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**APPEAL AGAINST THE GRANTING OF AN INTERGRATED ENVIRONMENTAL
AUTHORISATION FOR THE PROPOSED CONSTRUCTION OF THE 1050MW COLENZO
COAL-FIRED POWER STATION AND ASSOCIATED INFRASTRUCTURE NEAR COLENZO IN
THE KWAZULU NATAL PROVINCE**

The Minister of Environmental Affairs, Mrs B E E Molewa, has considered the appeal against the Departments granting of an Environmental Authorisation for the construction of the 1050MW Colenso Coal-Fired Power Station and associated infrastructure dated 5 February 2016.

After evaluating the appeal and relevant information submitted to her, the Minister has reached a decision with regard to the aforementioned appeal, a copy of which is attached hereto.

A handwritten signature in black ink, appearing to read 'B. E. E. Molewa'.

MINISTRY OF ENVIRONMENTAL AFFAIRS

DATE: 2016/11/08



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 151941

APPEAL DECISION

**APPEAL AGAINST THE GRANTING OF AN INTERGRATED ENVIRONMENTAL
AUTHORISATION FOR THE PROPOSED CONSTRUCTION OF THE 1050MW
COLENZO COAL-FIRED POWER STATION AND ASSOCIATED INFRASTRUCTURE
NEAR COLENZO IN THE KWAZULU NATAL PROVINCE**

1. INTRODUCTION

In terms of Regulation 25 of the Environmental Impact Assessment Regulations, 2014, published by Government Notice (GN) No. 38282 of 4 December 2014 (2014 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Chief Director: Integrated Environmental Authorisations of the Department of Environmental Affairs (the Department) authorised the the construction of the 1050MW Colenso coal-fired power station and associated infrastructure near Colenso in the KwaZulu-Natal Province.

2. BACKGROUND

- 2.1 Colenso Power (Pty) Ltd (the applicant) lodged an application in March 2015, for the proposed construction of the 1050MW Colenso coal-fired power station and associated infrastructure, near Colenso, in the KwaZulu-Natal Province.
- 2.2 The applicant commissioned an independent environmental consultancy, EcoPartners (Pty) Ltd, to conduct an Environmental Impact Assessment (EIA) for the above mentioned project.
- 2.3 The final Environmental Impact Report was received by the Department on 15 October 2015, following which the Department was of the view that it was in a position to formulate a decision regarding the application, and an EA was subsequently granted to the applicant on 5 February 2016.
- 2.4 Following the issuance of the aforementioned EA, the Directorate: Appeals and Legal Review received two appeals, the grounds of which can be summarised as follows:
 - 2.4.1 The failure of the Department to apply the NEMA principles in its decision-making;
 - 2.4.2 The failure of the Department to comply with section 24 O(1) of NEMA;
 - 2.4.3 The failure of the Department to comply with section 24(4) of NEMA;
 - 2.4.4 The failure of the Department to comply with the applicable provisions of the 2014 EIA Regulations; and
 - 2.4.5 The Department's breach of the applicable provisions of the Constitution.
- 2.5 Following receipt of the aforementioned grounds of appeal, the applicant submitted its responding statement to the appeal on 22 March 2014.

3. THE APPEALS

In terms of section 43 (1) of NEMA, Groundwork (first appellant), and South Durban Community/ Environmental Alliance (second appellant), both represented by the Centre for Environmental Rights, lodged its appeals against the aforementioned 1050MW Colenso coal-fired power station and associated infrastructure, near Colenso, in the KwaZulu-Natal Province on 1 March 2016.

4. DECISION

4.1 In reaching my decision on the appeals against the aforementioned EA, I have taken the following into consideration:

4.1.1 Material information contained in the project file (14/16/12/3/3/201);

4.1.2 The appeal by the Centre for Environmental Rights, lodged on behalf of both appellants, together with the annexures thereto, dated 1 March 2016;

4.1.3 The applicant's response to the appellants' grounds of appeal, together with the annexures thereto, received on 22 March 2016;

4.1.4 The comments received from the Chief Directorate: Integrated Environmental Authorisations of the Department;

4.1.5 The comments received from the Directorate: Air Quality Management of the Department;

4.1.6 The comments received from the Branch: Climate Change of the Department; and

4.1.7 The comments received from the Chief Directorate: Integrated Environmental Management Support of the Department.

4.2 In terms of section 43 (6) of NEMA, I have the authority, after considering the appeals, to confirm, set aside or vary the decision, provision, or condition of the Department, or to make any other appropriate decision.

4.4 Having considered the above mentioned information, and in terms of section 43(6) of NEMA, I have decided to set aside the EA and to refer the matter back to the Department for reconsideration, for reasons set out in 4.4 below.

4.5 In arriving at my decision, it should be noted that I have not responded to each and every statement set out in the grounds of appeal or the responding statement thereto, and where a particular statement is not directly addressed, the absence of any response should not be interpreted to mean that I agree with or abide by the statement made. Furthermore, due to the nature of my decision, I have deemed it unnecessary to make a specific ruling in respect of each of the grounds of appeal by the appellants.

