



NKANGALA DISTRICT MUNICIPALITY

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My Ref.:
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30 January 2017

The Chief Director: Air Quality Management
Department of Environmental Affairs
Private Bag 447
Pretoria
0001

Attention: Dr TM Khumalo
Fax : 012 359 3619

RE: POWER GENERATION ATMOSPHERIC EMISSION LICENCE COMPETENT AUTHORITY

The Nkangala District Municipality would like to acknowledge the communications between DEA – DARDLEA and ourselves dating from late November 2016 to the 15th of December 2016, in relation to the competent authority for Khanyisa AEL.

The initial determination communicated to us by Department of Environmental affairs was that whoever issued the AEL is empowered to address the question of amending/ varying the AEL. The limitation in the abovementioned communications is the fact that the considered view has legal backing and is in line with the DEA legal opinion and section 36(5) of the National Air Quality Act it states that:

"Notwithstanding subsections (1) to (4), the Minister is the licensing authority and must perform the functions of the licensing authority if—

- (a) a provincial organ of state, which has been delegated the power to perform the licensing authority function in terms of subsection (2) by the metropolitan or district municipality, applies for an atmospheric emission licence;
- (b) the listed activity falls within the boundaries of more than one province;
- (c) the listed activity forms part of a matter declared as a national priority in terms of a Cabinet decision and notice referred to in section 24C(2B) of the National Environmental Management Act, 1998, as amended by the National Environmental Management Laws Second Amendment Act, 2013;

(d) the listed activity relates to a prospecting, mining, exploration or production activity as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998".

Whilst on the other hand the reliable advice is indicating that there will be communication or agreement in the future as to how similar matters will be handled in future.

The AEL in question of Khanyisa Power is a provisional AEL that was issued by DARDLEA on behalf of the municipality which was done during the time when there was still no clarity on who is the competent authority for national priority projects, whilst the Act according to our opinion is clear that the Minister / DEA is the AELA in such cases.

We say this being aware that there has been discussions at Working Group 2 where a legal opinion came out to say for new national priority projects Minister / DEA. Khanyisa Power has a provisional AEL and they have not commenced yet, hence they are new priority project.

In light of the above the District Municipality is of the view that the facility must be regulated by the Minister / DEA. We also have another IPP whose AEL application was being handled by DARDLEA during the EIA stage and the Environmental Authorisation has been issued by the Minister/ DEA. This application will also have to be considered, processed and AEL issued by the Minister / DEA in our view.

Kindly advise the Municipality on the way forward, if all the electricity generation activities will be handled by DEA or it will be formally assigned to lower Authorities.

Regards'



MAHLANGU VM
DISTRICT AIR QUALITY OFFICER

1Cc: MM Mahlaele
Provincial Air Quality Officer
2 Derick Mkhabele
3 Vumile Senene