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Postnet Suite #113, Private Bag X153, Bryanston, 2021

COMMENTS ON:

1. THE MINUTES OF MEETING HELD ON THE 18TH OF JANUARY, 2020

2. THE REVISED DRAFT ENVIRONMENTAL IMPACT ASSESSMENT REPORT: VALLEY SILTS PROJECT IN JOHANNESBURG, GAUTENG PROVINCE

COMMENTS ON THE MINUTES

Prefatory

The detailed recordal of the proceedings of the above-mentioned Meeting is acknowledged, with thanks.

There is a number of perceived errors, which we shall endeavour to address. Since we are not in possession of an audio-recording of the meeting, we shall not be in the position to supplant the perceived incorrect comments attributed to the FSE with the exact words or phrases used during the meeting. However, the essence of what the FSE wanted to convey during the meeting will hopefully be reflected in our comments subjoined hereunder.

Please also see our replies to some of the responses from the Kongiwe Stakeholder Team.

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Response:

"*Ms Ashleigh Blackwell indicated that the owner of the Mining Right (MR 184 GP) is Ergo Mining (Pty) Ltd, a subsidiary of DRDGold*".

Reply:

Analogous to Ms Blackwell's response, DRDGOLD Limited website[1] informs us that all its operations are consolidated into one operating entity, Ergo Mining Proprietary Limited (Ergo). Ergo is wholly owned by Ergo Mining Operations Proprietary Limited (EMO). EMO is a wholly-owned subsidiary of DRDGOLD Limited.

Allow us please to comment on the relationship between parent companies and their subsidiaries and in the matter under consideration, the relationship between Ergo, EMO and DRDGOLD Limited. Governance gaps between parent companies and their subsidiaries provide the permissive environment or sometimes even the incentive structure for environmental and social harm.

Our comments in this regard are actuated by Mintails Limited's strategy of disengagement in South Africa. Mintails Limited divested itself from its South African operations by spinning off its South African subsidiaries and renaming itself Orminex Limited, thereby avoiding liability for the environmental damage caused by its South African operations.

It is necessary for the Applicant and the authorising authorities to ensure that there is no gap between corporate influence and corporate accountability[2] and that environmental and social responsibilities flow along the same channels as profit. Liability for environmental and social violations ought to be attributed not only to a subsidiary but also to the parent company itself because of the power, influence and command it wields at the top of the corporate structure.

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Please supplant "*N1*" with "*M2.*" Subjoined hereunder is an extract from the attached paper, titled "*Desktop assessment of the risk for basement structures of buildings of Standard Bank and ABSA in Central Johannesburg to be affected by rising mine water levels in the Central Basin"* (Final Report) – Volumes I-III, pp. 267, 166, 13 (submitted by: Mine water Research Group, North West University, Potchefstroom Campus; Team Leader: Prof. Dr. Frank Winde) from which I borrowed during the meeting.

> In addition to this, a number of flooding-related risks not considered previously have been identified. This includes the exposure of residents to the radioactive gas radon via shafts even before flooding of the Central Basin is complete as well as the possible subsidence of tailings structures incorporated into infrastructure such as the M2 highway due to liquefaction of unconsolidated fill material in low lying reef outcrop zones.

20.DESKTOP ASSESSMENTS OF TH

[1] https://www.drdgold.com/about-us/corporate-profile (accessed on the 28th of March 2020).

[2] Please refer to John Ruggie's "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises" (Human Rights Council, April 7, 2008).

We now refer to the comments attributed to the FSE namely: *"It is her understanding that if a successor company such as Ergo takes over ownership of a mining right, they also take over the liabilities and responsibilities of that right, even if there is non-compliance on some of the historical issues"* and Mr Motsau's question whether Ergo should *"take responsibility for the previous owners, even if the pollution was from the 1900s*". Mr Ovens responded that "*he is not a legal expert, so in terms of legality, he cannot comment for certain*".

Some clarity regarding this matter can be found in the legal opinion by Glendyr Nel – Associate: Cullinan and Associates as published under the heading "*Environmental Law and Liability*" in the 2012 Enviropoedia (pages 122 & 123).

