



Centre for Environmental Rights

Advancing Environmental Rights in South Africa



Mr Henri Nieuwoudt
Anglo Operations Proprietary Limited (AOL)
By email: henri.nieuwoudt@angloamerican.com

Copied to:
Lerato Ratsoenyane
By email: lerato.ratsoenyane@digbywells.com

Our ref: CER/RH
Date: 4 September 2013

Dear Sir

REQUEST FOR COPIES OF APPLICATIONS TO THE RELEVANT AUTHORITIES FOR THE PROPOSED DALYSHOPE PHASE 1 COAL MINE

1. We address you on behalf of our client Earthlife Africa Johannesburg (ELA), which is an interested and affected party in the above-named project. We refer also to correspondence between our client and Digby Wells (the relevant Environmental Assessment Practitioner (EAP)) regarding copies of the applications relevant to this project.
2. On 15 August 2013, our client requested copies of the waste management licence application and of the application in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) from Digby Wells. On 20 August 2013, Lerato Ratsoenyane, the EAP's Unit Manager: Stakeholder Engagement indicated to our client that Digby Wells was not obliged to provide these documents and that our client was welcome to request copies from the relevant authorities. In this response, Ratsoenyane also indicated that Anglo had indicated that it would not be releasing the requested information and that:

"The information contained in the application forms is described in the Background Information Document (BID) and Draft Scoping Report (DSR) which have been issued for public review. These documents describe the activities for which authorisation is being requested, as well as the reference numbers allocated to these applications by the various departments. The allocation of the reference number indicates to I&APs that the departments have received the application forms and will in due course, process the documentation required in support of the applications."

3. Thereafter, on 26 August 2013, our client requested copies of the mining rights application and the water use licence application from Digby Wells.
4. On 27 August 2013, Ratsoenyane indicated that the mining right application had not yet been submitted and that a "mining right application contains confidential information and the client is unlikely to release a copy".

223 Lower Main Road,
Observatory, 7925
Cape Town, South Africa
Tel 021 447 1647, Fax 086 730 9098
Email info@cer.org.za, www.cer.org.za

No response was provided in relation to the water use licence application, but our client's understanding is that this application has not yet been made.

5. It is not clear whether the EAP takes this view on instructions from Anglo. We are instructed to point out that, as an interested and affected party, our client is entitled to copies of these applications in order meaningfully to participate in the process. NEMA requires that there be adequate and appropriate opportunities for public participation. Section 2(4)(f) of NEMA provides that: *"the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured."* The EIA Regulations also make clear that all interested and affected parties are entitled to information containing all relevant facts in respect of the application, as well as a reasonable opportunity to comment.
6. It is submitted that a failure to provide our client and other interested and affected parties with copies of the applications deprives it of this reasonable opportunity and amounts to non-compliance with the legislation, including the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). There can be no basis not to make this information available.
7. In the circumstances, kindly confirm that you will communicate with Digby Wells that it should it make available the applications that have already been made in relation to this project, and, in due course, the other applications once these have been made.
8. We look forward to your urgent response.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



Robyn Hugo

Attorney

Direct email: rhugo@cer.org.za