

**REGIONAL MANAGER  
MPUMALANGA REGION**

**RECORD OF DECISION REGARDING THE ENVIRONMENTAL MANAGEMENT  
PROGRAMME**

**APPLICANT: ATHA-AFRICA VENTURES (PTY) LTD**

**MINERAL: COAL**

**MINING METHOD: UNDERGROUND**

**1. PURPOSE**

To obtain the Regional Manager's **agreement to refuse** the Environmental Management Programme (EMP) for the above-mentioned application.

**2. BACKGROUND**

- The application for a mining right was accepted on the 25<sup>th</sup> April 2013.
- The due date for the submission of the scoping report was on the 24<sup>th</sup> May 2013.
- The due date for the submission of the EMP was on the 24<sup>th</sup> October 2013.
- The applicant submitted the EMP on the 18<sup>th</sup> October 2013.

**3. PROMOTION OF ADMINISTRATIVE JUSTICE**

- The applicant was in terms of section 39(5) of the Act provided with a directive detailing the manner in which the Environmental Impact Assessment and Environmental Management Programme is to be compiled during the acceptance of the application.
- Subsequent to the submission of the EMP, the EMPs were consulted in terms of Section 40 of the Act with other state departments. During the evaluation of the EMP it was found that majority of the proposed mining activities are located within a water resources, furthermore the application area (i.e. mining right area) falls within the Wakkerstroom Wetland Grassland and an application in terms of Section 49 of the MPRDA has been submitted to this office for the Minister to exercise her discretion in terms of Section 49 of the MPRDA (Act No.28 of 2002) to further prohibit any further prospecting or mining to declare the area as a protected environment. As such an inspection was arranged with the applicant to verify the baseline information provided concerning the affected environment or area applied for which the inspection was arranged for the 22<sup>nd</sup> January 2014.
- Following the inspection conducted on the 22<sup>nd</sup> January 2014, the applicant was directed to address the following :

- To reassess the surface layout design in order to re-position the proposed infrastructure to an environment which is not sensitive.
  - To provide the environmental emergencies and remediation plan and the procedures for the remediation of the environmental related emergencies that might arise during the operation of the mine as a result of the proposed mining activities.
  - To provide a detailed rehabilitation plan for all components at the mine with the detailed methods to decommission each mining component and proposed mitigation or management strategy to avoid, minimize and manage residual or latent impacts.
  - To provide the cost for capacity to rehabilitate and manage the negative impacts on the environment.
  - To provide the list of aspects that will be monitored, frequency as well as the plan which shows the monitoring points.
  - To indicate how the decant post closure will be managed.
  - To address the concerns from the Department of Water Affairs and communicate results with DWA.
- The applicant submitted two copies of revised EMP on the 04<sup>th</sup> March 2014 as requested, however the revised EMP fails to provide a sustainable measure to mitigate the impacts of the proposed mining activities on the identified wetlands, as such the proposed measures provided by the applicant in the revised EMP cannot be considered reliable to remedy the cause of pollution or degradation as required in terms of section 39(3)(d)(iii) of the Act. It is for this reasons that the current EMP as revised and submitted on 04<sup>th</sup> March 2014 does not meet the approval criteria as set out in Section 39(4)(a) of the Act.

#### **4. COMPLIANCE WITH THE APPROVAL CRITERIA (SECTION 39(4)) OF THE ACT)**

##### **4.1 COMPLIANCE WITH SECTION 39 (4) (a) (i) – PROVISIONS OF SECTION 39 (3)**

###### **SECTION 39(3)(a)**

**Read together with Regulation 51(a) – Establish baseline information concerning the affected environment, to determine protection, remedial and environmental management objectives)**

- The EMP **does** include a description of the current environmental state of the specific area applied for.
- The EMP **does** identify specific environmental features on the site applied for which may require protection, remediation, management or avoidance.

- The EMP **does** identify closure or end use objectives for the site applied for.

**SECTION 39(3)(b)(i)**

**Read together with section 39 (3) (d) (1) – Identify all actions, activities or processes which may cause pollution or environmental degradation.**

- The description of all the main mining activities such as office complex, sewage plant, change house, workshops, conveyor system, water treatment plant, discard dump, adit, four pollution control dams, cut-off drains, trenches, run-off mine (ROM) stockpiles and underground workings **have** been provided (Reg.50 (e) and 51 (b) (i)).
- A plan showing the location of the aforesaid main mining activities **has** been provided as required, however the said plan does not depict the aerial extent to be covered by those mining activities.
- A categorization, relative to the list of main mining activities, showing which of these activities will be affected by each of the construction, operational, closure and post-closure phases of the operation **has** been provided (Reg. 51 (b) (i)).

**Read together with Regulation 50 (c) - An assessment of the nature, extent, duration, probability and significance of the identified potential environmental impacts of the proposed mining operation, including the cumulative environmental impacts.**

- Details of the engagement process with land owners, interested and affected parties **have** been provided. Engagement with land owners, interested and affected parties was done through placing of site notices, newspaper advert, distribution of Background Information Documents (BID), and meetings with the land owners, interested and affected parties (Reg. 50 (f)).
- Potential impacts that were identified by land owners, interested and affected parties **have** been provided and addressed in the EMP. However the measures provided are not sustainable.
- Mpumalanga Tourism and Park Agency also object to the application during the public participation process of the application, in that the application forms part of a larger area proposed to be declared as protected environment under National Environmental Management Protected Areas Act ( Act 57 of 2003).The area in question is classified as a sensitive area from a biodiversity conservation perspective (see copy of the comments attached as Annexure A).
- An objection was also received from WWF, in their comments they indicated that they object to the project due to the sensitivity of the area (see copy of the comments attached as Annexure B).
- Potential impacts were identified by State Departments charged with the administration of any law which relates to matters affecting the environment (Reg. 39 (4) (b) (ii)).According to the comments from Department of Water Affairs the area applied for is situated within the national fresh water ecosystem priority area. **This is also supported by the information provided in the specialist**

**reports utilised to compile the EMP.** The greatest concern regarding the fresh water ecosystem is the potential impact of the mine on water resources as a result of underground water reduction due to dewatering activities and ground water contamination due to sulphate seepages from the mine workings and discards facility. Both the cone of depression and the ground water contamination plume extend to wetland. The Department of Water Affairs also indicated that the mitigation measures provided are not sustainable. As such the Department of Water Affairs does not support the project (see copy of the comments attached as Annexure C).

- All the potential impacts **have** been identified relative to the respective phases of construction, operational, closure, and post closure phases of the mining operation (Reg. 51 (b) (i)).
- All the potential impacts identified **have** been assessed in terms of their nature, extent, probability and their significance.
- The aforesaid potential impacts **have** been classified as potentially, cumulative or otherwise.
- **Read together with Regulation 50 (g)** – Identify knowledge gaps concerning the foregoing impact assessment, and report on the adequacy of predictive methods, underlying assumptions and uncertainties encountered in compiling the required information have been provided (Reg. 50 (g)).

#### **SECTION 39 (3) (b) (ii)**

**Read together with Regulation 50 (c) - An assessment of the nature, extent, duration, probability and significance of the identified potential impact on the socio-economic conditions of any person who might be directly affected by the mining operation.**

- Potential socio-economic impacts that were identified by the land owner, interested and affected parties have been provided and addressed in the EMP (Reg.50 (f)).
- No potential socio economic impacts were identified by state departments charged with the administration of any law which relates to matters affecting the environment (Section 39(4)(b)(ii)).
- All the potential impacts thus identified have been assessed in terms of their nature, extent, probability and significance.
- A comparative assessment of the identified land use and development alternatives and their potential socio-economic impacts has been provided (Reg 50 (d)).

- The EMP proposed that offset mitigation will be employed in order to address the impact in relating to the wetlands that are to be destroyed,. The proposed offset mitigation measure cannot be considered reliable due to the following reasons:
  - The area which the application relates to is mostly characterised by wetlands and rivers. The aforesaid water bodies forms an integral part of fresh water system and has also been identified as a source of fresh water supply for the country.
  - The wetland grassland existing with the application area includes the headwaters of three of South Africa's twenty two primary catchments. These are the Vaal, Tugela and Pongola Catchments.
  - In addition to the above, the area applied for comprises of irreplaceable sites that are characterised by highly threatened species and large intact ecosystem. The loss or transformation of this area could preclude the meeting of specific biodiversity conservation targets within the Mpumalanga Biodiversity Conservation Plan.
- Based on the above it is deemed impossible to offset the entire functioning of the fresh water system within the area in question, this also includes the biodiversity thereof.
- The EIA/EMP also revealed that decant formation as a result of the underground operation will also occur and such decant will be managed through the water treatment plant facility. The aforesaid measure is not considered environmentally sustainable, in that the, construction thereof will adversely impact the existing sensitive environment.
- In view of the above, the intended underground operation if allowed to continue without associated infrastructure as proposed over the wetland areas, will not sustainably benefit the environment due to the anticipated impacts thereof(i.e. migration of decant water).
- The proposed measures **are** reconcilable with the technical and supporting information attached as appendices however not sustainable due to the sensitivity of the environment (Reg. 50 (i) and Reg. 51 (b) (vii).
- The measures **will not** contain or remedy the cause of pollution or degradation and migration of pollutants regarding cumulative impacts considering the sensitivity of the environment within the area applied for as indicated above Reg. 50 (c).

