

Annex C11

DEA GDARD Response to Competent Authority Question

Alan Cochran

From: Muhammad Essop <MEssop@environment.gov.za>
Sent: 28 February 2017 11:41 AM
To: Alan Cochran
Cc: Mathebula Mantwa (EXT EGP South Africa) (mantwa.mathebula@enel.com); ravisha.ajodhapersadh@enel.com; Stuart Heather-Clark
Subject: RE: 0390166 Request for Pre-consultation meeting

Dear Mr Cochran.

Based on the information provided, it is my understanding that the competent authority will be the DMR.

As such, you are required to contact the relevant office and arrange a site visit with them.

Regards

Muhammad Essop

Assistant Director - Strategic Infrastructure Developments

Integrated Environmental Authorisations

Department of Environmental Affairs

Private Bag X447

Pretoria

0001

(012) 399 9406

MEssop@environment.gov.za

From: Alan Cochran [mailto:Alan.Cochran@erm.com]
Sent: Monday, February 27, 2017 18:23 PM
To: Muhammad Essop <MEssop@environment.gov.za>
Cc: Mathebula Mantwa (EXT EGP South Africa) (mantwa.mathebula@enel.com) <mantwa.mathebula@enel.com>; ravisha.ajodhapersadh@enel.com; Stuart Heather-Clark <Stuart.Heather-Clark@erm.com>
Subject: RE: 0390166 Request for Pre-consultation meeting

Dear Muhammad,

Thanks for your email. I have completed the application form, please see attached. If I could I would like to take this opportunity to provide some further clarity on our query and perhaps we can forgo the need for a meeting. What we would like to clarify is whom the Competent Authority will be for the Environmental Authorisation. Below is some pertinent information in this regard:

- Enel Green Power are planning to develop a 20x20MW Solar PV Plant within the Goldfields South Deep Mining Right Boundary;
- The land is owned by Goldfields;
- Enel will lease the land from Goldfields;
- Enel will connect directly into the Goldfields South Deep 11kV emergency power network;
- The power generated by the Solar PV will supply the Goldfields South Deep plants only, no power will be evacuated to the grid.

Based on the above information are you able to inform us whether we need to undertake a NEMA EIA or a MPRDA Section 102 Amendment Application?

Your assistance in this regards would be greatly appreciated.

Regards,

Alan

Alan N Cochran

Senior Consultant

T +27 11 798 4300 | M +27 82 666 0363 | E alan.cochran@erm.com | W www.erm.com

From: Muhammad Essop [<mailto:MEssop@environment.gov.za>]

Sent: Friday, February 17, 2017 9:51 AM

To: Alan Cochran

Cc: Mathebula Mantwa (EXT EGP South Africa) (mantwa.mathebula@enel.com); ravisha.ajodhapersadh@enel.com;

Stuart Heather-Clark

Subject: RE: 0390166 Request for Pre-consultation meeting

Dear Alan.

Your email below refers.

Kindly complete the pre-application meeting request form, which can be found on our website and submit it for review and consideration.

We will advise on a suitable date for a meeting, if one is needed, based on the information provided, as well as the agenda items provided.

Regards

Muhammad Essop

Assistant Director - Strategic Infrastructure Developments

Integrated Environmental Authorisations

Department of Environmental Affairs

Private Bag X447

Pretoria

0001

(012) 399 9406

MEssop@environment.gov.za

From: Alan Cochran [<mailto:Alan.Cochran@erm.com>]

Sent: Wednesday, February 15, 2017 12:27 PM

To: Muhammad Essop <MEssop@environment.gov.za>

Cc: Mathebula Mantwa (EXT EGP South Africa) (mantwa.mathebula@enel.com) <mantwa.mathebula@enel.com>; ravisha.ajodhapersadh@enel.com; Stuart Heather-Clark <Stuart.Heather-Clark@erm.com>

Subject: 0390166 Request for Pre-consultation meeting

Dear Muhammed,

I hope that this email finds you well? ERM have been appointed by Enel Green Power to undertake an EIA for the development of 2x20MW solar power plants near Westonaria in Gauteng, and I will be the EAP on the project. To this end we would like request a meeting with you as soon as possible in order to outline the proposed project, discuss our proposed way forward in terms of environmental authorisation, and seek any advice you may offer in terms of the process and procedures to be followed.

The proposed attendees of the meeting would be myself and two representatives from Enel (cc'd on this email). We are able to come and see you next week Wednesday to Friday. Would you be so kind as to indicate a time that would suit you?

Thanking you in advance for your consideration.

