

ENVIRONMENTAL ALERT

06 March 2013

STREAMLINING WATER USE LICENCE APPLICATIONS INTO ENVIRONMENTAL MINING REGULATION

Over 50 mines in South Africa operate without valid water use licences (WUL) under the National Water Act, No 36 of 1998 (NWA).

There are therefore on-going concerns about unregulated and potentially negative impacts on water resources and fears of mines that risk major economic repercussions if forced to shut down for operating in violation of the law. The number of mining companies operating without a WUL is generally blamed on inefficiencies in processing of water use licence applications (WULAs) by the Department of Water Affairs (DWA) and backlogs since enactment of the NWA in 1998.

Several companies operating without WULs have applied for a licence, however, applications have been significantly delayed by two years or more. In an effort to address this, the DWA introduced 'Project Letsema' in 2011 to expedite WULAs. However, waiting periods remain long and mine operations are unlawful pending the granting of WULs, notwithstanding submission of a WULA. This problem is aggravated by the fact that mining licences are often applied for and granted far in advance of the submission of WULAs and grant of WULs.

Environmental impacts of mines are currently regulated primarily by three pieces of legislation, namely the NWA, National Environmental Management Act, No 107 of 1998 (NEMA) and Minerals and Petroleum Resources Development Act, No 28 of 2002 (MPRDA). Mining Minister Shabangu recently announced that the Department of Mineral Resources (DMR) and the Department of Environmental Affairs (DEA) had again begun discussions to introduce an integrated licensing process under this legislation. The integrated approach

would include an application for a mining right and WULA being considered and granted simultaneously.

This announcement flows from the resuscitation of an enduring five year discussion between the Departments on the integration of laws regulating environmental impacts of mining. In 2008, an Agreement was signed between the ministers regarding this and amendments were made to NEMA (they have not yet commenced) and amendments to the MPRDA were proposed.

At representations to the Parliamentary Committee in mid-February 2013, the DEA conveyed it wished the Minerals and Resources Development Amendment Bill (the MPRDA Bill), which was enacted to further integrate environmental legislation with mining law, to be processed speedily. It reiterated its on-going desire to create unified legislation to cater for the needs of the DEA, DWA and DMR, as recorded in the Agreement. This would ensure mining licence applications would be directly linked to environmental impact assessments (EIAs) and WULAs, with the three applications being considered separately but officials retaining their powers on a joint committee. The DEA emphasised that there was a need to streamline Environmental Management Programmes, presently regulated under the MPRDA, WULAs, and EIAs for mining. Clarification was requested from the committee on whether it would prefer three separate bills or one all-encompassing General Laws Amendment Bill, to deal with the matters. The DEA urged that this legislation be prioritised.

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A coordinated approach of this kind has the potential to improve efficiency and would ensure only mines in possession of WULs could commence operations. At present however, there is a rubicon of the MPRDA Bill, the MPRDA's proposed amendments; and amendments to NEMA (NEMA Amendments) that have not yet commenced. No proposed amendments have, to date, been introduced with regard to the NWA. There also are several inconsistencies between these proposed changes to NEMA and the NWA. Read with the NEMA Amendments, the proposed changes to date are likely to result in the environmental regulation of mining being even more complex and delayed. With the introduction of

the MPRDA Bill, it appears that the Departments are back to where they were in 2008. A General Laws Amendment Bill in respect of the MPRDA, NEMA and NWA appears to be the best way forward but would result in further delays in achieving the desired goal.

Until the amendments to the current environmental framework are implemented, mining companies seeking to commence activities are advised to submit WULAs early in their planning process to avoid lengthy (and often costly) delays to the commencement of operations.

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