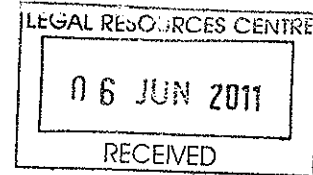




DMR 5



MINISTRY
MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA

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The Director
Legal Resources Centre
PO Box 932
Grahamstown
6139

Your Ref: Ms Sarah Sephton

Dear Madam

APPEAL IN TERMS OF SECTION 96(2) OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002 (HEREINAFTER REFERRED TO AS "the Act") AGAINST THE GRANTING OF A MINING RIGHT TO TRANSWORLD ENERGY AND MINERAL RESOURCES SA (PTY) LTD ON THE KWANYANA BLOCK OF THE XOLOBENI TENEMENT AREA, WILD COST, EASTERN CAPE PROVINCE (EC 30/5/1/2/2/ 100MR)

The above mentioned appeal on behalf of Amadiba Crisis Committee has reference.

After careful consideration of the appeal in terms of section 96(2) of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 Of 2002), hereinafter referred to as "the Act", for the withdrawal of the decision made by the Director-General: Mineral Resources by virtue of powers delegated to him, I, Ms. S Shabangu, MP, Minister of Mineral Resources of the Republic of South Africa, by virtue of powers conferred on me in terms of section 96(2) of the Act, hereby makes the following determination:

- 1) I am satisfied that the power to grant the abovementioned mining right was duly delegated to the Director-General: Mineral Resources in terms of section 103 of the Act.
- 2) I am satisfied that Transworld Energy and Mineral Resources SA (Pty) Ltd took all reasonable steps to consult with interested and affected parties as contemplated in section 22(4) (b) of the Act.

I hereby however withdraw the decision of the Director-General to grant the mining right to Transworld Energy and Mineral Resources SA (Pty) Ltd to mine heavy minerals on the Kwanyana Block of the Xolobeni Tenement area, Wild Coast, Eastern Cape Province for the following reasons:


- a) The decision to grant the mining right was taken at a stage when several environmental issues were still outstanding as per a directive from the Regional Manager Eastern Cape Region to Transworld Energy and Mineral Resources SA (Pty) Ltd dated 4 June 2008.

I hereby direct in terms of section 29(a) of the Act that:

- a) Transworld Energy and Mineral Resources SA (Pty) Ltd address the aspects as per the letter by the Regional Manager: Eastern Cape Region dated 4 June 2008 and annexed letter from the Department of Environmental Affairs and Tourism dated 20 December 2007. Copies of both the said letters are attached hereto for ease of reference.
- b) Transworld Energy and Minerals Resources SA (Pty) Ltd is further directed to submit such further information to the Regional Manager: Eastern Cape Region within 90 (ninety) days of the date of this letter.

The Regional Manager: Eastern Cape Region is directed to submit a recommendation to the Minister after re-evaluation of the information submitted by Transworld Energy and Mineral Resources SA (Pty) Ltd as mentioned above for final determination.

Yours faithfully


Ms S SHABANGU, MP
MINISTER
DATE: 17/05/2011

**the dme**Department
Minerals and Energy
REPUBLIC OF SOUTH AFRICA

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Reference: EC 30/5/1/2/2/0100 MR

Date: 04 June 2008

Messrs Transworld Energy and Minerals Resources (SA)(Pty) Ltd

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DURBAN

3652

Fax: 011- 807 0744

Dear Sir/ Madam

DIRECTIVE IN TERMS OF SECTION 29(a) READ TOGETHER WITH 39(5) OF THE MINERALS & PETROLEUM RESOURCES DEVELOPMENT ACT (ACT 28 OF 2002) REGARDING THE APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22 OF THE ACT: HEAVY MINERAL MINING: STATE LAND, EASTERN CAPE REGION

1. Please refer to the meeting held at the Director-General's office on the 4th June 2008, and find the instruction in terms of section 29(a) of the Act.
2. Under conditions of uncertainties in relation to the proposed mining blocks (Kwanyana, Sikombe, Mthethu and Myameni) and the varying degrees of sensitivities and state of degradation, the Department will take a risk-averse precautionary approach, by at this stage, only allowing investigations in relation to the Kwanyana block.
3. The Department would, however, also like to bring the following important legislative consideration that would be applied in the decision making of your application, hence its vital that an amended documentation required from you as a result of the discussion, must also demonstrate compliance to these principles:-

