



## **environmental affairs**

Department:  
Environmental Affairs  
**REPUBLIC OF SOUTH AFRICA**

Private Bag X 447 · PRETORIA · 0001 · Environment House · 473 Steve Biko, Arcadia · PRETORIA  
Tel (+ 27 12) 399 9372

**DEA Reference:** 14/12/16/3/3/2/684/685/686 & 687

**Enquiries:** Mr Mahlatse Shubane

**Telephone:** (012) 399 9417 **E-mail:** Mshubane@environment.gov.za

Mr André van der Spuy  
André van der Spuy Environmental Consultants  
42 Afrikander Road  
**SIMON'S TOWN**  
Cape Town  
7975

Telephone Number: (021) 786 2919  
Email Address: avdspuy@iafrica.com

Dear Mr Van der Spuy

**RE: NOTIFICATION OF PROCEDURAL FLAWS, OBJECTION THERETO AND CALL TO THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS FOR RESTORATION OF CORRECT ORDER WITH REFERENCE TO THE PROPOSED UMSINDE EMOYENI WIND ENERGY FACILITIES AND ASSOCIATED GRID INFRASTRUCTURE, WESTERN AND NORTHERN CAPE PROVINCES**

Your letter dated 19 May 2016 to Ms Ngcaba, Director General of the Department of Environmental Affairs and the Department's acknowledgement letter dated 14 July 2016, refer. The Department would like to respond as follows:

**1. AVDS letter to the Director General of Environmental Affairs (dated 15/03/2016): Failure of the competent authority to respond and to restore the rights of our clients.**

1.1. The original email correspondence dated 15/3/2016 and the attached letter dated 06/03/2016 were never received by the Directorate: Strategic Infrastructure Developments of the Department. However, the Department has reviewed the scoping reports and found that it adhere to the requirements of the 2010 EIA Regulations hence accepting these reports on 30/04/2015. The Department cannot therefore "totally reverse the process".

All I&APs had another opportunity to participate in the process with the opportunity to comment on the draft environmental impacts assessment reports (EIAs) within the timeframe provided. In addition, the comment period on the draft EIAs were extended (e-mail 19/02/2016) until 07/03/2016 to give I&APs additional time to comment. I&APs have also an opportunity to submit their comments on the final EIAs to the Department.

1.2. Refer to point 1.1 above. In addition, the Department notes that you are acting on behalf of the following parties:

- Mr. Frans Harvoor & Others
- Badsfontein Country Guesthouse and Farm (Mr. Izak van de Merwe)
- Ratelfontein Private Game Reserve (Mr. Jan Pickard)

Is it then not your responsibility to inform, liaise and solicit comments from these parties? It cannot reasonably be expected that the EAP must still individually solicit comments from these parties who you represent. Mr Frans Harvoor and other parties have an opportunity to comment in the EIA phase.

## **2. Inclusion and submission of draft information of a material nature to the Department.**

- 2.1. The Department has not yet accepted the final EIAs and will take this issue into consideration when reviewing the final EIAs.
- 2.2. The Department is satisfied that all the requirements of the EIA process were met and I&APs were given a fair opportunity to comment on all reports up to and including the draft EIAs. As indicated above, the Department has not taken a decision on the final EIAs. In making the decision on the acceptability of the final EIAs, it will determine if all legal requirements were adhered to.
- 2.3. The Department agrees that the comments relating to the final EIAs are required to be submitted to the Department (and a copy submitted to the EAP) in terms of the 2010 EIA Regulations. As indicated above, no decision has been taken on the final EIAs and the Department will consider the applicable legal requirements in such decision.

The public consultation process is however not an open ended process. Comments on the final EIAs must be submitted to the Department and copied to the EAP. There is no provision in the Regulations for another comments and response cycle.

