



water affairs

Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

MPUMALANGA

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Ref : 16/1/1/6/2/3

: 16/1/1/6/2/9

Exxaro : Leeuwpán Coal

P O Box 2353

DELMAS

2210

Attention: Mr Stephen Badenhorst

Tel: 013 665 7601

Cell: 083 279 7333

E-mail: Stephen.badenhorst@exxaro.com

BY HAND AND MAIL

Dear Sir,

DIRECTIVE IN TERMS OF SECTION 53 (1) OF THE NATIONAL WATER ACT; ACT NO 36 OF 1998, FOR ENGAGING IN UNLAWFUL MINING ACTIVITY IN A WATERCOURSE ON PORTION 7 OF WELTEVREDEN 227 IR: EXXARO LEEUWPAN COAL.

I. REASONS FOR DECISION TO ISSUE DIRECTIVE

The directive issued in terms of Section 53(1) of the National Water Act, 1998 (Act 36 of 1998) hereinafter referred to as the "NWA", to Mr Stephen Badenhorst in your capacity as the Mine Manager of Exxaro Leeuwpán Coal relates to you using water in contravention of provision of chapter 4 specifically section 22 of NWA; You have commenced with water use activities in terms of the following sections; section 21(c) impeding or diverting the flow of water in a watercourse and section 21(i) altering the bed, banks, course or characteristics of a watercourse, of the NWA without an authorisation as required in terms of section 22 of the NWA.

- The facility is undertaking mining activity in a wetland at the property mentioned above, the co-ordinates of where the water use activity is taking place are S 26°07'53.3" E 28°46'0.1". Authorisation is required in terms of Section 40 prior to any water use activity under Section 21 of the NWA being exercised.

A notice of intention to issue a directive in terms of section 53(1) of the NWA was issued to Mr Stephen Badenhorst regarding the above dated 17 May 2012 which afforded Mr Stephen Badenhorst an opportunity to make representation with **two (2) working days** from the date of receipt of the notice in accordance with Section 3 of the Promotion of Administrative Justice Act, Act no 3 of 2000, if he believed there were any compelling reasons for me not to exercise my

DIRECTIVE IN TERMS OF SECTION 53 (1) OF THE NATIONAL WATER ACT; ACT NO 36 OF 1998, FOR ENGAGING IN WATER USE ACTIVITIES WITHOUT AUTHORISATION: EXXARO LEEUWPAN COAL.

powers in terms of section 53(1) of the NWA and issue him with a directive. Representation was received from Mahlangu Attorneys dated 22 May 2012. The Department issued a rejection letter dated 4 June 2012 stating that the response was unsatisfactory and the rejection letter addresses all issues raised in your representation.

II. DIRECTIVE

I, Moses Mahunonyane in my capacity as the Acting Regional Head, Mpumalanga Regional Office of the Department of Water Affairs and duly authorized in terms of the powers delegated to me by the Minister of Water and Environmental Affairs, hereby **DIRECT** you Mr Stephen Badenhorst in your capacity as the Mine Manager of Exxaro Leeuwpan Coal in terms of Section 53 (1) of the NWA to:-

- Provide proof of authorization for the following water uses within two (2) working days from date of receipt of the directive from the Department of Water Affairs on the above-mentioned mining activity: The facility is undertaking mining activity in a wetland at the property mentioned above.
- Stop the construction on the area that is within the extent of a watercourse that is within 1:100 year floodline or delineated riparian habitat whichever is the greatest and/or within 500m radius from the boundary of a wetland which constitute a section 21 (c) and (i) water use authorisation should this activity be within regulated area above, within two (2) working days should you fail to provide proof of authorisation.
- Conduct an Environmental Audit to determine the risk this activity poses to the water resource(s).
- Appoint an independent environmental consultant to compile and submit the Wetland Management and Rehabilitation Plan to address the impact made on the water resource(s).
- Submit the abovementioned studies to the Department within two (2) weeks from receipt of this notice.
- After approval, implement all recommendations contained in the Rehabilitation Plan and rehabilitate the areas affected by the water use activities within thirty (30) days of the Departmental approval of the Rehabilitation Plan.

III. IMPLICATIONS

The following implications of this Directive are herewith brought to your attention:

1. Should you fail to comply, or comply inadequately with this directive, legal action will be taken against you, and the Department of Water Affairs taking the necessary action in terms of section 53(2) of the NWA to,
 - a. Carry out any works and take any other action necessary to rectify the contravention and recover the its reasonable costs from you; or
 - b. Apply to a competent court for appropriate relief.
2. I would like to bring to your attention that failure to comply with a directive issued in terms of section 53(1) of the NWA constitutes an offence in terms of section 151(1) (d) of NWA, and engaging in a water use activity without authorisation also constitutes an offence in terms of section 151(1) (a) of the NWA.
3. Any person who contravenes any provision of of section 151 subsection (1) of the NWA is guilty of an offence and liable, on first conviction, to a fine or imprisonment for period not exceeding five years, or both a fine and such imprisonment and in the case of second conviction or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment in terms of section 151(2) of the NWA.

IV. APPEALS TO WATER TRIBUNAL

You may appeal this directive in terms of section 148(1) of the NWA, and the chairperson of the Water Tribunal can be contacted on the following address:

DIRECTIVE IN TERMS OF SECTION 53 (1) OF THE NATIONAL WATER ACT; ACT NO 36 OF 1998 FOR ENGAGING IN WATER USE ACTIVITIES WITHOUT AUTHORISATION: EXXARO LEEUWPAN COAL.

Waterbron Building, 191 Schoeman Street

Tel: (012) 336 8297
Fax: (086) 590 8915

In terms of section 148(2) of the NWA, it must be noted that an appeal does not suspend the Directive pending the outcome of such appeal.

Should you have any further queries, please contact the relevant official at the number above.

Yours faithfully,



ACTING REGIONAL HEAD: MPUMALANGA

DATE: 11/06/2012

Acknowledgement of Receipt:

Received by Mr/Ms Ignat Davyd

On behalf of the company EXXARO LEEUWPAN COAL

On this 13 day of June 2012, at Leeuwpan Coal

Signature: [Signature]