

EYESIZWE PAARDEPLAATS

Importance:	<p>The case is illustrative of the systemic issues of failure to on the part of the mining company and officials in the Department of Mineral Resources to properly consult with all interested and affected parties and to provide access to relevant information. The case, however, is interesting in serving as an example where the RMDEC took a decision <i>against</i> the granting of the prospecting right. The Minister (or her delegated officials) however, granted the right in spite of this.</p>
Alleged Facts:	<p>This case relates to the granting of a prospecting right for coal on portions 28,29, 30, 40 of the farm Paardeplaats 380 JT and the remaining extent of portion 2 of the farm Paardeplaats 425 JS. The right was granted in favour of Eyesizwe Coal (Pty) Ltd on 30 October 2006 on which date the Environmental Management Plan (EMP) was also approved. The mining area comprises some 1167 ha near the town of Belfast in Mpumalanga. It falls within an area identified as ‘highly significant’ by the Mpumalanga Tourism and Parks Authority (MTPA) as regards terrestrial and aquatic biodiversity.</p> <p>During 2002 and 2003, Eyesizwe held approximately four meetings with the Environmental Escarpment Protection Group (EEPOG) regarding mining in the Belfast area, which it termed the ‘Belfast Block’. They also signed an agreement with EEPOG that they would notify this group of any applications in the Belfast area. Notwithstanding this, and despite officials of the Department of Mineral Resources (DMR) being aware of EEPOG’s interest in the matter, EEPOG received no notification whatsoever of the submission and acceptance of Eyesizwe’s prospecting rights application in respect of the aforementioned properties during 2004 or 2005. One of the landowners of the properties affected by the application was given a ‘notification form’ to sign by representatives of Eyesizwe. The notification form in effect sought to obtain the landowner’s consensus that consultation would be limited to the time frame and location of the prospective drilling holes. When asked for more information he was simply informed that consultation could only happen after he signed the notification form. The landowner, however, was never again contacted and no consultation took place. While Eyesizwe appeared to have consulted with certain landowners and lawful occupiers during 2005, it thus appeared to avoid consulting with this particular landowner (who was affiliated to EEPOG) and EEPOG itself. During 2005 EEPOG wrote to the relevant regional office of the DMR stating its desire to be consulted in respect of this particular application, but received no reply.</p> <p>EEPOG subsequently submitted an objection against the prospecting rights application to the Regional Mining Development and Environment Committee (RMDEC). The matter was discussed four times at the RMDEC (on 22 September 2005, 7 November 2005, 10 February 2006 and 20 April 2006 respectively). At these meetings both EEPOG and the MTPA objected to the application. The MTPA, in particular, maintained that 24 of the proposed boreholes would be in wetlands or natural grasslands and that mining would affect the community and have a negative impact on tourism as the driving economic activity in the area. The RMDEC in fact concluded that the EMP should not be approved since it did not comply with the provisions of s 39(3) of</p>

	<p>the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) or reg 52 of the regulations passed in terms thereof. This decision was based on Eyesizwe’s failure to submit the results of a public participation process requested by the RMDEC. Despite this recommendation the prospecting right was granted and the EMP approved by the Minister or delegated officials (DMR Ref. No. MP/30/5/1/1/2/190 PR). Although the landowner referred to above subsequently obtained a copy of the prospecting right when Eyesizwe approached him on 31 March 2009 to commence prospecting on his property, he never obtained a copy of the approved EMP, despite requesting access to this document (Eyesizwe insisted that he could only read through the document, but could not keep a copy). EEPOG similarly never obtained access to the EMP despite their participation in the RMDEC meetings.</p> <p>EEPOG subsequently submitted an appeal against the granting of the prospecting right on 3 May 2009. In the meantime, however, an application for a mining right in respect of these properties (and a few additional properties) had already been submitted by Eyesizwe and accepted by the DMR on 3 March 2009.</p>
Forum:	Administrative appeal to the D-G/Minister of the Department of Minerals in terms of s 96 of the MPRDA.
Issues:	<p>The case raises the following issues:</p> <ul style="list-style-type: none"> • Insufficient public participation and consultation. The appellants allege that both the Regional Manager and the mining company concerned were non-compliant with their duties in s 10 and s 16(4) of the MPRDA respectively as regards notification of and consultation with interested and affected parties. This includes having access to sufficient information in order to consult meaningfully on the proposed project. They take issue, in particular, at the alleged ‘intimidatory’ tactics of the mining company as constituted by the attempt to constrain participation and consultation through the signing of the ‘notification form’. • EMP was insufficient. The appellants allege that the EMP was deficient in that it failed to set out baseline information relating to the affected environment and failed to identify and evaluate the effects and significance of the proposed project on the environment and the socio-economic conditions of any affected party, amongst others. The allegations of EEPOG in this regard, however, must be qualified by the fact that they have not had sight of the EMP. • Work and inputs of other State departments ignored. The inputs made by the MTPA regarding the prospecting application seemingly made no difference to the eventual granting of the right.

Paper Trail:

Document	Author /Originator	Date
Prospecting right	DMR (in favour of Eyesizwe)	30 October 2006
Notification of acceptance of mining right	DMR	3 March 2009

Appeal against granting of prospecting right	EEPOG	3 May 2009
--	-------	------------