4.6 INACCURACIES AND DEFICIENCIES IN THE EA ISSUED TO THE APPLICANT

4.6.1 The insertion of condition 6 in the EA is premature, and a site layout map must be submitted to the Department prior to the issuance of the EA, which site layout map must, at a minimum, indicate the following:

- Position of the power station and associated infrastructure;
- Foundation footprint;
- All existing infrastructure on the site, including internal roads;
- Wetlands, drainage lines, rivers, streams and water crossing of the proposed facility's associated infrastructure;
- All sensitive features, e.g. heritage sites, wetlands, pans and drainage channels that will be affected by the facility and associated infrastructure;
- Soil heaps (temporary for topsoil and subsoil and permanent for access material);
- Temporary construction laydown areas;
- All buildings, including accommodation;
- All "no-go" and buffer areas; and
- A map combining the final layout plan superimposed on the environmental sensitivity map with the co-ordinates of all associated infrastructure.

4.6.2 A Geophysical survey must also be concluded by the applicant and submitted to the Department for approval prior to the issuance of the EA.

4.6.3 The numbering of conditions 39-46 is incorrect and must be amended to read as follows:

- 38.1 *Quantities, classification, physical characteristics and chemical composition;*
- 38.2 *Information on the successful implementation of the proposed activity or similar activities locally and internationally where available;*
- 38.3 *Description of how physical, biological, social, economic and cultural aspects of the environment may be adversely affected by the proposed activity and how these would be mitigated and managed;*
- 38.4 *An assessment of the potential environmental and health impacts and risks that could result from the proposed activity at several sites with different characteristics;*
- 38.5 *Management, monitoring and reporting procedures;*
- 38.6 *Quality assurance and control measures including sampling and analyses as well as chemical concentration limits for specific components in the waste which may render it unsuitable for the proposed waste management activity;*
- 38.7 *Locally or geographical area where the proposed activity may or may not take place; and*
- 38.8 *Standard operational procedures.*

4.6.4 All numbering of conditions in the EA following condition 39 should also be renumbered as a result of the changes in the EA as a result of the numbering changes in 4.4.3 above.

4.6.5 Condition 72.3 of the EA must be amended to read as follows: *“Groundwater monitoring **must** commence at least one year prior to the commencement of the Colenso Coal Fired Power Station”.*

4.6.6 Conditions 6 and 72.6 must be removed from the EA.

4.6.7 Condition 77.3 must be amended to read: *“Uncontaminated runoff water may under no circumstances be used to dilute leachate emanating from the Site.”*

4.7 FAILURE BY THE APPLICANT TO UNDERTAKE A CLIMATE CHANGE ASSESSMENT

Whilst the appellants' contentions in respect of the necessity to undertake a climate change impact assessment for the proposed project are noted, it must be emphasised that although South Africa has confirmed its nationally determined contribution at an international level, through its adoption of the Paris Agreement on Climate Change in December 2015, there is currently no legal basis to inform such assessments within the EIA framework.

Notwithstanding the above, the applicant will be allocated a carbon budget as soon as it becomes operational, should it obtain the requisite authorisations and be awarded preferred bidder status by the Department of Energy. This measure is one of the measures designed to reduce the country's greenhouse gas (GHG) emissions and to keep South Africa's emissions within its NDC.

Furthermore, once pollution prevention plan regulations are promulgated and GHGs are declared as priority pollutants, the applicant will be required to outline how it plans to reduce GHGs as well as to submit its annual progress reports in respect thereof, which will be evaluated by the Department on an annual basis to ensure that the country remains within its nationally determined contribution.

It is also evident from the submissions by the appellant that it is in opposition to all coal-fired power stations and intimates that all such projects should be refused on the grounds that it contributes to CO₂ emissions globally. This view is untenable and the appellant is reminded that in order for the country to meet its long term electricity demand, a mix of power generation technologies must be pursued, which includes coal-fired power stations. I must stress, however, the Department's commitment to identifying and implementing cleaner power generation technologies in the country's energy mix.

As a result of the foregoing, this ground of appeal is dismissed.

4.8 MANY OF THE GROUNDS OF APPEAL ARE GENERALISED AND VAGUE

Having evaluated the remainder of the appellants' grounds of appeal, I note that many of the contentions relate to an objection to coal-fired power stations in general. Indeed, many of the contentions of the appellants in this regard are little more than generalised, vague and unsubstantiated submissions. I note furthermore, that the Atmospheric Impact Report, which will form part of the AEL application process, will provide additional details of the facility's impact on human health and the receiving environment.

The information before me also indicates that the proposed power station will not have the same SO₂ emissions as other existing power stations that currently operate with no SO₂ abatement in place. The existing facilities that are old and polluting should therefore not prevent newer, more efficient and cleaner facilities from coming into operation.

I am furthermore satisfied that the environmental impacts associated in terms of the development of the proposed coal fired power station and associated infrastructure were assessed and informed by relevant specialised studies, as required by the 2014 EIA Regulations. However, I note that a project of this nature will have certain impacts which will not be comprehensively mitigated or prevented, but that these concerns must be weighed against the interests of the country, as well as the social and economic benefits derived from the project. Certain negative impacts are consequently unavoidable but I am satisfied that these impacts were evaluated and adequately assessed during the public participation process and mitigated accordingly before the EA was granted.

Accordingly, having noted the comprehensive appeal submitted by the appellants, and save for the reasons for my decision in respect of 4.4 above, the grounds of appeal by the appellants are dismissed.



MRS B E E MOLEWA, MP

MINISTER OF ENVIRONMENTAL AFFAIRS

DATE: 2016/11/08