- 2.4. The EAP must submit the final EIAs to the Department after taking into account any issues raised on the draft version (as is required in the Regulations). As already indicated, the EIA process is not an open ended process with continues comment-and-response cycles. The EIA Regulations are clear on the steps and opportunities for I&APs to participate in and to comment on reports. I&APs have an opportunity to verify minutes, issues raised etc. in the review of final EIAs and submit comments on these reports to the Department and copied to the EAP. There is no provision in the regulations for the EAP to respond to the comments submitted by I&APs on the final EIAs.
- 2.5. Please see above response. Your letter did not indicate the substantive issues that you raised during your comment on the draft EIAs. The Department will verify that all comments on the draft EIAs have been adequately dealt with in the final EIAs and the comments and responses reports.
- 2.6. It is correctly stated that Regulation 56(4) refers to draft reports. However, the Department is satisfied that I&APs have had a fair and reasonable opportunity to comment on the draft reports. The Department therefore considers the submitted final EIAs, to be final reports. Whether the requirements, regarding the submission of the final EIAs in terms of the EIA Regulations, 2010 have been met, will be determined with the review of these reports.
- 2.7. Please see response under 2.4. In terms of Regulation 56, the Department will take this into consideration when reviewing the final EIAs. Please note that there is "no approach adopted by the EAP and the Department" and "the Department's apparently acceptance" of the final EIAs is incorrect.

## **3. Draft stakeholder meeting minutes: Failure by the EAP to uphold agreed to procedures of review and subsequent dishonest representation of same (and other critical information)**

- 3.1. According to the EAP, the minutes of the focus group meeting held on 04/02/2016 were sent on 01/04/2016 for your review and comment, but the EAP has not received any comments back. The final reports were submitted to the Department on 20/04/2016, therefore it seems that you had a reasonable

amount of time to submit comments. I&APs had an opportunity to review minutes, issues raised etc., during the comment period on the draft EIAs and have so on the final EIAs.

3.2. Please see response under 3.1.

3.3. The EAP indicated that the minutes of the meeting held on 04/02/2016 were sent to you on 01/04/2016 for your review and comment but no comments were received to date (proof of email is included in the report). The EAP further denied that there was such condition agreed upon. The Department is not in a position to confirm if there was an agreement reached between the EAP and yourself that the minutes must be approved before finalising the final EIAs. The Department will consider all requirements in terms of the 2010 EIA Regulations when reviewing the final EIAs.

3.4. The Department has reviewed the scoping reports and found that these adhere to the requirements of the 2010 EIA Regulations hence accepting these reports on 30/04/2015. The Department cannot reconsider its decisions taken on these reports. The Department is of the opinion that all reasonable measures were taken to notify I&APs of the project and to solicit comments. As indicated previously, it is expected that you should inform and obtain comments from your clients. The Department will consider all comments in reviewing the final EIAs.

#### **4. Draft public meeting minutes: Failure by the EAP to uphold accepted procedures of review and dishonest representation of the same**

4.1. The Department already responded to the above allegation under point 3.2.

4.2. The Department is not in a position to confirm what was presented at the meeting. Page 40 to 43 of the final Scoping Report received by the Department on 10/02/2015 and accepted on 30/04/2015 included a full description of the site selection process followed. It is stated that a prefeasibility assessment was undertaken as part of the site selection process, and the Umsinde site during the pre-feasibility assessment was found to have no fatal environmental flaws. The presentation made by the applicant was included in Volume II. The response from the EAP seems to be reasonable.

#### **5. Lack of answers by EAP to formal enquiries and requests submitted on 5 April 2016**

5.1. It was established that the designated commenting period on the draft EIAs commenced on 15/01/2016 and lasted until 24/02/2016. This period was extended until 07/03/2016. Your enquiry was submitted on 05/04/2016 and follow-up enquiries were also sent via email (on dates of 10/5/2016, 12/5/2016 and 18/5/2016) when the commenting period has already closed. The Department is of the opinion that you had a reasonable opportunity to submit your comments in the 50 days provided. The consultative process is not an open ended process but have start and end phases to ensure that the process come to a conclusion.

5.2. Please refer to response 5.1. The EAP indicated that it did respond to your email on 19/05/2016. You were however unhappy with the response. The Department will consider the response when decisions on the acceptability of the final EIAs are made.