> "NEMA has been amended to clarify that the duty to take reasonable measures to prevent significant pollution or degradation of the environment from occurring, continuing or recurring ("the duty of care") also applies to pollution that occurred before NEMA commenced; to pollution that might arise at a different time from the actual activity that caused the contamination and to pollution that may arise following an action that changes pre-existing contamination (NEMA section 28(1A). **It is therefore no defence to say that the pollution is historic, indirect or underlying – the responsibility to take reasonable steps remains.**
>
> The significance of these changes becomes more apparent when one remembers that section 34 of NEMA makes provision for both 'firms' (including companies and partnerships) and their 'directors' (including board members, executive committees or other managing bodies or companies or members of close corporations or of partnerships) to be held liable, in their personal capacities, for environmental crimes. This personal liability also applies to managers, agents or employees who have done or omitted to do an allocated task, while acting on behalf of their employer. In all instances, the offence in question has to be one that is listed in Schedule 3 of NEMA and the person concerned must have failed to have taken all reasonable steps necessary under the circumstances to prevent the commission of the crime.
>
> The sting in the tail is that NEMA section 28(14) is now listed as a Schedule 3 offence. This means that unless it can be shown that all reasonable steps necessary to prevent the crime were taken, even an unintentional (but negligent) unlawful act or omission which causes significant pollution or degradation of the environment, can make a 'director' personally liable".

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We refer to Mr Ovens' response to Mr Motsau regarding the rehabilitation of the area, namely: "*It is the intention of Ergo to suitably shape the area where the silts have been removed and then to adequately revegetate this area to ensure that the soils are stable. The drying areas will also be worked down to red earth to ensure that all contaminated soils have been removed, then levelled and shaped."*

Mr Ovens' response indicates that the area will be stabilised not rehabilitated. Measures such as the removal of contaminated soils and soil profiling cannot be regarded as reasonable measures[3] for rehabilitation.

Rehabilitation describes the intervening actions (including engineering interventions) which aim to improve the land area or river with the intention of either reinstating the original ecosystem processes or structures or facilitating the use of the contaminated land area or river ecosystem to an agreed upon* new system.

*(Since they are the potential future land users, the requirement of the MPRD Regulation entails that interested and affected parties must be involved in agreements regarding future and use of affected areas and thus in the decisions regarding the establishment of objectives for such future land use.)

We refer in this regard to the MPRD Regulations which prescribe that "*the land is rehabilitated, as far as is practicable, to its natural state, or to a predetermined and agreed standard or land use which conforms with the concept of sustainable development.*"

In terms of Appendix 5 to the 2014 EIA Regulations a closure plan must include:

*"(d) measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity and associated closure to its natural or predetermined state or **to a land use which conforms to the generally accepted principle of sustainable development**…"*

(Emphasis added.)

Failure to rehabilitate the footprints, with its implications for socio-economic and environmental sustainability, may rob communities and future generations of actual or potential livelihood opportunities and eco-system goods and services.

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We refer to the FSE's comments namely: "*The FSE recommendation is just based on the Council of Geoscience that no authorisation must be given unless one can rehabilitate.*" Please supplant it with: ***"The FSE recommendation is based on the Council of Geoscience's recommendations that authorisation for the reprocessing of individual residue deposits need to be reviewed insofar as it allows for the selected extraction of value from portions of a site without ploughing some of that value back into the rehabilitation of the entire mining area."***

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The recordal of the following comments attributed to the FSE are not accurate, namely:

"*Radiation does not just need to be done in the soil, it has to do with the end quality and that is measured in becquerels. It also has to be measured with the close's community in mind, so Radio meters need to be installed.*"

Please replace it with the following comments:

[3] The National Environmental Management Act 107 of 1998, section 28 requires that a responsible person must take all "reasonable measures" to prevent control and remediate the effects of pollution.

"In assessing the radiation safety, it is necessary to determine the radiological exposure to the adjacent landowners, communities and occupiers of the land and to assess all exposure pathways, e.g. direct external gamma radiation; internal radiation through the inhalation and ingestion pathways; exposure of radon. This should have been done by placing radon gas monitors at a number of representative positions (indoors and outdoors) around the community, landowners and occupiers of the land. Furthermore, it is well established that the health risk posed by uranium is due to both radiotoxicity and the chemical toxicity of uranium."

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We refer to the comments ascribed to the FSE namely: "*Remember that the Russel Stream is part of a wetland. We would like to see a more collective assessment.*" Please replace it with *"Remember that the Russell Stream is part of a wetland. We would like to see an impact assessment report which takes into account the accumulative impacts of the Project on the adjacent wetlands*."

Page 14

Please supplant *"Ms Liefferink declared that there is a conflict of interest. Her son in law works for the Biodiversity Company, but did not do the report,…*" with *"Ms Liefferink wished to report that there may be a conflict of interest. Her son-in-law works for the Biodiversity Company, but he did not do the report…"*

Page 15

Please supplant *"Her understating is that the SLP is still draft and has not been published…*" with *"Her understanding is that the Amendments to the Mineral and Petroleum Resources Development Regulations (2019) which pertain to the Social and Labour Plans are still in draft format and have not been published…"*

Conclusion

The FSE shall submit its comments on the Revised Draft Environmental Assessment Report as a separate document. Please confirm receipt of this submission.

SUBMITTED BY:

Mariette Liefferink.

CEO: FEDERATION FOR A SUSTAINABLE ENVIRONMENT

28 March 2020.