- a. The objects of the MPRDA include giving effect to section 24 of the Constitution by ensuring that the Nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development. (Sect. 2(h) of the MPRDA).
- b. Demonstration that mining operation as proposed will be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic, and environmental factors into the planning and implementation of mining projects, in order to ensure that exploitation of mineral resources serves present and future generations. (Sect 37 (2) of the MPRDA).
- c. That the principles set out in section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of the MPRDA (Sect 37 (1) (b) of the MPRDA), and
- d. Accepted principles of sustainable development, as they relate to the concept of intergenerational equity referred to above, imply that where a mining operation cannot internalise all its costs (i.e. all its social, economic and environmental costs) in the operation, the resource rightfully belongs to future generations and should not be exploited under current scale and prevailing available economic reserves.

4. Environmental specific issues

S.C.S. OK, ✓

- a. Provide the coordinates of all mining blocks for all sites proposed as part of this application. The separation of the areas by virtue of coordinates would assist the decision maker in arriving at an informed decision regarding your application.
- b. Detailed mining plan on a topographical sheet and/or aerial photo with the following:-
 - i. Mine design with all the proposed infrastructure. ✗
 - ii. Schedule, sequence and direction of mining and applicable time frames; ✓
 - iii. Mineable areas in m² or ha. ✓
- c. Layout of all infrastructure for all mining and other activities incidental to mining:-
 - i. Processing plant. ✗
 - ii. Ore and waste stockpiles. ✗
 - iii. Storm water channels and return water dams for silt trap and leachate control. ✗
 - iv. Bulk storage of hydrocarbons. ✗
 - v. Road network, pipeline and other infrastructure, etc ✗
- d. A water reticulation defining inflow & outflow of water quantities in the system. - ?
- e. An Environmental Impact Assessment (EIA) of all activities defined above (not limited to) and their impacts on the environment:-
 - i. Impacts of water abstraction on the ecological reserve of the affected rivers.

- 3 months
- ↑
- ii. Impacts on the fresh/ sea water ratio as a result of water abstraction & implications on the ecological functioning of the estuaries.
 - ✓ iii. Creation of a draw-down cone or depression from water hydraulically drain into the working areas and its impacts on the wetlands and river systems.
 - iv. Possible impacts on other water users within the system. ?
 - ✓ v. Quantification of chemical nature of the effluent from tailings.
 - f. An Environmental Management Programme (EMP) for managing impacts arising from the activities:-
 - i. the biophysical impacts (fauna & flora, hydrological impacts).
 - ii. The social impacts as a direct result of mining and as they relate to possible relocation of people. ?
 - g. A rehabilitation plan detailing among others:-
 - i. Maintaining the natural topography & manage visual impacts.
 - ii. Returning the ecological functioning of the area. — linked to DEATS
 - iii. Management of social impacts.

5. Social specific consideration

- a. An indication that object 2(d) of the Act will be complied with (par. "substantially and meaningfully expand opportunities for historically disadvantaged persons to enter the minerals industry and benefit from the exploitation of minerals.....") and this is important to establish if it will be in the national interest to issue this right applied for:
 - i. Preferential procurement and empowerment of the local community. This is important and must not be viewed in the light of preferential procurement-favour of the shareholder(s), however, must be considered from a local community benefit point of view. (a plan must be proposed of how this would be achieved). ??
 - ii. Details of skills development programme (with a schedule and time frames) for both the shareholders, employees and communities.
 - iii. Directorship and composition of the board as defined by the shareholder agreement.
 - iv. In relation to 5(a)(i to iii), please submit supporting following documentation:-
 - Shareholders agreement between TEM and Keysha Investment.
 - Structure and the working agreement in Xolco by the representative trusts and the proposed benefits for the community from participating in the project.

