

UMCEBO - KLIPPAN

Importance:	<p>This case is interesting because of civil society's apparent early victory – an initial appeal against the mining right granted to the mining company was upheld. The Minister of Mineral Resources both withdrew both her delegation to the Regional Manager and the authorization granted for the Environmental Management Programme Report. The matter was referred to the (then) Department of Water Affairs and Forestry (DWAF) for their comment. Notwithstanding this victory, mining appears to have commenced and continued unabated (except for one point) and civil society engagement in terms of the processes of the mining company amending the EMPR, applying for a water use licence (WUL) and obtaining authorization for the construction of diesel storage tanks has been largely unfruitful.</p>
Alleged Facts:	<p>This is a very complex case involving multiple authorizations and interventions on the part of civil society. The case centres around the proposed new Klippan Colliery situated on the farm Klippan 452 JS, Belfast in the district of Carolina. The area consists of a number of farms which are utilised for tourism and agricultural use. There is concern about the groundwater as the cumulative effect of other mines' groundwater could be potentially problematic. The area includes very sensitive pans which are of irreplaceable value namely, Blinkpan and Grootpan, both of which serve as critical nodes for wildlife and biodiversity.</p> <p>The proposed Klippan Colliery would lie adjacent to existing collieries at Grootpan and Steelecoal. Along with the proposed Klippan Colliery, Umcebo Mining (Pty) Ltd operates 4 other operations in the Wonderfontein district, these being the adjacent collieries at Grootpan and Steelecoal, the Onverwacht Colliery (on a contract basis with Xstrata Alloys) and the railway siding and washing facility at Wonderfontein. The documentation available dates from late 2006 till August 2010 and covers the following processes:</p> <ul style="list-style-type: none"> • Process 1: Obtaining a mining right for the establishment of a coal mine on the remaining extent of portion 2 of the farm Klippan. A mining right for this project appears to have been granted during the latter half of 2006 and the EMPR for the project was signed on 4 December 2006 (DME REF No. MP/30/5/1/2/3/2/1/111EM). The planned operations at Klippan involved mixed opencast and underground operations, producing about 300 000 tonnes of coal per annum. Operations started in late 2006 but without NEMA/EIA authorizations or WULs. The Escarpment Environment Protection Group (EEPOG) submitted an appeal against the granting of this right to the D-G of the Department of Mineral Resources in terms of s 96 of the MPRDA on 26 August 2007. The Minister of Minerals upheld the appeal on 8 August 2008. • Process 2: The amendment to the EMPR for the same project. The need for the amendment arose from new geological data which improved the characterization of the coal reserve. The amendment related to changing the proposed underground operations to opencast operations. The new opencast mine was projected to produce almost 3.5 times the amount of coal, compared to the original mine. The

	<p>EEPOG lodged an objection against the proposed amendment on 23 May 2008. Notwithstanding a letter from Umcebo Mining to the contrary (see letter 3 December 2008) it appears that the EMPR amendment was not approved before Umcebo commenced with the new operations. Additional supplementary objections were submitted by EEPOG on 15 January 2009.</p> <ul style="list-style-type: none"> • Process 3: The application for a water use and waste management licence for the Klippan Colliery, together with the Grootpan and Steelecoal Collieries. This process is characterized, firstly, by numerous requests on the part of EEPOG to the relevant authorities to be involved in the public participation process for the granting of these licences (which requests seem to have fallen on deaf ears). The process intensified in January 2009 when EEPOG submitted a formal objection to the Regional Director of DWAF against the water licence application for these collieries. • Process 4: Application for authorization for aboveground storage of diesel in terms of the NEMA EIA regulations. The authorization was granted and an appeal against the authorization was lodged mid-2010. <p>During the course of these processes, African EPA – the consultants who started work on the project, were taken over by Golder & Associates.</p>
Forum:	<p>This case involves administrative appeals to the Minister of Minerals, the Regional Mining Development and Environment Committee, the Regional Director: Water Resource Management, and the HoD of the Mpumalanga Department of Economic Development, Environment and Tourism.</p>
Issues:	<p>The processes outlined above raise the following issues:</p> <p>Regarding process 1:</p> <ul style="list-style-type: none"> • Lack of consultation in the scoping process of the EMPR, resulting in artificial and inadequate restrictions to studying the effects of the mining on the pans in the area. • Mining authorization granted notwithstanding strong objections voiced by Mpumalanga Parks and Tourism (presence of two red data species on the site). • The flawed integrity of the administrative decision to grant the mining right based on a failure by the applicant: (i) to assess alternatives, particularly site alternatives for the proposed project; (ii) to assess the no-go option considering the sensitive nature of the water resources in the proposed mining area; (iii) to submit the objections raised during public participation process in the final EMPR; (iv) to take into account the C-plan developed by the Mpumalanga Tourism and Parks Board. In terms of this plan the pan below the mine had been indexed as ‘irreplaceable’; (v) to assess the cumulative impact of the project on the site, notwithstanding that the adjacent mines were operated by the same company and employed the same consultants. • The flawed integrity of the administrative decision to grant the mining right based on a failure by the decision-maker (i) to take the assessments and objections submitted by EEPOG into account (in this regard, EEPOG pointed out that its request for a peer review of the

groundwater study be carried out, but were then subsequently informed that the EMPR had been submitted; (ii) to ensure that a sustainability study was carried out (in this regard EEPOG relied on the decision in the *Fuel Retailers* case). EEPOG emphasized the effect of the proposed mining on the unique and pristine pans in the area.

