provide credit in rural areas to small and medium enterprises (SMEs) and for seasonal agricultural activities.

(Neither USAID nor the IP reviews or approves individual loans.)

### The ESDM/ env compliance issue

**Reg. 216 provides for a categorical exclusion for “support to intermediate credit institutions” when USAID does not reserve the right to review and approve individual loans**

*Should the Catex apply?*

## Case 3:

# Credit enhancement/private sector support (cont'd)

## And again—no.

**The general premise** behind DCA credit enhancement is that the activities supported would not otherwise be financed.

Thus, when these activities may have significant environmental impacts, categorical exclusions cannot apply.

**In this case**, the expansion of private sector activity that is the intended result of this project has potential, perhaps significant, adverse environmental impacts

**However**, USAID does not have direct control over the loan recipients but only over the general parameters and conditions of the loan-making process.

### Result:

#### ND w/conditions:

The IP and the COR shall assure that the recipient bank will have the capacity to and shall fully implement an environmental due diligence process which:

- bars funding to activities for which funding is prohibited under the Sections 118 & 119 of the Foreign Assistance Act;
- bars funding for “classes of action normally having a significant effect on the environment (per 22 CFR 216.2.d) pending an Environmental Assessment acceptable to USAID and USAID’s approval of that assessment, and
- ascertains compliance with national environmental requirements as a condition for loan-making.

# Case 4:

## Integrated production and processing support

### The project:

**Small- and medium-scale aquaculture production and processing promotion**

### Concept:

Direct TA and GDAs to promote small- and medium-scale freshwater aquaculture and fish processing for rural food security and income enhancement.

### Components:

1. Train local extensionists in business development and aquaculture techniques.
2. Extensionists provide TA to smallholder producers.
3. Support formation of new processing MSMEs.
4. Grow and provide fingerlings; sell quality fish feed and other inputs at a profit.

### The ESDM/ env compliance issue

Reg. 216 provides for a categorical exclusion for “education, technical assistance or training programs, **except to the extent such programs include activities directly affecting the environment**”

*Should the Catex apply to components 1-3?*

## Case 4:

# Integrated production and processing support (cont'd)

## And finally—no.

### The IEE found:

Training and extension/technical assistance activities contribute to the project's goal of expanding and intensifying aquaculture activities. This has potential for, perhaps significant, adverse environmental impacts. A Categorical Exclusion cannot apply.

### However, the IEE notes:

- experience shows that small- and medium-scale aquaculture impacts are avoidable or controllable with appropriate siting and application of basic good environmental management principles; and
- USAID's direct control over entities responsible for impacts (and thus USAID's direct responsibility) is limited, as are measures feasible to address impacts.

### Result: ND w/conditions for the project in its entirety:

1. Training and TA will incorporate (1) sound environmental management practices per the *Small Scale Guidelines* and (2) host-country environmental requirements.
2. A commitment to sound environmental management, compliance and cleaner production will be incorporated in all GDA agreements and in programming and actions.
3. Existing aquaculture or processing facilities receiving direct USAID support will be reviewed to identify any significant deficiencies in basic environmental management or compliance with host country environmental requirements, and these deficiencies promptly corrected.
4. An ERF-based subproject review process is required for (1) any new aquaculture or processing facilities, and (2) for significant expansion of existing facilities, where funded or partially funded by USAID.