#### **4.2 COMPLIANCE WITH SECTION 39 (4) (a) (ii) – FINANCIAL PROVISION**

**Read together with Section 41 (1) - Before the Minister approves the Environmental Management Programme the applicant must make the prescribed financial provision for the rehabilitation or management of negative environmental impacts.**

- The applicant undertook to provide a financial provision of R 5, 757, 031.00. However, the said amount cannot be considered to be acceptable since the measures provided are not sustainable to can remedy the cause of pollution or degradation considering the sensitivity of the area.

#### **4.3 COMPLIANCE WITH SECTION 39 (4) (a) (iii) – CAPACITY TO MANAGE AND REHABILITATE THE ENVIRONMENT**

**Read together with section 37 (2) and Regulation 11 (1) (g) (iv) – The applicant has the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment.**

- Although the cost of each of the measures to either, modify, remedy, control or stop any actions, activities, processes leading to, or causes of, pollution or degradation have been determined and provided. It cannot be concluded that the capacity to manage the potential impacts is adequate or not due to the fact that the proposed measures provided for the management of impacts towards the water resources (wetlands and rivers) cannot be considered reliable to contain or remedy the cause of pollution or environmental degradation and migration of pollutants and therefore it can be concluded that the proposed mining activities will result in unacceptable pollution, ecological degradation or damage to the environment and such is contrary to the provisions of section 23(1)(d) of the Act .

#### **4.4 COMPLIANCE WITH SECTION 39 (4) (b) (i) - RECOMMENDATIONS BY THE REMDEC.**

- No objections **were** received during the processing of this application.

#### **4.5 COMPLIANCE WITH SECTION 39 (4) (b) (ii) - CONSULTATION WITH GOVERNMENT DEPARTMENTS**

The EMP was forwarded to:

- Dept of Economic Development, Environment and Tourism
  - Comments **were** received.(Annexure D)
- Dept of Water Affairs
  - Comments **were** received (Annexure C).
- Dept of Agriculture
  - Comments **were not** received.
- MTPA
  - Comments **were** received (Annexure A).

( A period of 60 days was allowed for comments.

## 5. SUMMARY

The EMP does not meet the requirements of section 39(3) (d) (i-ii) and therefore does not comply with the provisions of section 39(4) read with 23(1)(d) of the Act based on the following reasons:


- The application falls within the Wakkerstroom wetland grassland area. Environmental studies conducted within the area revealed that the area comprises of irreplaceable sites that are characterized by highly threatened species and large intact ecosystem. The outcome of the studies has resulted in an application by Mpumalanga Tourism and Parks Agency (namely Wakkerstroom section 49 application) indicating a need to declare the area protected area in terms of .Section 28 of the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003)
- The proposed mining activity and its associated infrastructure is intended to be located over the existing wetlands and rivers which will therefore be directly affected and the proposed measures provided for the management of impacts towards the aforesaid water resources (i.e. wetlands, streams) cannot be considered reliable to contain or remedy the cause of pollution or degradation resulting from the proposed mining operations in that the said water bodies are interlinked and the destruction of one will ultimately destroy the entire ecosystem of the area.
- The aforesaid water bodies forms an integral part of fresh water system and has also been identified as a source of fresh water supply for the country. The area in question forms an integral part of the headwaters of three of South Africa's twenty two primary catchments, which are the Vaal, Tugela and Pongola Catchments according to the comments provided by Mpumalanga Tourism and Parks Agency (Annexure A).
- The measures proposed to address the impact in relating to the wetlands and other water bodies within the area applied cannot be considered reliable to contain or remedy the cause of pollution or degradation resulting from the proposed mining operations due to the nature of the environment as described above.

## RECOMMENDATION

It is herewith recommended that you do not consider the approval of the Environmental Management Programme pertaining to this application for further processing as-

- The application does not meet the requirements of Section 23(1)(d) of the Act, in that the EMP does not meet the requirements of Section 39(3)(d) of the Act and does not comply with approval criteria set out in Section 39(4)(a) of the Act.

### RECOMMENDATION APPROVED




REGIONAL MANAGER  
MPUMALANGA REGION  
DATE: 16/05/2014

### RECOMMENDATION NOT APPROVED

REGIONAL MANAGER  
MPUMALANGA REGION  
DATE:

### RECOMMENDATION SUPPORTED

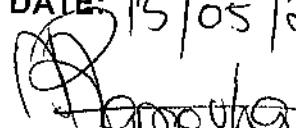


DEPUTY DIRECTOR: MEM  
MPUMALANGA REGION  
DATE: 15/05/2014


### RECOMMENDATION NOT SUPPORTED



DEPUTY DIRECTOR: MEM  
MPUMALANGA REGION  
DATE:



ASSISTANT DIRECTOR: MEM  
MPUMALANGA REGION  
DATE: 15/05/2014



ENVIRONMENT OFFICER  
MPUMALANGA REGION  
DATE 15/05/2014