- Department of Minerals' failure to incorporate conditions which would ensure that monitoring be undertaken throughout the lifecycle of the project.
- Under the PAJA banner of taking irrelevant considerations into account, EEPOG noted that at the first public participation meeting for the project, a Mr Nel of Umcebo Mining claimed (i) that Umcebo was well-connected to the Department of Minerals especially to the women in the department that were actively promoting their activities; (ii) that Umcebo was well-connected within the governing political structures and had a lot of support within these structures; and (iii) that all the mining reserves from Witbank to Belfast would be mined in the next 40 years.

Regarding **process 2**:

- The submission of an application to amend the EMPR while the appeal against the mining right was still pending.
- Failure to assess the sustainability of the project, including the allegation that there was insufficient availability of water to sustain Umcebo's operations.
- Failure on the part of Umcebo to show that the mining of this particular reserve would contribute to the socio-economic development of the communities residing in the area in which they are operating.
- Failure to obtain a WUL for the Klippan Colliery (and adjacent mines operated by Umcebo)

Regarding **process 3**:

- Commencement of operations without the necessary WUL.
- Budget for rehabilitation limited to two – three years post-closure.
- Lack of compliance by the mine with their own plans and lack of enforcement by the DME.
- Ambiguity of the WUL application process regarding public participation and failure on the part of DWAE (then DWAF) to respond to I & APs requests for authorization.
- Allowing mining to commence in a catchment which is already 29% oversubscribed.

Regarding **process 4**:

- Authorization of the diesel storage tanks gives the project a trace of legitimacy.
- Failure on the part of DEDET to initiate enforcement efforts notwithstanding inspection (by Mr Altus Lotter).

Paper Trail: The documentation received for this case is too voluminous to list in the paper trail. The most critical documents have been identified and included in separate folders.

Document	Author /Originator	Date
Minutes: First Meeting - Klippan Public Participation Meeting	African EPA	24 July 2007
Map of Klippan Colliery	Unknown	10 Feb 2008
Map indicating Klippan Colliery in relation to Grootpan and Steelecoal	African EPA	25 March 2008
Overview of the Klippan Mine application	Koos Pretorius	Undated
Process 1: Appeal against mining right on portion 2		
Letter addressed to EAP regarding discussions held at public meeting on 4 May 2006	EEPOG	14 May 2006
Internal Appeal To The Director-General DME	EEPOG	26 August 2007
Ministerial letter setting aside approval of Umcebo EMP for mining on remaining portion 2 of Klippan	Minister Sonjica	8 August 2008
Process 2: Objection against amendment to Klippan EMPR		
Request for EAP to provide original EMPR	EEPOG	7 August 2007
Issues and Response Report for Klippan EMPR Amendment	African EPA	4 September 2007
Scoping report for EMPR Amendment	African EPA	5 September 2007
Objection to amendment of Klippan EMPR	EEPOG	23 May 2008
Unsigned letter from Mpumalanga Parks and Tourism Authority strongly objecting to the EMPR Amendment	MPTA	Letter undated but faxed on 1 December 2008
Letter notifying EEPOG of approval of mining right based on amended EMPR	Umcebo Mining	3 December 2008
Supplementary objections to EMPR Amendment	EEPOG	15 January 2009
Letter to Umcebo notifying that DMR had failed to affirm approval of amended EMPR	LRC (acting for EEPOG and others)	15 January 2009
Request to Mpumalanga Dept of Agriculture and Land Affairs to issue directive regarding illegally excavated pit on Klippan	LRC (acting for EEPOG and others)	Undated
Letter from DMR confirming approval of Umcebo's amended EMPR	DMR	4 May 2009
Process 3: Objection against the application of an Integrated Water and Waste Management Plan for the collieries at Klippan, Grootpan and Steelecoal		
Response from environmental consultants on need to obtain a water use licence for the operations at Klippan	African EPA	9 October 2006
Letter to DEA requesting them to investigate failure to obtain water use licences at three mines operated by Umcebo	EEPOG	15 August 2007
Klippan Integrated Water and Waste Management Plan	African EPA	January 2008
Request to DWAF to be included in public participation processes for granting of WULs to a number of mines operating in Mpumalanga	EEPOG	21 February 2008
Another request to be involved in the public participation process for the integrated WULs for the collieries Klippan, Grootpan, Steelecoal, Strathrae and Blinkpan	EEPOG	5 August 2008
Objection to IWWUL for Klippan, Grootpan, Steelecoal, Strathrae and Blinkpan Collieries	EEPOG	8 January 2009
Update on on-the-ground situation and further particulars to objections against grant of IWWUL	EEPOG	21 January 2009
Process 4: Appeal against authorization of aboveground		

storage of diesel tanks in terms of NEMA		
Application for authorization for storage of diesel tanks (7 x 23m ² tanks) at the Klippan Colliery	Jaco Kleynhans (on behalf of Umcebo)	11 November 2009
Authorization for storage of diesel tanks	Mpumalanga Department of Economic Development, Environment & Tourism	7 July 2010
Appeal against authorization of diesel storage facility	EEPOG	20 July 2010
Responding statement by Umcebo mining	Umcebo Mining	18 August 2010