- 3
- b. An indication that the objects of section 2(e) of the Act will be complied with and the project will be economical once all the costs of implementation (environment & social) have been considered in the planning.
 - c. An indication that the objects of 2(l) of the Act will be complied with through the inclusion of a detailed schedule (with time frames) of sound and viable social project that will be undertaken by the applicant and such must be linked to the Local Economic Development (LED) priorities of the affected municipalities. This is important to establish if it will be in the national interest to issue this right applied for.
6. Considering the specific issues raised above, the amended documentation, therefore, must be compiled to the following minimum standard and format: -

- a. Basic information on the mining project, the mineral concerned and the nature of the intended operation.
- b. Description of the pre-mining environment in order to establish a baseline at the time of commencement of operations.
- c. A full description of the mining project, including a plan of the intended mine path. Each activity on the mine such as *inter alia*, excavating, hauling, transport, pipeline, accommodation, dust suppression, etc must be listed in a comprehensive activity based description of the mining project, which description list is capable of identifying the source(s) of each impact evaluated in the EIA.
- X d. The programme must further list the impacts of each of the aforesaid activities, which impacts must be suitably cross referenced to the relevant assessment in the EIA. All biophysical, socio-economic, and cultural-historic impacts, including those raised by interested and affected parties must be taken into account.
- e. The programme must reflect clearly, in tabular form, the specific action that will be taken for each of the aforesaid impacts and these must be clearly to the sources of the identified impacts. Even in cases where no action is required, this must be clearly stated.
- f. These actions must be clearly cross referenced to the EIA and activity list described above in order that the completeness of the management actions required may be meticulously verified against both sources and severity of the impacts. The actions to be taken must be designed in accordance with principles contained in chapter 2 of the National Environmental Management Act. Once the aforesaid management measures have been identified the impacts must be re-assessed assuming the aforesaid measure is in place in order to determine the potential effectiveness of such measures.

Copy

g.

The management programme which sets out the aforesaid measures must also include those management activities which, where applicable, will be conducted daily, weekly, monthly, quarterly, annually or periodically as the case may be in order to manage the aforesaid impacts effectively.

h.

In addition, the total cost of the aforesaid management measures and/or impacts described in (a) (b) & (c) above must, in the same numerical format, be calculated and assigned to applicable categories of concurrent annual cost, immediate closure cost, end of life of mine cost, and post closure cost.

i.

The total liability generated by mining activities for the duration of the project, as relate to the Kwanyana block,

j.

A fully costed rehabilitation plan reflecting the anticipated end of life closure costs must be included in the environmental management programme and a rehabilitation and closure plan detailing principles as contained in Regulation 56 of the Act.

1. page 5-1

not found till page 6-2

7.

It is also brought to your attention that a letter from the Department of Environmental Affairs and Tourism is also attached for you to provide a response on the matters raised.

To comply with the requirements of section 39(4)(a) of the MPRDA, the programme must comply with these above minimum standards for the compilation of the revised Environmental Management Programme (EMP) as directed in terms of section 29(a) and 39(5) of the Act. Failure to adhere to the aforementioned directive and format or to adequately address the aforementioned concerns and requirements will result in the required EMP not being approved and the subsequent refusal to grant the right applied for.

Your earliest response to the issues raised will allow the Department to finalize the matter.

Yours faithfully

**REGIONAL MANAGER: MINERAL REGULATION
EASTERN CAPE**

cc: Nanette Hattingh; Fax No. (011) 803 5745

with this department in this regard as a matter of urgency as the two processes in terms of the MPRDA and NEMA have vastly different requirements and time frames. It is already clear that some of the reports submitted will have to be revised to adhere to the minimum requirement of NEMA and that the time frames in the NEMA EIA process will not be compatible with the time frames in the EIA process under the MPRDA.

The department again wants to highlight that Section 63 of the National Environmental Integrated Coastal Management Bill specifies additional criteria that the competent authority must take into account before granting an environmental authorisation in terms of NEMA for activities located in the coastal zone. It is recommended that this list of criteria, attached as Appendix 1, be used as a guideline in respect of any activities related to this proposed mining application that may occur in the coastal zone.

It must be noted that the applicant must adhere to the permit requirements with regard to the Coastal Conservation Area, Republic of Transkei, Decree 9 of 1992. The Eastern Cape Department of Economic Development and Environmental Affairs is the relevant authority to handle all applications in this regard.

The area to be impacted on consists of several rivers and estuaries. From the draft EIA and draft EMP, it is clear that there is a high probability that these areas will be impacted on significantly and permanently. It is the opinion of the Directorate: EIE that the requirements of the National Water Act in terms of the Water Use License need to be taken into consideration when determining the possible environmental impacts related to all water matters as this could impact on the total quantities allowed, the quantities to be recycled and the quantities available for rehabilitation. Currently this is not yet in place and this contributes to the uncertainties in the draft EIA and draft EMP.

