FSE's SUBMISSION PURSUANT TO THE MINUTES OF THE FPR AND NEMLA BILL
STAKEHOLDER MEETING HELD ON 24 MAY 2018

We refer to the Minutes of the Stakeholder Meeting which was held on the 24 May 2018 pertaining to the proposed FPR and NEMLA Bill.

The following article has relevance to the FPR and NEMLA Bill.

https://oxpeckers.org/2018/07/cleaning-up-mining/

The time for comments on the proposed FPR and NEMLA Bill may have prescribed. Allow us, nonetheless, to submit the subjoined comments on the proposed FPR following the Stakeholder Meeting and the Minutes of the proceedings. It is submitted with diffidence, on behalf of the Federation for a Sustainable Environment. These comments do not supplant the comments which were submitted on the 11th of December, 2017 by the Centre of Environmental Rights (CER) on behalf of the FSE and other organisations.

The FSE and I trust that our comments will not be passed over. It is grounded upon more than 15 years of grassroots’ experiences and extensive engagements with mining companies, mining affected communities and civil society organisations, organs of state and national and international academics and academic institutions, and national and international non-governmental organisations.

SUBJOINED COMMENTS

(Please note that in our comments, reference is made to MW Sutton’s and IM Weiersbye’s paper titled “South African Legislation Pertinent to Gold Mine Closure and Residual Risk” (2007); “Responsibilities, liabilities and duties for remediation and Mine Closure under the MPRDA and NWA” by Carin Bosman and Louis J Kotze (2005) and the WRC Report 2015 (2005).)

Deletion of “care and maintenance plan” and all care and maintenance provisions. It was argued by the DMR during the DEA’s workshop on the Financial Regulations that section 52(1) of the MPRDA addresses care and maintenance.

We respond as follows:
Entities that place their operations under care and maintenance, cease operations. In terms of the MPRDA a holder must apply for a closure certificate upon cessation of mining operations. Within 180 days from this situation occurring, the holder must complete and submit a prescribed closing plan, including an environmental risk report to the DMR Regional Manager. Only after the Chief Inspector and DWS confirmed in writing these provisions have been complied with pertaining to health and safety; management of potential pollution to water resources may a closure certificate be issues; and may the financial contribution or part thereof be returned.

By placing operations under care and maintenance (referred to by the South African Human Rights Commission as “warehousing”), mining companies circumvent the prescribed requirements to obtain a closure certificate and to, from a generic perspective, fail to eliminate harm to human health and safety; fail to eliminate risk of harm to surface and groundwater and non-aquatic organisms and fail to ensure that soil (property) must be fit for use consistent with current and future land use.

To exemplify: We subjoin hereunder photographs of two mines that ceased operations but failed to apply for a closure certificate. The result is significant harm to the environment and communities, no mitigation of dust fallout and management of groundwater and surface water, and failure to rehabilitate the land to a predetermined and agreed standard or land use which conforms with the concept of sustainable development.
Mintails’ Operations: Tudor Shaft Informal Settlement in the foreground, with the overburden material and open pits from Mintails’ Princess Cluster operations, Lancaster Dam, 11.23 – 25, the partially reclaimed North Sands- and Eskom Dumps, and the unrehabilitated footprint of CAMS Dump in the background (Photograph: Mark Oalde. 2017)

Mintails’ operations within the West Rand

Mogale Gold (Pty) Limited is a subsidiary of Mintails South Africa (Pty) Limited. Mintails SA (Pty) Ltd acquired Mogale Gold from the liquidators in late 2005 and re-commissioned operations in 2006. Mintails commercially holds three mining rights namely MR132, MR206 and MR133. Mintails’ estimated closure costs have been assessed at R336.5 million. Mintails, has, in terms of the DMR’s Financial Provision Register Bank Guarantee amounting to R2.6 million for MR 206; R25 million is being held in trust with DRDGold for MR132. No monies is held on account for MR133. The Mogale Mining Work Program reveals that the Company cannot fund the rehabilitation obligation as per the prescripts of the MPRDA. The expected life of the Mine is 2020.
The Blyvooruitzicht Gold Mine Company (BGMC)

Floated in 1937 as a subsidiary of West Witwatersrand Areas Ltd., Blyvooruitzicht was an “outstanding mine” yielding 1, 102 238 kg of gold, silver, uranium and other mineral commodities. Durban Roodepoort Deep Gold Ltd (DRD Gold) was the majority shareholder in the Blyvooruitzicht Gold Mine Company (BGMC.) In June 2011, the BGMC placed itself under supervision and business rescue in terms of the Companies Act 71 of 2008.

On 6 August 2013 a provisional winding-up order was granted. (The winding up provisions do not accommodate the financial provision for rehabilitation as a special call on the company’s assets that should be set aside before any other creditors are satisfied.) BGMC left in its wake a number of un-rehabilitated footprints of reclaimed tailings storage facilities, containing toxic and radioactive water and soil, radioactive infrastructure, tailings storage facilities without vegetation, retainer walls and functional toe paddocks and penstocks, and total liabilities of R891 098 234. R36 947 540 was held in trust for rehabilitation. In terms of DRD Gold EMPR 2007 it is stated: “The site would be left ecologically and geophysically stable and would not pose an economic, social or environmental liability to the local community and the state now or in the future.”