Regards,

Alan

Alan N Cochran
Senior Consultant

ERM

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Please visit ERM's web site: <http://www.erm.com>

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Please visit ERM's web site: <http://www.erm.com>

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RECEIVED BY HAND: 14/08/17
IQ IQ REF: IQ/17/0358



Enel Green Power RSA (Pty) Ltd

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Sandton, Johannesburg, South Africa
T +27 (10) 3440200 – F +27 (10) 344 0201

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Directorate: Integrated Environmental Management: Policy, Strategy & Regulatory Support

473, Steve Biko Rd & Soutpansberg Rd

Arcadia, Pretoria

0083

08 August 2017

Dear Mr Franz Scheepers,

RE: CLARIFICATION OF THE MEANING OF “DIRECTLY RELATED TO” IN SECTION 24C(2A) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 (NEMA) FOR THE PURPOSE OF IDENTIFYING THE COMPETENT AUTHORITY FOR SOLAR PHOTOVOLTAIC POWER PLANT PROJECTS CONSTRUCTED AND OPERATED EXCLUSIVELY BY A NON-MINING INDEPENDENT POWER PRODUCER ON A MINING AREA

We refer to the above matter and our previous correspondence with representatives (Mr Muhammed Essop and Ms Mary Katarere) of the Department of Environmental Affairs (the Department) dated 27 February and 21 April 2017 respectively.

Prior to setting out the issues on which we require final clarity from the Department, we set out some detailed background information so as to inform your views on the clarification required. The facts, project specific details and a basic timeline of events leading up to this correspondence are as follows:

- Enel Green Power RSA (Proprietary) Limited (EGP) is an independent power producer;
- EGP was selected as the preferred bidder to construct and operate a 40MW solar photovoltaic (PV) power plant for Gold Fields Limited at its South Deep mine in Westonaria, Gauteng;
- Environmental Resource Management (ERM) was appointed as the independent Environmental Assessment Practitioner (EAP) to apply for the requisite environmental authorisation for the development and operation of the solar PV power plant;

- prior to the submission of the application for environmental authorisation, both EGP and ERM sought clarification from the Department as well as the Department of Mineral Resources as to which Department would be the competent authority under the circumstances;
- such clarification was required as the preferred site for the solar PV power plant, as well as all the alternative sites, are all located within the South Deep Mining Right area and all electricity generated by such plant will be supplied directly to the South Deep processing plants only. In other words, no electricity that is generated by the solar PV plant will be evacuated to the Eskom grid;
- the need for clarification further arose due to the failure of NEMA to define what is meant by “*directly related to*” in section 24C(2A) thereof, where it provides:

“The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection

*(1) where the listed or specified **activity is directly related to:***

*a. **prospecting or exploration of a mineral or petroleum resource; or***

*b. **extraction and primary processing of a mineral or petroleum resource.**”*
- EGP will lease the land on which the authorised site is located from Gold Fields;
- the solar PV power plant will connect directly to the South Deep 11kV emergency power network
- further to various requests for clarification as to the identification of the competent authority, Mr Essop and Ms Katarere of the Department confirmed in emails dated 28 February and 24 April 2017 respectively, that the Department of Mineral Resources is the competent authority under the circumstances and that the project does not fall within the ambit of the Department of Energy’s Independent Power Producer Procurement Programme, both of which views we are in agreement with;
- the Department of Mineral Resources concurred with the Department’s views on the issue;

- based on the confirmations received from both the Department as well as the Department of Mineral Resources, an application for environmental authorisation for the solar PV plant was submitted by ERM to the Department of Mineral Resources on 22 May 2017; and
- the scoping report, which forms a component of the environmental impact assessment process, was submitted by ERM to the Department of Mineral Resources on Thursday 6 July 2017 and approved on the 15 July 2017.

Although the Department has previously expressed its views relating to the identification of the competent authority in this matter, and which views we are in agreement with, we have subsequently been presented with a contrary legal opinion (the Opinion) by our counterpart (Goldfields), prompting us to seek written confirmation from the Department of Environmental Affairs.

Without going into the detail of the Opinion, the noteworthy conclusion reached therein was that even though the electricity generated by the solar PV power plant is to be used exclusively by the South Deep mine, the activity of generating electricity will be exclusively undertaken by a non-mining independent third party and that the actual activity of generating electricity is not directly related to extraction and primary processing of a mineral. Accordingly, the Gauteng Department of Agriculture and Rural Development, and not the Department of Mineral Resources, is the competent authority under the circumstances. This Opinion could prove to be a significant barrier to EGP obtaining the necessary debt finance for the proposed solar PV power plant and we are therefore left with no alternative but to seek further clarification on the issue from the Department.

Based on the Opinion, as well as the fact that this project will set a precedent for similar projects in South Africa in the context of supplying renewable energy to mining operations, we respectfully request the Department to express its formal view as to what is meant by "*directly related to*" in the above highlighted section 24C(2A) of NEMA.

We further request the Department to express its formal view as to whether the development and operation of solar PV power plants on mining areas are "*directly related to*" the extraction and primary processing of mineral resources where the generated electricity is to be used exclusively by a mine.

Such opinion from the Department will assist us in confirming whether or not the existing environmental authorisation application submitted to the Department of Mineral Resources is legally sound or whether such application should be withdrawn.

Given the strict project schedule deadlines associated with the financing and commencement of the development and operation of the proposed solar PV power plant, we kindly request the Department's formal views on this issue urgently, by no later than Friday 18th August 2017.

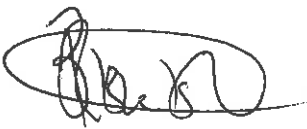
Thank you in advance for considering our request for clarification regarding the South Deep Solar Project, your guidance in these matters will be appreciated.

Should you require any further information or discussion, please feel free to contact EGP and Goldfields on the details below.

Mantwa Mathebula
Permitting Manager (EGP)
060 976 8156
mantwa.mathebula@enel.com

Simon Mporetji
Environmental Manager (Goldfields)
084 500 7704
Simon.Mporetji@goldfields.com

Yours Faithfully



Zoliswa Tshetshe on behalf of
William George Price
Enel Green Power
Country Manager

Alan Cochran

From: Mathebula Mantwa (EXT EGP South Africa) <mantwa.mathebula@enel.com>
Sent: 24 April 2017 02:15 PM
To: Franz Scheepers
Subject: RE: IQ/17/0151: Competent Authority for Power Generation Facility for Goldfields South Deep Plants Only,

Hi Frans

Thanks for this prompt elaborative confirmation. You had mentioned to me that you will include a line at the end of the email stating that this is a formal response and legal etc? Could you kindly resend the email with that line.

Thanks and I appreciate it.
Regards
M

Mantwa Mathebula
Business Development



Enel Green Power
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mantwa.mathebula@enel.com

From: Franz Scheepers [mailto:FScheepers@environment.gov.za]
Sent: 24 April 2017 01:36 PM
To: Mathebula Mantwa (EXT EGP South Africa) <mantwa.mathebula@enel.com>
Subject: IQ/17/0151: Competent Authority for Power Generation Facility for Goldfields South Deep Plants Only,

Dear Mantwa

Your enquiry below refers. Based on the information provided please note the following:-

- On 1 July 2016, the Minister of Environmental Affairs (the Minister) published Government Notice 779 in *Government Gazette* No. 40110 {Annexure A} to confirm that the Minister is the competent authority for activities which are identified as activities in terms of section 24(2)(a) of NEMA, which may not commence without an environmental authorisation, and which relates to the IRP and any updates thereto. Therefore, if a proposed development will form part of the Department of Energy's IRP Programmes, the Minister will be the competent authority (see attached Energy Explanatory Document for further information).
- In the scenario specified below it appears that the proponent will not and does not intend to participate in any of the IRP programmes as you indicated that the power generated by the Solar PV will supply the Goldfields South Deep plants only, and that no power will be evacuated to the grid. In such a scenario, section 24C(2A) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) will be applicable and it provides that the Minister responsible for mineral resources must be identified as the competent authority where the listed or specified activity is or is directly related to-
 - (a) prospecting or exploration of a mineral or petroleum resource; or

(b) extraction and primary processing of a mineral or petroleum resource.

Based on the information to our disposal, the relevant competent authority for the construction of the Solar PV Plant is the Department of Mineral Resources (DMR) as 1. the proposed development is directly related to mining and 2. the proponent does not intend to participate in any of the IRP programmes

- For further information, please find attached the following documentation:-
 - o Energy Applications Explanatory Document for GNR 779
 - o Annexure A: Published Notice –GNR 779 of 1 July 2016
 - o Annexure B: Electricity Regulations on New Generation Capacity
 - o Annexure C: Renewable Energy Determination
 - o Annexure D: Coal and Hydro Determination
 - o Annexure E: Gas Determination
 - o Annexure F: Cogeneration Determination
 - o Annexure G: Nuclear Determination

For any further assistance in this regard, please do not hesitate to contact me.

Kind Regards,

Mary Katerere
Directorate: Integrated Environmental Management: Policy, Strategy & Regulatory Support
Environment House
Cnr. Steve Biko and Soutpansberg Road, Pretoria
Tel: 0123999181
Fax: 0123593693

From: Mathebula Mantwa (EXT EGP South Africa) [<mailto:mantwa.mathebula@enel.com>]

Sent: 21 April 2017 04:04 PM

To: IQ

Subject: 0390166 Request for Pre-consultation meeting

Good day Frans

Thanks for your availability on the call this morning, as discussed:

We sent a clarification email to DEA a while back regarding the Competent Authority for the solar pv project we are proposing in the Westonaria area (see attached).

