

**ACKNOWLEDGEMENT OF RECEIPT:**

**DIRECTIVE TO THE GENERAL MANAGER OF NEW DENMARK COLLIERY  
NOVEMBER 2009**

Received by Mr/Ms L E Lubbe

On behalf of the company Golder Associates

On this 27<sup>th</sup> day of November 2009, at

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Signature:

L E Lubbe



## water affairs

Department:  
Water Affairs  
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE REGIONAL HEAD: GAUTENG  
Bothongo Plaza East, 285 Schoeman Street, Pretoria

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0001

16/2/7/C114/C074

General Manager  
New Denmark Colliery  
Private Bag X 2022  
Standerton  
2430

Attention: Mr. PP De Wet

### GAUTENG REGION: UPPER VAAL WATER MANAGEMENT AREA:

### DIRECTIVE IN TERMS OF SECTION 19(3) OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (the "Act")

#### BACKGROUND

1. It has been brought to the attention of the Department of Water Affairs (DWA) that your mine has been engaging in activities which have led to the pollution of ground water and may lead to the pollution of the surface water if not controlled properly.
2. New Denmark Colliery is mining at levels of  $\pm 200\text{m}$  below surface. The mine needs to reduce all potential risks pertaining to flooding of the mine as implied by the Mine Health and Safety Act, 1996, and the Regulations thereunder.
3. We are given to understand that the mine abstracts water which is pumped to Tutuka Power station for purification. On a daily basis 0.89 MI/day of brine is disposed underground in Compartment 321 East. This activity is happening since 2006. Studies in this regard commenced back in 2001.
4. The best **temporary** alternative in the circumstances, in order to contain the pollution, is to store the water in an underground compartment, which is lower than all the other compartments so as to avoid possible pollution of the upper levels of the ground water and surface water. This compartment is 321 East Compartment at New Denmark Colliery.
5. Section 19 of the Act states that:

*"(1) An owner of land, a person in control of land or a person who occupies or uses the land on which-*

- (a) any activity or process is or was performed or undertaken; or
- (b) any other situation exists,

*which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.”*

6. New Denmark Colliery is either the owner, the person (“person” as defined in the Act includes juristic persons) in control, or the person who occupies or uses Slagkraal 353-IS, Joubertsvallei 3 (portion of portion 1) and 3 RE of portion 1 337 IS, Uitkyk Portion 2 and 6339 IS, Standershoop Portion 5 and 6 340IS, Villiersschrik Portion 10 and 12 338 IS.
7. New Denmark Colliery are at present engaged in an activity which has caused pollution of water resources, namely:
  - (a) the disposal of brine at the Tutuka Power Station, which has resulted in pollution plumes that have polluted the ground water; and
  - (b) The movement of the pollution plume from the ash dam, which has also impacted on the ground water in the area.
8. They (New Denmark Colliery) have not as yet taken any reasonable measures to prevent such pollution from occurring.
9. Therefore I, Hendrik Albertus Smit, in my capacity as Acting Regional Head: Gauteng Region, by virtue of the powers delegated to me by the Minister of Water and Environmental Affairs in terms of section 63, do hereby direct you in terms of section 19(3) of the Act to:
  - (a) dispose of brine from the spiral reverse osmosis water treatment plant at Tutuka Power Station into the 321 East Compartment at New Denmark Colliery; and to-
    - (i) cease all pumping of brine into 321 East Compartment (the “Compartment”) either once the full capacity of the Compartment has been reached or on the 31<sup>st</sup> of October 2011. If water is decanting into another compartment before this date, full water quality analysis and weekly reporting to this office shall be done. Such decanted water shall be incorporated into the mine water reticulation system;
    - (ii) ensure compliance with all commitments and management measures proposed in the supporting technical report compiled by Prof. Hodgson, titled “*Technical report on possible brine disposal in 321 East Compartment at New Denmark Colliery*”, dated November 2001. The report requested a more permanent solution will have to be found for brine disposal. The report is attached as Appendix B in the Interim Water Management Plan, Golder Associates, September 2009;
    - (iii) forward the results of the water quality of brine in the (a) Compartment and (b) the decant on a weekly basis to this office by registered post;