In terms of the financial statements of the Blyvooruitzicht Rehabilitation Trust Fund for the year ended 30th of June 2016, the trust fund was R43 007 932. The trust fund has subsequently been transferred to Blyvoor Gold Capital and the trustees (Daniel Johannes Pretorius, Mark Burrell and Kevin Peter Kruger) resigned and were replaced by the directors of Blyvoor Gold Capital

We respond as follows:

Deletion of latent but retaining of “residual”.

Residual impacts should include recognition of the following impacts in determining the financial provision:

- While most mines recognise the fact that tailings dams generate acid mine drainage, it is generally and incorrectly assumed that the impact will decrease to acceptable levels when mining operations cease. The assessment of long-term risks from tailings dams can at best be described as subjectively qualitative in nature and no proper quantitative assessments were reported in any of the EMPRs.
- It appears to be quite widely assumed that the larger particle size of waste rock dumps makes them a minor pollution risk. This view is erroneous as the waste rock dumps have very large inventories of fine material and they are much more permeable to oxygen than tailings dams. The secondary source of contaminants that remain in the soil after a dump has been removed appears to be universally ignored and it is assumed that removal of the dump removes all potential for pollution from that site.
- Most mines appear to have some monitoring programme to evaluate shallow aquifer and surface water impacts from the surface residue deposits. However, the monitoring programs are not clearly stipulated in the EMPR documents and hence it is not clear if the extent of contaminant plumes is known.
- Very few specialist investigations appear to have been done to identify the status of the geohydrological regime, the extent of contamination, preferential pathways and predictions regarding long-term migration. As a result there are very limited mitigation or management options described in the EMPRs that specifically deal with the containment/rehabilitation of contaminated groundwater.
- The potential impact on the groundwater from other surface contaminant sources such as the metallurgical plants, domestic and industrial waste sites are not described. Many of the EMPR documents state that these structures will be removed/rehabilitated during decommissioning, but it is not stated if they had an impact and if groundwater rehabilitation is required.
- Many of the older mines were subjected to amalgamations and changes in ownership and in many instances the surface infrastructure, including some tailings and rock dumps were sold to 3rd parties. Many of the current mine EMPR documents exclude infrastructure that has been sold and it is not clear if the new owners are required to address groundwater contamination and if it is in fact being done.

The DWS’ Mine Water Management Policy differentiates between 3 categories of mines. Coal and Gold Mines are categorised as Category A mines because of their acid producing potential. These residual impacts must be costed and sufficient financial provision ought to be made for the life time of the impacts. The reduction of the time period for financial provisions from 10 years to 3 years is not advisable for Category A mines where the rewatering may result in flooding of the mining basins, acceleration of sinkhole formation and ground stability problems and decant. This necessitated the establishment of vigorous groundwater and stability monitoring systems that are required to continue for some time after mine closure. The water quality in the mine workings is of a poor quality and cannot be disposed into the natural environment without treatment.
According to the draft Financial regulations, provision is no longer required for latent impacts since it is argued that by their definition these impacts are unknown or at best merely suspected and therefore provision will not be made for them. For example, gold deposits on the Witwatersrand Basin naturally co-occur with uranium and other radioactive material and metals such as Mg, Cu, Zn, Mn, As, Ni, C, Co and Pb. In addition, long living cyanide-metal complexes persist in TSFs.

The latent impacts on biota, including humans, of bioaccumulation and exposure to elevated levels of metals and NORMs (naturally occurring radioactive materials) are established in the international scientific literature. Furthermore, the mining industry should have gained enough experience from the asbestosis and silicosis catastrophes in South Africa to justify the application of precautionary principles in respect of other suspected latent impacts. Financial provisions should cover future exposure and currently unsuspected latent impacts. In order to address residual and latent liabilities, we recommend that a precautionary approach should be adopted and the following risks should be considered when determining the financial provision:

1. The near certainty of contaminated water which will require some form of decontamination treatment, decanting from closed underground mines, or from lower lying interconnected neighbouring mines;
2. The near certainty of sulphate, metal and NORM contamination of soils and sediments by seepage from unlined tailings storage facilities (TSFs), tailings spillages and plant discharges, and the potential for contamination of downstream/downwind soils and sediments;
3. The near certainty of sulphate, metal and Norm contamination of surface water bodies and their sediments, and ground water, by seepage from unlined tailings storage facilities, tailings spillages, plant discharges and underground workings. In addition, the potential contamination of surface soils overlying shallow polluted groundwater via evaporative pathways during dry seasons.
4. The potential for sulphate, metal and NORM contamination of crop soils irrigated with contaminated surface water or contaminated groundwater.
5. The concomitant loss of genetic/biodiversity and potentially ecosystem goods and services on disturbed, fragmented and polluted properties.
6. The potential for bioaccumulation of some metals and NORMS by flora and fauna.
7. The potential of exposure of fauna and humans to bioaccumulated pollutants.
8. The potential for acute and latent toxicity impacts of bioaccumulated pollutants on humans and the potential for radioactivity impacts from NORMs on humans.
9. The potential for structural damage to buildings and other structures, and human injury by mining exacerbated seismicity and sinkhole formation.
10. The potential for uncontrolled future land uses on or within the zone of influence of TSFs, footprints and mineral processing facilities, such as human settlement and recreation, food crops and home vegetable gardens, livestock grazing and informal remining and scavenging all of which are incompatible with safety and the fragile status of lands, and could exacerbate liabilities for mining and the State post-closure.

SUBMITTED BY:
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