5.3. Neither the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("the NEMA") nor the EIA Regulations of 2010, require that the viewpoints of I&APs must be heard directly from the affected individual and not through a representative. However, in the case where legal issues emerge, and there is no proof that the representative acted on behalf of the clients, the representative may be held personally liable in legal proceedings.

- 5.4. The necessary documentation was submitted to the Department. This was included in the application forms submitted as part of the final EIAs and include the commissioner of oaths forms and the declarations of independence. This can be found in Appendix A of the final EIAs.
- 5.5. The Department takes into consideration all the legal requirements of the Regulations when making in-process and final decisions (EA) and will consider your allegations when reviewing the final EIAs. The Department rejects your claim that it colludes with the applicant and EAP in the strongest sense and you are advised to submit evidence to substantiate this very serious allegation.
- 6. Request for site meeting at AVDS clients affected properties, operations and premises prior to a final decision by the DEA on the subject applications**
- 6.1. The Department accepted the final SRs on 30/04/2015. It was satisfied that all legal requirements were met. At this stage in the EIA process, the Department must consider the final EIAs and all the legal requirements pertaining thereto. It is also unclear as to what are the true facts and real extent of the environmental and socio-economic impacts which are grossly misrepresented by the EAP. Again, as stated above, your claims regarding a conspiracy will be ignored unless supported by evidence.
- 6.2. The Department advise that in terms of Regulation 16 (1) before conducting basic assessment or S&EIR, an applicant must appoint an EAP at own cost to manage the application. In addition, regulation 56 (1) states that a registered interested and affected party is entitled to comment, in writing, on all written submissions, including draft reports made to the competent authority by the applicant or the EAP managing an application, and to bring to the attention of the competent authority any issues which that party believes may be of significance to the consideration of the application.

In terms of Section 1 of the Act:

**competent authority**”, means that in respect of a listed activity or specified activity, means the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, with granting or refusing an environmental authorisation in respect of that activity.

In addition, this Department advises that, the definition of an EAP as defined in the EIA Regulations, 2014 “means an environmental assessment practitioner as defined in section 1 of the Act.”

In terms of Chapter 1 of the Act:

**“environmental assessment practitioner”**, when used in Chapter 5, means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans or any other appropriate environmental instruments introduced through regulations;”

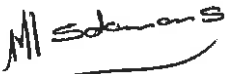
In light of the definitions above as well as regulation 16(1) and 56(1), the responsibility of the competent authority is to evaluate the EIA applications and the EAP is to plan, manage and co-ordinate environmental impact assessments and the registered I&APs to provide comments. It is therefore not the role of the Department to “meet with I&APs and visit their properties and places of abode”.

- 7. Notification of reserved right to submit comments on legitimate final EIAs after restoration of procedural correctness**
- 7.1. Noted. As indicated above, the Department has not taken a decision on the acceptability of the final EIAs. The Department will take the legal requirements into consideration when reviewing the reports.

- 7.2. Please refer to response under point 2.4. I&APs have the opportunity to comment on the final EIAs and submit their comments to the Department and copied to the EAP. There is not another round of "response" by the EAP or Department to these comments. The Department will take all comments into consideration when making a decision on the application.
- 7.3. Noted. The Department will recommence with reviewing the final EIAs. Once a decision has been made, you will be notified by the EAP of the decision.
- 7.4. There is no legislated timeframe for the submission of comments to the Department on final reports by I&APs. In general the Department allows for a 30 day commenting period which is regarded as reasonable.

Should you have any queries or wish to discuss the points raised above, please do not hesitate to contact the writer whose details are specified at the top of this letter.

Yours faithfully



**Mr Sabelo Malaza**  
**Chief Director: Integrated Environmental Authorisations**  
**Department of Environmental Affairs**  
**Letter Signed by: Ms Millicent Solomons**  
**Designation: Director: Strategic Infrastructure Developments**  
**Date: 24/08/2017.**

cc	Mr Peter Venn	Emoyeni Wind Farm Project	Email: peter.venn@windlab.com
	Ms Jennifer Slack	Arcus Renewable Energy Consulting Ltd	Email: JenniferS@arcusconsulting.co.za