- (iv) ensure that the Mine complies with all the general and specific management commitments regarding water management pertaining to this Directive as presented in the technical report "*New Denmark Colliery: Interim Water Management Plan*, Golder Associates, September 2009";
- (v) provide DWA with an alternative practical strategy, by 16 August 2010, regarding the brine disposal by New Denmark Colliery and Tutuka Power Station. Such alternative strategies have to be discussed with the DWA bi-annually. Strategies mentioned under Section 4.1.7 of the Interim Water Management Plan, Golder Associates, September 2009, need to be discussed and assessed in greater detail. The alternative strategy to be implemented by the mine not later than 1 November 2011. No underground disposal of brine shall commence after the 31<sup>st</sup> of October 2011. An important assessment to be included, is the impact of the sodium-sulphate rich mine water on the environment in the event the mine workings fill with water.
- (vi) indicate to DWA an emergency plan, within 60-days after the issuing of this Directive, for the storage of brine in the case the water treatment plant is not operational so that the mine has no need to apply for emergency discharge into the water environment.
- (vii) A Regulation 704 compliance plan, indicating compliance/non-compliance with all the relevant sections under this Regulation and especially additional focus on subsidence areas, to be submitted to this office by 30 November 2009.

10. The mentioned time frames in this Directive are final and justifiable.

11. You may appeal against this Directive to the Water Tribunal in terms of Section 148 of the Act within thirty (30) days after receipt of this letter. Please note that in terms of section 148 (2) of the Act, an appeal does not suspend this Directive. Note further that you do not need a lawyer to appeal to the Water Tribunal.

12. The contact details of the Water Tribunal are as follows:

The Chairperson  
Water Tribunal  
Private Bag X316  
PRETORIA  
0001  
Fax: (012) 336 8666  
Tel: (012) 336 8325 / 336 8313

13. Failure to comply with this directive may result in DWA taking the measures it considers necessary to remedy the situation in terms of section 19 (4) of the Act.

14. In terms of section 19(4) of the Act, DWA may recover all costs incurred as a result of it acting under subsection (4) from New Denmark Colliery.

15. DWA reserves the right to lay criminal charges against you in terms of section 151 of the Act.

16. Please find attached a copy of section 148 and 151 of the Act.

  
**ACTING REGIONAL HEAD: GAUTENG**

**DATE:** 2009/11/23

chairperson, the deputy chairperson and all other members of the Tribunal in consultation with the Minister of Finance.

- (8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission referred to in subsection (5), as the case may be, and after giving the member an opportunity to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.

[Sub-s. (8) substituted by s. 3 of Act 45/99]

#### 147. Operation of Water Tribunal

- (1) Subject to section 146 (4), after having considered the necessary field of knowledge for the purposes of hearing a particular matter, the chairperson may nominate one or more members of the Water Tribunal to hear a matter and a decision by such member or members constitutes a decision by the Tribunal.
- (2) Administrative support for the Tribunal must be provided by officials of the Department designated by the Director-General, subject to the laws pertaining to the secondment of officers in the Public Service.
- (3) The expenditure of the Tribunal must be defrayed out of money appropriated by Parliament for that purpose or from any other source.
- (4) Neither the Tribunal, the chairperson, the deputy chairperson nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

#### 148. Appeals to Water Tribunal

- (1) There is an appeal to the Water Tribunal -
- (a) against a directive issued by a catchment management agency under section 19 (3) or 20 (4) (d), by the recipient thereof;
- (b) against a claim by a catchment management agency for the recovery of costs under section 19 (5) or 20 (7) by the person affected thereby;
- (c) against the apportionment by a catchment management agency of a liability for costs under section 19 (8) or 20 (9), by a person affected thereby;
- (d) against a decision of a water management institution on the temporary transfer of a water use authorisation under section 25 (1), by a person affected thereby;
- (e) against a decision of a responsible authority on the verification of a water use under section 35 by a person affected thereby;
- (f) against a decision of a responsible authority on an application for a licence under section 41, or on any other application to which section 41 applies, by the applicant or by any other person who has timeously lodged a written objection against the application;
- (g) against a preliminary allocation schedule published by a responsible authority under section 46 (1), by any interested person;

- (h) against the amendment of a condition of a licence by a responsible authority on review under section 49 (2), by any person affected thereby;
  - (i) against a decision of a responsible authority on an adjudication of claims made under section 51 (1), by any person affected thereby;
  - (j) against a directive issued by a responsible authority under section 53 (1), by the recipient thereof;
  - (k) against a claim by a water management institution for the recovery of costs under section 53 (2) (a), by the person against whom the claim is made;
  - (l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an entitlement under section 54, or on the surrender of a licence under section 55, by the person entitled to use water or by the licensee; and
  - (m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk under section 118 (3) or (4).
- (2) An appeal under subsection (1) -
- (a) does not suspend a directive given under section 19 (3), 20 (4) (d) or 53 (1); and
  - (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise.
- (3) An appeal must be commenced within 30 days after -
- (a) publication of the decision in the *Gazette*;
  - (b) notice of the decision is sent to the appellant; or
  - (c) reasons for the decision are given,
- whichever occurs last.
- (4) The procedure for lodging, hearing and deciding -
- (a) an appeal under subsection (1); and
  - (b) an application for the determination of compensation under section 22,
- is contained in Part 2 of Schedule 6.
- (5) The chairperson may make rules which -
- (a) govern the procedure of the Tribunal, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Tribunal;
  - (b) may provide for application or appeal fees payable by a claimant or appellant; and
  - (c) must be approved and published in the *Gazette* by the Minister.

#### 149. Appeals from decisions of Water Tribunal

- (1) A party to a matter in which the Water Tribunal -
  - (a) has given a decision on appeal under section 148, may, on a question of law, appeal to a High Court against that decision; or
  - (b) has determined the liability for compensation or the amount of compensation under section 22 (9), may, on a question of law, appeal to a High Court against that determination.
- (2) The appeal must be noted in writing within 21 days of the date of the decision of the Tribunal.
- (3) The notice of appeal must -
  - (a) set out every question of law in respect of which the appeal is lodged;
  - (b) set out the grounds for the appeal;
  - (c) be lodged with the relevant High Court and with the Water Tribunal; and
  - (d) be served on every party to the matter.
- (4) The appeal must be prosecuted as if it were an appeal from a Magistrate's Court to a High Court.

#### **150. Mediation**

- (1) The Minister may at any time and in respect of any dispute between any persons relating to any matter contemplated in this Act, at the request of a person involved or on the Minister's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.
- (2) A directive under subsection (1) must specify the time when and the place where such process must start.
- (3) Unless the persons concerned have informed the Minister at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Minister must appoint a mediator.
- (4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or negotiation proceedings, by agreement between them, appoint another person to act as mediator.
- (5) A person appointed by the Minister in terms of subsection (3) must either be an official of the Department or an independent mediator.
- (6) Where the Minister or the Department is a party to the dispute, the mediator may not be an official of the Department.
- (7) The contents of all discussions which took place and of all submissions made as part of a mediation process under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.
- (8) The fees and expenses of a mediator must be paid by -



- (a) the Department, if the Minister has appointed the mediator; or
- (b) the parties, if they have appointed the mediator.

## CHAPTER 16

### OFFENCES AND REMEDIES

In common with other Acts of Parliament which aim to make non-compliance a criminal offence, this Chapter lists the acts and omissions which are offences under this Act, with the associated penalties. It also gives the courts and water management institutions certain powers associated with prosecutions for these offences, such as the power to remove the cause of a stream flow reduction.

#### 151. Offences

- (1) No person may -
  - (a) use water otherwise than as permitted under this Act;
  - (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;
  - (c) fail to comply with any condition attached to a permitted water use under this Act;
  - (d) fail to comply with a directive issued under section 19, 20, 53 or 118;
  - (e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork;
  - (f) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
  - (g) fail to register an existing lawful water use when required by a responsible authority to do so;
  - (h) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;
  - (i) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;
  - (j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;
  - (k) fail to register a dam with a safety risk;
  - (l) fail to comply with a temporary restriction on the use of water in terms of item 6 of Schedule 3; or
  - (m) commit contempt of the Water Tribunal.
- (2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent

conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

#### **152. Enquiry in respect of compensation for harm, loss or damage suffered**

Where any person is convicted of an offence under this Act and -

- (a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or
- (b) damage has been caused to a water resource,

the Court may, in the same proceedings -

- (i) at the written request of the person who suffered the harm or loss; or
- (ii) at the written request of the Minister in respect of the damage caused to a water resource; and
- (iii) in the presence of the convicted person,

enquire without pleadings into the harm, loss or damage and determine the extent thereof.

#### **153. Award of damages**

After making a determination in terms of section 152, the Court may -

- (a) award damages for the loss or harm suffered by the person referred to in section 152 against the accused;
- (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and
- (c) order that the remedial measures to be implemented, be undertaken either by the accused or the relevant water management institution.

#### **154. Offences in relation to employer and employee relationships**

Whenever an act or omission by an employee or agent -

- (a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of the employer or principal, as the case may be, the employer or principal, as the case may be, is, in addition to the employee or agent, liable to conviction for that offence; or
- (b) would constitute an offence by the employer or principal, as the case may be, in terms of this Act, that employee or agent will in addition to that employer or principal be liable to conviction for that offence.

#### **155. Interdict or other order by High Court**

A High Court may, on application by the Minister or the water management institution concerned, grant an interdict or any other appropriate order against any person who has contravened any provision of this Act, including an order to discontinue any activity