

KHULILE MINES - WITKRANZ

Importance:	<p>This case, located in the highly-significant biodiversity and water quality area of Chrissiesmeer, is illustrative of a number of the commonly-occurring themes in the study of pending cases: Failure to consult adequately with stakeholders, including the Mpumalanga Tourism and Parks Agency (MTPA); regulatory unresponsiveness in that no response from the DME was forthcoming for requests for information or even the submission of a s 10 objection; and materially false and insufficient information was set out in the EMP.</p>
Alleged Facts:	<p>Khulile Mines' application for a prospecting right for coal on portions 4, 7, 11 and the remaining extent of the Farm Witkranz 53 IT (Ermelo, Mpumalanga) was accepted by the DME on 8 May 2008.</p> <p>The farms on which the prospecting was to take place are located in the district of Chrissiesmeer, Mpumalanga. The owners in this area carry out farming operations or own eco-tourism lodges. Water flows from this area into the dam supplying the town of Carolina, and from there to the Nooitgedacht dam which is one of the main reservoirs for Eskom. There is currently one decanting mine on the farm Witkranz 53 IT, together with four other operating mines in the area and 2 non-operational mines on the Witrand adjacent to Witkranz which decant into the Blesbokspruit which also reports to Carolina dam and Nooitgedacht dam.</p> <p>Significantly, the terrestrial and aquatic biodiversity in the area had been identified by the Mpumalanga Tourism and Parks Agency (MTPA) in its Conservation Plan as 'highly significant', meaning that it contained significant wetland areas. This type of land accounted for only 12.3% of land in the area of Mpumalanga.</p> <p>On 27 May 2008 the Mpumalanga Lakes District Protection Group (MLDPG) submitted an objection to the Regional Manager against the application in terms of s 10 of the Mineral and Petroleum Resources Development Act 28 of 2002. A letter to Khulile Mines outlining the MLDPG's concerns, especially as regards impacts on water quality, was also dispatched (though this letter was not included in the EMP submitted). The MLDPG failed to receive any confirmation of the matter being referred to the relevant RMDEC.</p> <p>On 17 November 2008, the Regional-Director for the Mpumalanga Region, J.F. Rocha wrote to Khulile informing them that their prospecting application had been granted (Ref. <i>MP/30/5/1/1/2/3013 PR</i>). The letter also stated that 'the Regional Manager would approve the relevant environmental management plan and sign the right on 24 January 2009. The EMP was subsequently approved on 3 March 2009.</p> <p>An appeal against the granting of the prospecting right was lodged by the MLDPG and the landowners of the various farms on 21 June 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>Issues raised in the appeal:</p> <ul style="list-style-type: none"> • Inadequate consultation. The MLDPG failed to receive adequate notification of the prospecting application and adequate information to be meaningfully consulted. Apart from an initial notification which appears to have been sent to two of the landowners, no response was

	<p>received from either Khulile Mines or the DME regarding the MLDPG's requests for further information. The initial notification provided no information on the technical details of the operation or its environmental impacts. In this regard it is significant that the EMP was dated 20 March 2008 and was in final draft form 2 months <i>before</i> applicants were notified for the first time of the prospecting application.</p> <ul style="list-style-type: none"> • Work and input from other state departments ignored. The prospecting right was granted despite the area being designated as 'highly significant' by the MPTA. • EMP contained materially false information. The EMP for instance specified that the area was slightly flat with open veld whereas it is very undulating with steep slopes running into wetlands and streams with water of exceptional quality, it failed to specify the huge variety of grasses and species of plants occurring in the area, amongst a host of other <i>lacunae</i>. It appeared that no baseline data for the EMP had been gathered at all. The EMP also failed completely to address the 'no go' option.
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Paper Trail:

Document	Author /Originator	Date
Acceptance of application for prospecting right	DME	14 May 2008
Notice to landowner/lawful occupiers	Khulile Mines	19 May 2008
Notification of granting of prospecting right	DME	17 November 2008
Objection to Witkranz prospecting application	MLDPG	27 May 2008
Notification of approval of EMPR	DME	3 March 2009
Appeal against granting of prospecting right submitted by MLDPG	MLDPG	21 June 2009
Acknowledgement of appeal	DME	30 June 2009