

## **APPENDIX C.4**

### **MEMORANDUM OF UNDERSTANDING (MoU)**

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# 1 THE SCOPE OF THE MEMORANDUM

This memorandum is intended to provide an understanding of the nature of the working relationship between the Department of Water Affairs and Forestry (DWAF) and the Department of Minerals and Energy (DME) concerning **participation** pertaining to **Integrated Environmental Management for prospecting and mining activities** in South Africa as implied by the requirements of the Minerals Act (Act 50 of 1991) and the National Water Act (Act 36 of 1998). This will improve the efficiency of the process, and will minimise potential conflict and ambiguity.

In order to serve this purpose, the memorandum records a mutual understanding on the following issues:

- The fundamental premises with regard to Integrated Environmental Management, the role of such a system and its key success factors.
- The principles and obligations of both Departments regarding participation in the integrated environmental management.
- More detailed procedures and guidelines may be developed from the agreed principles contained in the memorandum.

## 2 INTEGRATED ENVIRONMENTAL MANAGEMENT

### 2.1 Fundamental premises

**The Department of Minerals and Energy (DME)** is required in terms of the Minerals Act (1991) to ensure the optimal utilisation and safe exploitation of mineral and energy resources, together with the rehabilitation of the surface of land concerned in any prospecting and/or mining operation according to an acceptable Environmental Management Programme (EMP). Prior to the approval of an Environmental Management Programme, the Regional Director of Minerals and Energy has to consult with each Department, which administers an Act concerning the environment. The Department of Water Affairs and Forestry is one such Department.

**The Department of Water Affairs and Forestry (DWAF)** is required in terms of the National Water Act (1998) to manage the development and utilisation of the water resources of the country for the economic and social prosperity of all its inhabitants. With regard to water quality, this includes the responsibility for ensuring that these resources remain fit for use on a sustained basis. Mining activities have been identified as a specific concern with regard to impacts on the water environment, which resulted in increasing the focus on more effective strategies to exercise control.

**Both the DME and the DWAF** must therefore exercise control over the environmental impact of mining activities in order to satisfy the requirements of their respective mandates. Co-operation between the DME and the DWAF in this regard is in the best interests of both Departments as well as the mining industry, and it will be facilitated by participation in the Integrated Environmental Management process for prospecting and mining activities.

## **2.2 The role of Integrated Environmental Management**

Integrated Environmental Management has a key role to play in the regulatory system of both Departments with respect to:

- Placing the Departments in a position to address anticipated effects on the environment before mining proceeds.
- Placing the Departments in a position to address effects on the environment of operating mines.
- Placing the Departments in a position to ensure that acceptable environmental objectives including regulatory requirements are constantly met.
- Ensuring that mining proponents have understood the magnitude and nature of the effect which their activities will have on the environment and have committed themselves to a practical means of dealing with these effects throughout the life of the mine before commencing with a mining venture.

Providing the authorities with an opportunity to satisfy themselves that the proponents have the means to ensure that the management measures proposed to control the environmental effect of their activities will be implemented.

It is acknowledged that the DME is best placed to assume the role of leadership (lead agent) for the overall co-ordination of the integrated system but that decision-making by the lead-agent on matters of common concern shall be accomplished after consultation with the DWAF.

## **2.3 Key success factors**

Effective operation of Integrated Environmental Management is based on the following key success factors:

- Clear definition of the role and mandate of each Department.
- Consensus-based decision-making within the framework of the lead-agent concept as contemplated in paragraph 2.2 above.
- Effective communication based on a structured system.
- Effective leadership.
- Effective conflict resolution mechanisms.
- A good working relationship between the officials of the two departments, based on a spirit of goodwill and co-operation at all levels.
- Consistent implementation.

## **3 PARTICIPATION**

### **3.1 Principles**

Participation in Integrated Environmental Management is based on the following principles:

- The process requires dynamic leadership, regular contributions and consistent attention by both parties.
- Responsibility for leadership and facilitation of the process maintenance lies with the lead agent.
- Participation within the environmental management process is based on the understanding that the regulatory objectives of both parties are being satisfactorily served.
- Participation in the environmental management process will impose certain obligations on both parties.

### **3.2 Obligations of the DME**

The DME hereby agrees to:

- Consult with the DWAF on the formulation of policy, legislation and regulations, which have a bearing on water and other aspects that could have an effect on the water environment.
- Consult before:
  - Approving any EMP (Environmental Management Programme)
  - Granting any mine closure (partial or in full)
  - Amending or withdrawing an EMP
  - Granting temporary authorisation for the commencement of any prospecting or mining operation
- Allowing any activity, which requires a recommendation from DWAF through the regulations, promulgated under the Minerals Act (1991).
- Consult when water-related issues are involved in determining the original quantum financial provisions.
- Establish procedures to facilitate co-operation in approving implementation and revision of EMP's.
- Consult on setting up guidelines, which have a bearing on water, and other aspects that could have an effect on the water environment.
- Facilitate and adjudicate in matters pertaining to the resolution of conflict between government departments, and between the proponent and government.
- Investigate and implement, where appropriate, the provisions of the Minerals Act (1991) to provide for adequate pecuniary provision, monitoring, auditing, prosecution of offenders and remediation.
- Consult before imposing rectifying measures where water-related aspects are concerned.

- Ensure all relevant data, information and reports regarding water quality and water supply in terms of monitoring and auditing as required through the EMP or other legislation are made available to the DWAF.
- Consult before approving any site for impoundment or placement of discard material.
- Consult before approving undermining of riverine areas and water containing structures.
- Notify the DWAF of any proposed/possible river diversions.
- Notify the DWAF of any incident reported in terms of the Mineral Act Regulations 25.6(d)(i) and (iii).
- Establish and maintain formal communication systems between the departments.
- Refer differences, in the case where consultation and/or facilitation does not result in agreement, to the next level in the hierarchy, and to continue referring it higher until a solution has been found.

### **3.3 Obligations of the DWAF**

The DWAF hereby agrees to:

- Consult with the DME on the formulation of policy, legislation and regulations that could have a bearing on the integrated environmental management process.
- Support the DME in providing the required expertise and resources to evaluate and respond to applications from mining proponents timeously and in accordance with agreed procedures.
- Provide proponents through the lead agent with clearly defined requirements on water related aspects for the preparation of their EMP's and give feedback on proposals where necessary.
- Provide the required expertise to support the DME in setting up procedures and guidelines, and to ensure that the DWAF requirements are clearly defined in this process.
- Provide the DME with assistance in the resolution of conflict.
- Endeavour to provide the DME with assistance regarding Integrated Environmental Management wherever requested.
- Respond to any request from the DME for consultation within an agreed period of time.
- Ensure that the requirements of the DWAF are clearly identified and defined in the relevant EMP's.
- Maintain the formal communication system between the departments, as established by DME
- Refer differences, in the case where consultation and/or facilitation does not result in agreement, to the next level in the hierarchy, and to continue referring it higher until a solution has been found.