

Mr K. G. Moodley

Mineral and Petroleum Regulation: KwaZulu-Natal Region

Department of Mineral Resources & Energy

Email: karoon.moodley@dmre.gov.za

06 June 2022

Dear Sir,

**RE: YENGO RESOURCES (PTY) LTD - APPLICATION FOR ENVIRONMENTAL
AUTHORISATION - PROSPECTING RIGHT AND RELATED INFRASTRUCTURAL
ACTIVITIES – FARM XIMBA NO. 16506, ULUNDI LOCAL MUNICIPALITY,
KWAZULU-NATAL: KZN30/5/1/2/11146PR**

1. All Rise Attorneys for Climate and Environmental Justice (All Rise) is a non-profit organisation and registered law clinic. We represent the Global Environmental Trust (“GET”), Mining Affected Communities United in Action (“MACUA”), and the South African Conservation Fund in the aforementioned application.
2. All parties have registered as Interested and Affected Parties with the Environmental Assessment Practitioner, Mr Itani Maselesele, Oris Professionals (Pty) Ltd and were provided with a copy of the draft Basic Assessment Report (“BAR”) on 6 May 2022 for comment.
3. In perusing said report and related documentation, we have identified a number of non-conformances with the Environmental Impact Assessment Regulations, 2014 (as amended) (“EIA Regulations”). Any reference to a regulation herein is made in terms of these EIA Regulations unless stated otherwise.
4. We hereby notify the DMRE in terms of Regulation 14 (2) of the suspected non-compliance with Regulation 13(1) (a) and (b) as well as our view that the application has lapsed. The reasons for these allegations are set out below. Supporting documentation is annexed hereto.

Regulation 13(1)(a): independence

5. Regulation 13(1)(a) requires that the Environmental Assessment Practitioner (“EAP”) must be independent which, in terms of the definition set out in Regulation 1, requires *“that such EAP has no business, financial, personal or other interest in the activity or application”* and *“that there are no circumstances that may compromise the objectivity of that EAP in performing such work”* other than *“fair remuneration for work performed in connection with that activity, [or] application”*.
6. We note from the draft BAR that the EAP is a geologist registered with SACNASP for geological sciences and the sole director for Oris Professionals (Pty) Ltd. It appears that Mr Maselesele also intends to undertake the work as the geologist for the actual prospecting work totally 17 months. We further note on page 25 of the draft BAR as well as Section 11 of the Prospecting Work Programme that the applicant has provided Oris Professionals (Pty) Ltd annual financial statement as confirmation of the availability of funds to implement the proposed project.
7. If the EAP is to also benefit from the actual prospecting work as the geologist and it is his company that is providing confirmation of the financial provision and funds for the operating expenditure, it is clear that he fails to meet the criteria necessary to be an independent EAP.
8. The remedy available to the applicant to address this lack of independence is to appoint an independent EAP to externally review the work done by Mr Maselesele, as provided for by Regulation 13(2). The public participation process would also need to be redone subsequent to such review.
9. It is also the competent authority’s obligation in terms of Regulation 14(3) to promptly investigate the suspected non-compliance with Regulation 13(1) (a) that we bring to its attention, and if found to be non-compliant, take the necessary actions set out in Regulation 14 which will include directing the applicant to appoint another EAP who meets the independence criteria, to either review or redo the assessment.
10. We note that the EAP in signing the “declaration of the EAP” on 25 July 2021 (which is attached to Yengo’s application for environmental authorisation), did not declare his vested interest in the proposed activity proceeding other than remuneration for the work performed as an EAP, which is thus incorrect and misleading information.
11. Notably, a person is guilty of an offence in terms of Regulation 48 (1)(a) if that person *“provides incorrect or misleading information in any form, including any document submitted in terms of*

these Regulations to a competent authority or omits information that may have an influence on the outcome of a decision of a competent authority”.

Regulation 13(1)(b): expertise

12. Regulation 13(1)(b) requires that the Environmental Assessment Practitioner (“EAP”) must *“have expertise in conducting environmental impact assessments or undertaking specialist work as required, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity”*
13. In the draft BAR¹, Mr Maselesele states that he is a “certified Environmental Assessment Practitioner with 10 years working experience in the field of Environmental Sciences”. However Mr Maselesele is not listed as a registered EAP on EAPASA’s² online EAP register³. We also seriously doubt whether Mr Maselesele would qualify as an EAP under EAPASA’s criteria if he were to apply.
14. His claim to have 10 years environmental management experience is misleading. The only environmental impact assessment he has recorded in his CV as having done, presumably since he left the employ of the Zululand Anthracite Colliery as a geologist at the end of March 2018, is a “BAR and EMP” for the application for a prospecting right as Hlolohloko Investment Holdings.
15. This certainly does not align with the statement on page 10 of the BAR that “he has been involved in a variety of different types of EIAs”. Based on the defects in the BAR for the prospecting application in Ximba we have submitted to the EAP (attached herewith for your reference), and the lack of qualification and experience in EIA, we submit that the EAP is not compliant with the requirements in Regulation 13(1)(b).
16. We also note that the EAP, in signing the “declaration of the EAP on 25 July 2021 has declared that he has the necessary expertise to conduct environmental impact assessments, including knowledge of NEMA, the EIA Regulations and of any guidelines that have relevance to the proposed activity”, which is thus incorrect and misleading information.
17. As mentioned above, it is the competent authority’s obligation in terms of Regulation 14(3) to promptly investigate the suspected non-compliance with Regulation 13(1) (b) that we bring to

¹ Page 10 of draft BAR.

² The Environmental Assessment Practitioners Authority of South Africa (EAPASA) in terms of Section 24H of the National Environmental Management Act, 1998 (NEMA).

³ <https://registration.eapasa.org/registered-practitioners>

its attention, and if found to be non-compliant, take the necessary actions set out in Regulation 14 which will include directing the applicant to appoint another EAP who meets the independence criteria, to either review or redo the assessment.

18. Further, a person is guilty of an offence In terms of Regulation 48 (1)(a) if that person “*provides incorrect or misleading information in any form, including any document submitted in terms of these Regulations to a competent authority or omits information that may have an influence on the outcome of a decision of a competent authority*”.

Regulation 45: lapsed application

19. In terms of Regulation 45, an application for environmental authorisation lapses, and a competent authority will deem the application as having lapsed, if the applicant fails to meet any of the timeframes prescribed in terms of these Regulations, unless extension has been granted in terms of Regulation 3(7).
20. Based on the information provided to us by the EAP, the application for environmental authorisation was submitted on 2 July 2021 and supplemented on 11 August 2021. In absence of any evidence of any extension granted in terms of Regulation 3(7), the application lapsed several months ago.
21. Kindly confirm the status of the application accordingly. If it has lapsed, the competent authority cannot grant or refuse environmental authorisation and the the applicant would need to submit a new application. Only then, can the EAP call for comment on the draft BAR and submit a final BAR for decision-making thereafter.
22. Based on Mr Maselesele’s lack of independence and expertise, the new application for environmental authorisation would need to be managed by an EAP who met these criteria.
23. ***Please provide feedback once the Department has investigated the allegations contained herein as required in terms of Regulation 14(3) of the EIA Regulations.***
24. Kindly acknowledge receipt.

Yours sincerely

Janice Tooley

(Sent by email and therefore unsigned)