Theme D of the White Paper for Sustainable Coastal Management in South Africa is entitled *Natural Resource Management*. Goal D1 of this theme aims to maintain the diversity, health and productivity of coastal processes and ecosystems. The theme points out that "the location of physical development and fixed structures, discharge of pollutants and waste, and other human activities will need to be carried out so as to minimise impacts upon the natural functioning of coastal ecosystems and processes". The draft EIA and draft EMP are unclear about the scale and extent of the impact.

The National Environmental Management Integrated Coastal Management Bill defines the coastal zone and determines its boundaries as follows: the inland boundary of the coastal zone 1 km inland of the high-water mark in rural areas such as the proposed mining area. The bill further provides for the adjustment of this boundary in the light of variable environmental considerations applicable in different areas. For example, the boundary may need to be more than 1 km (to encompass dunes and the portions of estuaries affected by tidal circulation) and it could be less than 1 km where environmental considerations allow for this. An appropriate determination of the inland boundary of the coastal zone is particularly relevant in the context of this proposal. Clarity on the determination of suitable buffer zones around rivers and estuaries needs to be provided and motivated. Rehabilitation measures need to be described in detail.

16 The Eastern Cape Biodiversity Conservation Plan indicates the area as being of highest conservation priority from both aquatic and terrestrial perspectives and the protection of this area is required to meet the national biodiversity conservation targets. The Mkabati Nature Reserve will be impacted on from the perspective of sense of place and the visual impact will be significant and permanent. It must be assessed by taking into consideration that the mining is a short-term economic activity with long-term negative impacts where the ecotourism in the area has an unlimited life span. One of the economic activities of the area may not impact negatively on other sustainable activities in the area.

The Wild Coast Spatial Development Initiative (SDI) has been identified as an area of great ecotourism potential, hence the approval of the establishment of an SDI by Cabinet in 1997 and its subsequent transfer from the Department of Trade and Industry to DEAT in 2000. The SDI was reconfigured for the initiative in the following four focal areas:

- Construction of the toll road
- Tourism development
- Clampdown on illegal cottage development
- The establishment of a consolidated conservation area

SPECIALIST STUDIES

All the above are aspects that should form a part of a specialist study. From the draft EIA and draft EMP, it is clear that only a limited number of specialist studies have commenced and been concluded. The specialist studies still to be undertaken are crucial studies to inform DEAT's final decision on this matter.

This matter was continuously raised by this department, the Eastern Cape Department of Economic Development and Environmental Affairs, Eastern Cape Parks and other authorities like the Department of Water Affairs and Forestry in their comments during the EIA process in terms of the MPRDA.

Surveys for the vegetation studies need to be conducted over a period of one year to take into account the flowering cycle of plants. This will be important to guide the rehabilitation capabilities and reproduction requirements that are crucial for the successful rehabilitation of disturbed areas. It is noted that the vegetation types in the report were described in terms of Acrocks. This is a point of concern as a much more defined and more correct map and set of data are currently available with regard to the land cover GIS layers.

The Eastern Cape Department of Economic Development and Environmental Affairs are concerned about the following:

- ✓ Incomplete and inadequate specialist studies
- ✓ Some of the studies will have to be amended to adhere to the requirements of EIA specialist studies in terms of NEMA
- The limited focus of the EIA in terms of the MPRDA where the impact of the proposed activity is limited to the mining area only and are not evaluated in the regional context,

- ✓ taking into consideration that the impacts of the supporting infrastructure need to sustain the proposed mining
- — Revegetation may restore some of the visual impacts but will never restore the loss of biodiversity and ecological function
- The short-term gains of mining (20 to 25 years) versus the sustainable development options of tourism-related developments over many years

The Directorate: Authorisation and Waste Disposal of DEAT is concerned about the following aspects:

- The storage of waste longer than 90 days on site without a permit from DEAT
- According to the report, no chemicals will be used. However, the report makes reference to "floculant". Where this will end up and how it will be treated, is unclear
- — According to the report, the domestic waste will be taken to Mbitzana. This site is not licenced. An application needs to be submitted in terms of Section 20 of the Environment Conservation Act and the minimum requirements of DWAF must be followed
- Lists of the kinds of anticipated waste need to be included
- — Detailed geological studies need to be undertaken to establish the environmental risks of the de-watering of final voids
- Volumes and quality of decant water must be taken into consideration
- — Light pollution needs to be considered, as well as the visual intrusion of the area that, according to the report, is a long-term, significant and definite impact
- — A detailed layout and rehabilitation plan were not submitted

The Chief Directorate: Transfrontier Conservation Areas and Protected Areas and the Directorate: Biodiversity Conservation is concerned about the following aspects:

- • The Eastern Cape Biodiversity Conservation Plan, which has now been officially launched by the MEC, should be adhered to and implemented in the decision of the Department of Minerals and Energy.
- • According to the recently published Eastern Cape Biodiversity Conservation Plan, a co-operative project between the South African National Biodiversity Institute, the Department of Water Affairs and Forestry the Eastern Cape Department of Economic Development and Environment Affairs and the Development Bank of South Africa, the proposed mining area consists of mainly BLMC1, a land management class that should, according to the guidelines, be maintained in its natural state, and where the only activities allowed should be conservation.
- This conservation plan has also mapped water and catchment sensitivity to transformation in sub-quaternary catchments. This takes into account the linkages between catchments, important rivers and sensitive estuaries. When landscapes are transformed beyond certain critical thresholds, ecological processes such as fire and the water cycle show dramatic changes. The catchment transformation threshold for this area, which falls in the ABLMC class 1, is given at less than 10%. ABLM1 represents critically important subcatchments and priority primary catchments for critical estuaries. This places the proposed mining area in the most sensitive aquatic environment, where the limit set to this aquatic BLM for transformation is less than 10% of the area.

- This conservation plan represents a synthesis of the latest biodiversity data, and serves to highlight sensitive areas in three ways: by looking at aquatic biodiversity and river health, by looking at transformation and terrestrial biodiversity, and by identifying critical biodiversity areas. In all three these analyses, this area comes up as an area that should not be utilised for almost any land management practice apart from conservation and game farming.
- The proposed storage dam and wiers would cause irreparable damage to the very unique aquatic fauna of the proposed river. This cannot be mitigated and will, in all probability, lead to the extinction of species. Fish are not the only aquatic fauna of a river ecosystem, and the aquatic fauna, in all probability, has as high a rate of endemism as the terrestrial species.
- Wetlands are virtually impossible to rehabilitate. The proposed activities will not only lead to near-permanent damage to the terrestrial environment, but also to the destruction of the very unique aquatic environment.

OTHER AREAS OF CONCERN

→ The visual impact of the proposed development will be significant and long term. The impact will not only be on the Wild Coast Sun, but also on the Mikabafi Nature Reserve as a tourism facility. This was not assessed in the study and is of concern to this department, Eastern Cape Parks, as well as the Eastern Cape Department of Economic Development and Environmental Affairs.

CONCLUSION

This department has grave concerns with regard to the proposed mining developments in the area and object to it.

Several crucial aspects and specialist studies are lacking. From the documentation submitted, it is clear that the accepted and adopted planning and policy guidelines for the area have not been taken into consideration and several of the legislative requirements have not been met. No time frames or schedules are included to indicate whether they will be adhered to.

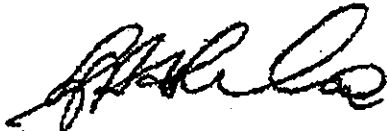
It must be emphasised that the MPRDA and NEMA processes must be correctly and carefully aligned. Currently, this is not the case. DEAT has not received the application for the listed activities in terms of the EIA regulations under NEMA. This alone is an almost fatal flaw in the public process to be followed should DEAT accept the documents in terms of the MPRDA. The environmental consultant appointed should advise the applicant that it is crucial to align and integrate the EIA process, both in terms of the MPRDA and in terms of NEMA, to facilitate a smooth and legally sound process for both applications. Currently the two processes are completely disjointed.

DEAT and the other authorities consulted have already identified several grey areas and it is already clear that several of the documents submitted will have to be redrafted to adhere to the NEMA EIA requirements.

It is further the view of this department that the Department of Minerals and Energy should not take a decision on the mining rights before the NEMA EIA process for associated and related activities has been concluded and this department has issued a decision, whether positive or negative, on the application.

In the light of the above, the department object to the proposed mining in the area and it is the opinion of this department that it cannot, at this stage, accept the draft EIA and draft EMP with the information available in its current format.

Yours sincerely



Ms Pam Yako

Director - General

Department of Environmental Affairs and Tourism

Letter signed by: Miss SBP Hlela

Designation: Chief Director: Environmental Impact Management (Acting)

Date: 20 DECEMBER 2007

