

BENICON- BANKFONTEIN

Importance:	<p>Some of the issues in this appeal appear to be factual in nature (e.g. the true extent of mining and the resultant decant). Many of the issues raised, however, relate to the following three underlying legal problems: (1) The limits placed on the scope of the study – why, for instance, it was decided to limit the wetland delineation to one area only, and the lack of public consultation and participation in the initial scoping phase of the project (e.g. the submission of the scoping report to the DME on 17 December 2009). (2) The failure of both the NEMA and MPRDA EIA regimes to properly consider the effects of an operation on <i>neighbouring</i> properties. The impacts seem to be artificially bounded in a manner that does not result in the internalization of the true costs of the operation. (3) The lack of integrity and rigour in the law, supporting administrative instruments and administrative enforcement regarding the assessment of post-closure mining impacts and the true costs of rehabilitation.</p>
Alleged Facts:	<p>Benicon Mining (Pty) Ltd applied for a mining right to mine coal on 513 ha of the farm Bankfontein (situated near to Breyton in Mpumalanga). The project proposal entailed the use of open-cast methods (which included the need to blast the overburden). The life of the mine was projected to be between seven and nine years.</p> <p>The mining application was submitted on 22 October 2008 and accepted by the DME on 20 November 2008. A scoping report for the Environmental Management Plan (EMP) was subsequently submitted to the DME on 17 December 2008. An application for environmental authorization for listed activities in terms the NEMA was made to the Mpumalanga Department of Economic Development, Environment and Tourism on 19 January 2009. During the course of 2009, the appointed environmental assessment practitioner (EAP), Digby Wells & Associates proceeded with the preparation of the Environmental Impact Assessment / Environmental Management Plan (it appears as if it was planned to submit the same document for purposes of obtaining the mining right for obtaining the required environmental authorization in terms of NEMA).</p> <p>The land in question is owned by Benicon Mining and leased to an adjacent farmer for grazing. It is mostly used as arable land with tourist farms, apple farms and stud farms adjacent to the mining area. There are no protected reserves in the area but the area's ecological and conservation status is considered to be very sensitive and worthy of protection. Three Red Data species were found, i.e. <i>Khadia carolinensis</i>, which is listed as Vulnerable and <i>Alepidea longeciliata</i>, which is listed as Endangered and <i>Afroscidium sp</i>, either Vulnerable or Endangered. The area is considered to be high in biodiversity. However, dry season surveys were not conducted and therefore migrant species that are present during this season could not be recorded. Two hydro-geomorphic (HGM) types of natural wetland systems occur within the area assessed. The hill slope seepage wetland connected to the pan was determined to be the largest and dominant wetland unit in the area. Numerous ecological services from both wetland units were determined to be of intermediate to moderately high importance. Wetland delineation was, however, only conducted on the pan and associated hill slope seepage areas connected to the</p>

	<p>pan. No ecological assessments were conducted for the additional wetland areas. There were a number of sites of archaeological and cultural interest or significance. An apple farm adjacent to the mining area employs 60 people on 40 ha (increasing to 110 workers during harvest time) and it was contended that these jobs could be lost if mining rendered the water available on the neighbouring farm unusable.</p> <p>An objection to the mining rights application (in terms of the MPRDA) was lodged by the Mpumalanga Lakes District Protection Group (MLDPG) with the Regional Manager, Mpumalanga on 2 December 2009. The objection cited concerns relating to access to the property and the impact of the resultant traffic, the failure on the part of the consultants (despite requests) to investigate the impact of the proposed project on the quality of the dam supplying water to the apple farm on the adjacent property, the cumulative impact on the dam water quality of this project together with the Spitskops Greenfields application by Xstrata (notwithstanding that Digby Wells & Associates had also been appointed as the consultant for the Spitskop project), the failure to put in place a closure plan to manage the decant (of acid mine drainage), the failure to carry out a sustainability study to determine whether mining is the best land use option, the failure on the part of the consultants to consider the impacts on the old underground workings on the farm and the possibility of a ‘waterburst’ between the new opencast workings and the old mine, and failure to do any acid base accounting for the project.</p> <p>Whilst the outcome of the mining rights application is unknown, the Mpumalanga Department of Economic Development, Environment and Tourism issued a positive environmental authorization for listed activities that would be undertaken during the course of the project on 4 March 2010 (Departmental Ref. No 17/2/2/1(e) GS – 02). The MLDPG subsequently lodged a notice of intention to appeal against this decision. The outcome of the appeal is unknown.</p>
Forum:	Administrative appeal to the MEC for environment, Mpumalanga against the granting of an environmental authorization for listed activities.
Issues for decision:	<p>The MLDPG has raised the following issues in the appeal:</p> <ul style="list-style-type: none"> • That the decision-maker assessed the area as very disturbed and lacking in diversity [though the source of this claim is not identified], whereas a spatial planning tool put forward by the Mpumalanga Parks and Tourism Authority assessed a significant area of the farm as being ‘highly significant’ and a smaller area as being ‘important and necessary from a biodiversity perspective. • The limitation of the wetland delineation to one wetland only and the failure to thus conduct an ecological assessment of the additional wetland areas (which constituted 49% of the mining area). • The possibility that the single aquatic survey does not provide an accurate representation of the current ecological integrity of the aquatic ecosystems surveyed. • The failure to conduct a sustainability study that assessed the true costs and benefits of the mine (factoring in, for example, the impacts of the operation on the sustainability of the adjacent tourism, apple and stud

	<p>farms and the costs of water rehabilitation post-closure of the mine)</p> <ul style="list-style-type: none"> • Important issues raised during the public participation process were not addressed (specifically relating to the road which the mining company needed to use to access the mining area, the impacts of blasting on neighbouring properties, and the impacts of the operation on the socio-economic activities taking place on adjacent properties). • The loss of land capability (due to settling and hard settling) was not addressed at all. • The amount of water which would decant from the mine was disputed and, flowing from that, the amount of acid water that would decant from the mine and for which financial provision had to be made post-closure. The appellants calculated the total cost of water rehabilitation post-closure to be in excess of R 50 million (calculated only over 20 years), whereas only made provision for just over R3 million for all post-closure impacts. The appellants contend this is contrary to the Department of Water Affairs' Best Practice Guidelines.
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Paper Trail:

Document	Author /Originator	Date
EIA/EMP	Digby Wells on behalf of Benicon Mining (Pty) Ltd	May 2009
Draft minutes from public feedback meeting for proposed Bankfontein EIA and IWULA	Digby Wells	17 September 2009
Objection to granting of mining	MLDPG	2 December 2009
Positive authorization for NEMA listed activities at Benicon mine	MDEDET	4 March 2010
Positive authorization for NEMA listed activities at Benicon mine – notification of stakeholders	Digby Wells	8 April 2010
Notice of intention to appeal positive authorization	MLDPG	Undated