Below is some pertinent information regarding the project:

- Enel Green Power are planning to develop a 20x20MW Solar PV Plant within the Goldfields South Deep Mining Right Boundary;
- The land is owned by Goldfields Mine;
- Enel will lease the land from Goldfields Mine;
- Enel will connect directly into the Goldfields South Deep 11kV emergency power network;
- The power generated by the Solar PV will supply the Goldfields South Deep plants only, no power will be evacuated to the grid.

We are requesting confirmation on the Competent Authority for this project in relation to the prescription of the law stated below:

1. In terms of the EIA Regulations, 2014 the Department of Mineral Resources (DMR) is the competent authority where a listed or specified activity **is or is directly related to** :
 - i. prospecting or exploration of a mineral or petroleum resource; or
 - ii. extraction and **primary processing** of a mineral or petroleum resource.
2. Does the project fall under Integrated Resources Plan (IRP) 2010-2030.

Based on the above information are you able to inform us whether we need to undertake a NEMA EIA with the DEA as the Competent Authority or the MPRDA Section 102 Amendment Application & EIA with the Department of Minerals Resources?

Your assistance in this regards would be greatly appreciated.

Regards
M

Mantwa Mathebula
Business Development



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Khosi Dlamini

From: Mathebula Mantwa (EXT EGP South Africa) <mantwa.mathebula@enel.com>
Sent: 21 August 2017 04:14 PM
To: Alan Cochran; Stuart Heather-Clark
Cc: Khosi Dlamini
Subject: Request for clarification of the meaning in Sec 24C(2A) of NEMA

Good day both

See GDARD' response below.

We can safely move on with our lives.

Regards

M

From: SCHARNICK, NEIL (GDARD) [mailto:NEIL.SCHARNICK@gauteng.gov.za]
Sent: 21 August 2017 11:26 AM
To: Mathebula Mantwa (EXT EGP South Africa) <mantwa.mathebula@enel.com>
Subject: RE: Request for clarification of the meaning in Sec 24C(2A) of NEMA

Dear Mantwa

In consultation with our Environmental Impact Assessment colleagues please be advised that in terms of Section 24C(2A) of NEMA, construction of a solar photovoltaic power plant for Gold Fields at its South Deep mine is an activity "directly related" to mining activities as contemplated in that section and as such the competent authority is the Department of Mineral Resources.

Regards

Neil Scharnick
Acting Chief Director: Legal Services
011 240 3237

From: Mathebula Mantwa (EXT EGP South Africa) [mailto:mantwa.mathebula@enel.com]
Sent: Friday, August 18, 2017 4:06 PM
To: GANSALLO, ANNETTA (GDARD)
Cc: OLOWA, ABIMBOLA (GDARD); SCHARNICK, NEIL (GDARD); Simon.Mporetji@goldfields.com; Ajodhapersadh Ravisha (EXT EGP South Africa)
Subject: Request for clarification of the meaning in Sec 24C(2A) of NEMA

Hi Annetta

Just following up if the letter has been well received.

Regards

M

Mantwa Mathebula
Business Development



Enel Green Power

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mantwa.mathebula@enel.com

From: GANSALLO, ANNETTA (GDARD) [<mailto:ANNETTA.GANSALLO@gauteng.gov.za>]
Sent: 14 August 2017 09:49 AM
To: Mathebula Mantwa (EXT EGP South Africa) <mantwa.mathebula@enel.com>; Simon.Mporetji@goldfields.com
Cc: OLOWA, ABIMBOLA (GDARD) <Abimbola.Olowa@gauteng.gov.za>; SCHARNICK, NEIL (GDARD) <NEIL.SCHARNICK@gauteng.gov.za>
Subject: RE: Request for clarification of the meaning in Sec 24C(2A) of NEMA

Dear Sir/ Madam

I hereby acknowledge receipt of your correspondence dated 7 August in which you request for interpretation/meaning of “Directly Related to” in Sec 24C(2A) of NEMA, directed to Ms Olowa as the Head of Legal Service.

Please note that Ms Olowa is no longer the head of Legal Services, the letter has been forwarded to Mr Neil Scharnick who is the Acting Chief Director Legal Services.

Regards

Annetta Gansallo
Compliance and Enforcement
Gauteng Department of Agriculture & Rural Development
56 Eloff Street, Umnotho House, JOHANNESBURG 2000
tel: 011 240 2554 \ email: annetta.gansallo@gauteng.gov.za
website: <http://www.gdard.gpg.gov.za>



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