



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

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PER E-MAIL

Dear Mr Katmer

NOTIFICATION OF SUSPENSION OF THE APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF REGULATION 14 OF THE EIA REGULATIONS 2014 AS AMENDED FOR THE PROPOSED GAS TO POWER POWERSHIP PROJECT AT THE PORT OF SALDANHA AND ASSOCIATED EVACUATION WITHIN SALDANHA BAY LOCAL MUNICIPALITY, WESTERN CAPE

The abovementioned application for environmental authorisation (EA) and the associated final Environmental Impact Assessment Report (EIAR) received by the Department on 09 January 2023 refers.

- i. On 06 March 2023, the Department received written notice, as contemplated in Regulation 14(2) of the Environmental Impact Assessment (EIA) Regulations, 2014 as amended from The Green Connection making allegations of suspected non-compliance by the appointed Environmental Assessment Practitioner (EAP) with Regulation 13 of the EIA Regulations, 2014 as amended.
- ii. Regulation 14(3) of the EIA Regulations, 2014 as amended provides that, where an interested and affected party (I&AP) so notifies the competent authority of suspected non-compliance, the competent authority must investigate the allegation promptly.
- iii. As a result of the above and in line with the relevant provisions of Regulation 13, the Department will initiate an investigation regarding the allegations of suspected non-compliance.
- iv. The Department has reason to believe that the suspected non-compliance is based on the following:
 - a) Misrepresentation of persons attending the Small-scale Fisheries Engagement meeting on 03 October 2022: In the final EIAR, there is an acknowledgement that the group was not small scale fishers (SSFs) and yet, the FEIR uses the results of that engagement to represent the views expressed in the focus group as being that of small-scale fishers.
 - b) Information from aquaculture and commercial fisheries participants was used as if it was valid information from the small-scale sector: These aquaculture officials and one commercial pelagic official were asked to provide information on the small-scale interim relief fishers and this information was

then presented in the report as if it was valid, reliable information about the small-scale, interim relief fishers of the area. The final EIA concludes that the potential impact on small scale fishers were thoroughly investigated. Given that there was no focus group meeting with SSFs, it is difficult to understand how this conclusion was derived.

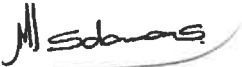
- c) Based on the information contained above, it appears that Triplo4 has attempted to mislead the competent authority. The EAP has not only failed to engage those stakeholders which are historically opposed to the project but they have produced a report, which purports to represent fishers views but does not contain the views of any fishers, and rely on the meeting participants views to support a conclusion that the project should be authorised.
- d) The Green Connection is of the view that the EAP has failed to comply with the requirements for EAPs, as set out in NEMA and the EIA Regulations, in at least the following respects:
 - (i) the EAP failed to ensure compliance with the EIA Regulations (regulation 13(1)(c));
 - (ii) the EAP failed to perform the work relating to the application in an objective manner (regulation 13(1)(d)); and
 - (iii) the failed to disclose all material information in possession of the EAP (regulation 13(1)(f)).
- v. In terms of Regulation 14(1)(a) of the EIA Regulations, 2014, as amended, you are hereby informed that the application and associated timeframes for reviewing and considering the application for EA for the proposed gas to power powership project at the Port of Saldanha and associated evacuation within Saldanha Bay Local Municipality, Western Cape (14/12/16/2/2/2006) is suspended until the matter is resolved. The extended timeframe for the processing of the application will be communicated once a decision on the matter has been reached in terms of Regulation, 14(5) of the EIA Regulations, 2014 as amended.
- vi. In terms of Regulation 14(1)(b) of the EIA Regulations, 2014, as amended, you are hereby afforded the opportunity to make representations in writing on the attached allegations made by The Green Connection, and to submit such representations to this Department on or before **Friday, 17 March 2023**.
- vii. Upon receipt of the information, or failure to submit the representations by the abovementioned date, this Department will then consider the matter (with or without your representations) and advise in terms of Regulation 14(5) of the EIA Regulations, 2014, as amended.
- viii. In terms of Regulation 14(6) of the EIA Regulations, 2014, as amended, you are hereby informed to notify all registered interested and affected parties (I&AP's) of the Department's decision within seven (07) days from the date of this letter.
- ix. In addition to the above, Regulation 10(c) of the EIA Regulations, 2014, as amended states that *"an applicant must provide the competent authority with all information that reasonably has or may have the potential of influencing any decision with regard to an application"*.
- x. Regulation 13(1)(b) states that *"An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must have expertise in conducting environmental impact assessments or undertaking specialist work as required, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;"*
- xi. Regulation 13(1)(c) states that *"An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must ensure compliance with these Regulations;"*

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- xii. Regulation 13(1)(d) states that "An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application".
- xiii. You are hereby informed that in terms of Regulation 48(1)(a) of the EIA Regulations, 2014, as amended, it is an offence to "provide incorrect or misleading information in any form, including any document submitted in terms of these Regulations to a competent authority or omits information that may have an influence on the outcome of a decision of a competent authority;" and in terms of Regulation 48(1)(b) of the EIA Regulations, 2014, as amended "fails to comply with regulation 10(c)."

Should you have any queries or wish to discuss the points raised above, please do not hesitate to contact the writer.

Yours faithfully



Ms Millicent Solomons
Acting Chief Director: Integrated Environmental Authorisations
Department of Forestry, Fisheries and the Environment
Date: 07/03/2023.

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