



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

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CD IEA Ref: 14/12/16/3/3/2/867/1

Appeal Ref: LSA 204679

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“WITHOUT PREJUDICE”

Dear Ms Koyama

RESPONSE TO CLARITY QUESTIONS POSED BY CENTRE FOR ENVIRONMENTAL RIGHTS IN RESPECT OF THE APPEAL DECISION WITH REFERENCE NUMBER: LSA 204679, DATED 10 AUGUST 2021

1. Your letter of 23 September 2021 pertaining to the above matter, addressed to the Chief Directorate: Integrated Environmental Authorisations (CD: IEA); the Directorate: Appeals and Legal Review (Appeals Directorate) both within the Department of Forestry, Fisheries and the Environment (the Department); and copied to the Minister responsible for the Department, refer.
2. The above letter relates to the Minister’s decision in respect of the appeal lodged by GroundWork on 3 May 2021, against a decision taken by the CD: IEA on 31 March 2021, to amend and replace the Environmental Authorisation (EA) issued to Richards Bay Gas to Power 2 (Pty) Ltd (the Applicant) on 4 October 2016, in respect of the proposed 400 Megawatts (MW) Richards Bay Gas to Power Facility.

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3. In an appeal decision dated 10 August 2021, the Minister upheld the grounds of appeal relating to the updating of the fuel storage capacity and the number of fuel offloading stations; as well as the extension to the validity period of the 2016 EA. In light of this finding, Minister remitted the matter to the CD: IEA and directed as follows:
 - 3.1 The CD: IEA is to engage with the Applicant to determine if they still prefer an amendment to the Original EA by way of replacing it or whether they prefer an addendum to the Original EA reflecting only the amendments that were allowed on appeal, provided such amendments would still be required by the Applicant (ad paragraph 2.37);
 - 3.2 The Applicant may consider undertaking an Environmental Impact Assessment (EIA) process to increase the fuel storage tanks and the number of fuel offloading stations (ad paragraph 2.38); and
 - 3.3 The error in relation to the period of validity in the 2021 Amended Authorisation is to be corrected (ad paragraph 2.59).

4. In paragraph 4 of your letter, you request (i) the status of the authorisation and its amendment in light of the Minister's decision; (ii) an indication of what approach the Applicant and the CD: IEA took in respect of paragraph 3.1 to 3.3 above; and (iii) to be furnished with any amendments to the EA, EMPr, Layout Plan and any other applicable new documents or changes that have taken place, to date.

5. I am advised by the CD: IEA that:
 - 5.1. It is in the process of effecting amendments to the EA as per the outcome of the appeal.
 - 5.2. As the process is still on-going it is premature to provide your client with the details relating to the Applicant and the Department's approach to this matter;
 - 5.3. The CD: IEA will provide the Applicant with the amended EA as soon as it becomes available, and the Applicant will be required to notify registered interested and affected parties (I&APs) of the said decision, as contemplated in regulation 4 of the EIA Regulations, 2014, as amended. Your client will accordingly receive copies of the requested documents from the Applicant.

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6. In your letter, you disputed certain aspects of the Minister's decision, and further requested reasons for the Minister's decision (under paragraph 5 - 7).
7. Kindly be advised that detailed reasons for the Minister's decision are contained in her appeal decision dated 10 August 2021, under each sub-heading titled "evaluation" (see paragraphs 2.12 - 2.39; 2.48 – 2.61; 2.74 – 2.89; and 2.97 – 2.98 of the Appeal Decision). The appeal decision also set out the documents considered during the decision-making process.
8. Lastly, the appeal decision advised your client of the right to apply to a competent court to have this decision judicially reviewed should they be dissatisfied with any aspect thereof. The appeal decision states: "*Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA)*".

Yours sincerely



Adv. F Patel

Appeals Legal Advisor

Date: