



1 Karkloof Road, Howick. P O Box 394, Howick, 3290. Tel 033 330 3931 Fax 033 330 4576 info@wessa.co.za www.wessa.org.za

Mining and Mining Resources: WESSA Position Statement

This position statement is based on the principles of ecologically sustainable development, and reflects the Vision, Mission, Aim, Style and Values of WESSA.

This position statement recognises that the socio-economic and environmental landscapes are complex and so must make space for continuous change and emergence.

Contact:

Bianca McKelvey Morgan: WESSA Environmental Governance Programme Manager

Email: conservation@wesakzn.org.za

Telephone: +27 (0)31 201 3126

This policy replaces all other WESSA policies relating to mining and mining resources that existed before December 2012.

All Regional Staff and WESSA members are acknowledged for their contributions.

Reg No. 1933/004658/08 (Non-Profit Company)

Registration Number in Terms of the Non Profit Organisation Act 1997: 000-716NPO Tax Exemption Number: 18/11/13/1903

DIRECTORS: Messrs: Dr RG Lewis (Chairman), F van Heerden (National Treasurer), Dr JT Burger (Chief Executive Officer), Prof M Kidd, Dr RJ Taylor, Dr P Bartels, Dr H Hendricks, M Ward, M Fischer, G Barnes, A Steyn

Mesdames: DL Perrett (Vice Chairman), S Erasmus, Dr E Rosenberg

M Powell (Company Secretary)

Patrons: Simon Gear, Andile Sangqu, Braam Malherbe, Keith Kirsten, Penny Heyns, Kevin Duncan, Sango Ntsaluba, Prof. Brian Huntley, Michael Judin, Jason Hartman

FOUNDER MEMBER OF



International Union for
Conservation of Nature

INTRODUCTION

Mining has been the main driving force behind the history and development of South Africa's economy, and continues to be a cornerstone of the current economy and forward planning for South Africa.

However, mining and related activities:

- Largely, exploit natural, non-renewable resources;
- Are a significant contributor to climate change;
- Result in recognizably negative impacts on biodiversity, energy, and water resources, as well as generating large volumes of (often hazardous) waste;
- Result in direct and indirect impacts on our natural and cultural heritage;
- Decrease the ability of the environment to produce free goods and services.

Residual environmental impacts occur as a result of mining and related activities despite the best available technology¹ and South Africa's limited collective experience for rehabilitation/habitat restoration.

These characteristics of the mining sector mean that decisions around the exploitation of mineral resources will generally result in opportunity cost² and unintended consequences for the economic, socio-cultural and biophysical environment.

There is therefore a chronic need for strong environmental governance and strategic, holistic decision-making to guide all levels of activity in the mining sector.

WESSA'S POSITION STATEMENT

WESSA's aim is not to oppose mining, but to ensure that mining and related activities are fully identified and adequately assessed, and that the mitigation of detrimental impacts takes place within reasonable timeframes. We also hope to ensure that there is adequate compliance monitoring by the authorities, and that strong enforcement action is taken when non-compliance is found. This is the only way to ensure responsible environmental practices in mining, in the interest of workers, communities and the country.

To this end, WESSA recommends that:

- Regulatory procedures be revised to ensure that environmental regulation in the mining sector conforms to the regulation of all other sectors;
- The concurrent competencies between Departments in the mining and environmental sectors be actively addressed through formalised, functional cooperative governance structures³;
- Decisions about where and how to mine in South Africa be guided by careful spatial planning that reconciles mining priority areas and environmental priority areas;
- Mining activities should be considered with a "cradle to grave" approach that allows us to avoid unintended environmental consequences and opportunity cost to society;
- All mining projects be assessed in the light of their opportunities for local beneficiation and utilisation, and the consequent potential benefits in creating additional jobs and increasing the contribution to the local economy;
- All mining projects be assessed with regard to maximising resource recovery and minimising waste, by encouraging production of co-products and bi-products either directly or indirectly as spin-off industries, and by implementing all relevant recycling strategies;
- All mining and mining related activities be measured against South Africa's strategic and specific water resource management strategies;

- South Africa takes decisive action to address the legacy of Acid Mine Drainage and environmental degradation of past mining, considering the severe limitations that these impacts place on society's choices for the future;
- Effective compliance monitoring and enforcement is enabled through legislative reform and appropriate capacity building within the Department of Mineral Resources;
- Access to information be improved to ensure transparency in decision-making, and public participation in decisions affecting mining resources;
- Provisions for the calculation and retention of the regulated financial securities for mine closure and rehabilitation be reviewed to ensure that the financial resources set aside for this are adequate and secure, and that these resources can be mobilized when they are required.

CONTEXTUAL INFORMATION

Environmental context:

Mining and related activities usually result in direct and indirect impacts on:

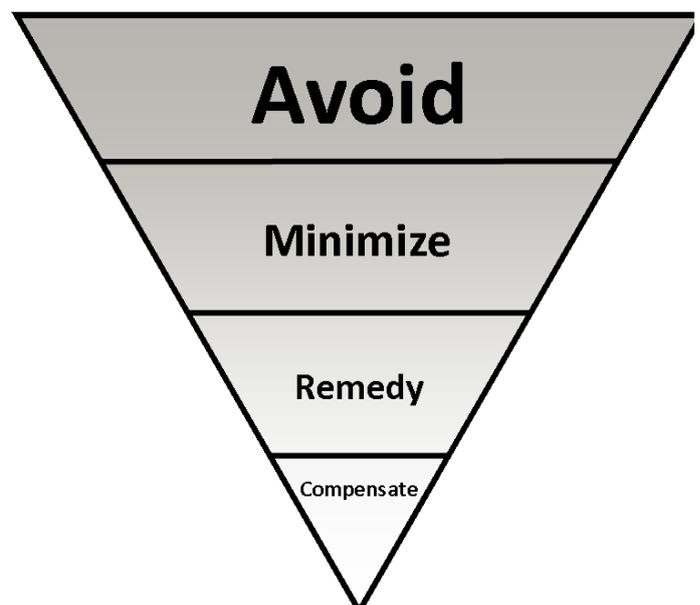
- Geology
- Climate
- Topography
- Soil
- Land capability
- Land use
- Flora - vegetation and ecosystems
- Fauna - habitat for threatened or protected species
- Surface water
- Ground water
- Wetlands
- Air quality
- Noise and nuisance factors
- Sites of archaeological, historical, scientific and cultural interest
- Visual and sense of place
- Climate change
- Cumulative impacts

Some of these impacts cannot be fully mitigated against, resulting in permanent changes to the environment, and diminishing the ability of the environment to produce free goods and services.

The best way to manage these impacts is through the mitigation hierarchy entrenched in South African legislation. This means that:

1. Impacts must first be avoided;
2. If impacts cannot be avoided, then they must be minimised/mitigated;
3. If impacts cannot be completely avoided or minimised, environmental damage must be repaired;
4. If, after avoiding, minimizing and remedying impacts there remains a residual environmental impact, this must then be compensated/offset.

Of all of the biophysical impacts of mining, impacts upon our water resources (particularly the quantity and quality of fresh water) are at the forefront of WESSA's concerns.



By their very nature, mining and related activities consume, transfer/divert and pollute water resources, to the point that water has been described as “mining’s most common casualty” (Environmental Mining Council of British Columbia, 2001). The current crisis of Acid Mine Drainage in parts of South Africa is part of the legacy of past mining activities that have been undertaken with little concern for the environment. Acid Mine Drainage is also the most difficult mine waste problem to address effectively, with some polluted water resources unlikely to ever be completely restored.

Therefore, it is critical that water resource management considerations are at the forefront of decision-making, planning and operations management for the whole of the mining sector.

Economic context:

Historically, South Africa’s diamond and gold production have been our key earners. Though now well below their historic peaks, South Africa remains second in global gold production. South Africa still remains rich in minerals, being the world's largest producer of chrome, manganese, platinum, vanadium and vermiculite, being the second largest producer of ilmenite, palladium, rutile and zirconium, and the world's third largest coal exporter.

With the growth of South Africa's secondary and tertiary industries, the relative contribution of mining to South Africa's gross domestic product (GDP) has declined over the past 10 to 20 years. Yet, the country is still estimated to have the world’s fifth-largest mining sector in terms of GDP value. A report by the Chamber of Mines stated that mining sector had contributed just over R1.9-trillion to gross domestic product and export earnings in 2011.

In addition to being a large and well established sector in South Africa, there is also significant potential for the expansion of mining and related activities in South Africa. Despite negative perceptions that the country is losing momentum in foreign investment, Ernst & Young found that South Africa remains the most attractive foreign direct investment (FDI) destination in Africa, and South Africa’s total reserves are among the world’s most valuable, with an estimated worth of R29.6-trillion (based on known reserves of the major minerals in the country). In addition, international mining houses perceive the cost of business in South Africa as being relatively low, given that our mining regulations are considered less prescriptive on labour and environmental practices than some other states.

The mining sector creates and preserves hundreds of thousands of jobs in South Africa, and the expansion of mining and related activities is projected to be able to provide significantly more employment in the country. The New Growth Path for South Africa suggests that accelerating mining and developing our beneficiation activities is critical for job creation in South Africa, with the expectation that the sector will create 140 000 jobs by 2020.

WESSA recognizes the need for and desirability of mining and related activities in the context of South Africa’s socio-economic environment and growth path, and therefore advocates strategic, holistic and transparent decision-making that takes full account of the negative social, economic and environmental impacts of the sector.

Environmental governance in mining:

The nature of the interrelationship between governance role-players will inevitably be reflected in the effectiveness of our environmental management.

Mining is regulated primarily through the Mineral and Petroleum Resources Development Act No. 28 of 2002 (MPRDA, as amended), as administrated by the Department of Mineral Resources (DMR). However, environmental functions are often concurrent competencies between all three spheres of government, with the Department of Environment Affairs (DEA) as

the lead agency. In the case of mining, the DMR remains the lead agency for environmental impact assessment, with concurrent authorizations required from the DEA. This leaves a disharmony in the institutional framework and threatens to forestall good governance, while also placing the environment at risk.

There are other regulatory issues that add complexity to this administration of environmental matters in mining, including the following:

- Under the MPRDA, the DMR's mandate is to promote mining and oversee the maximized, efficient extraction of mineral resources in South Africa, but this Department is also required to adjudicate the very environmental impact assessment process that may restrict access to these resources (ie. the Department is both player and referee in the assessment process).
- The environmental considerations for mining that are articulated in the MPRDA fall well below the standards set for other sectors through the Environmental Impact Assessment Regulations under the National Environmental Management Act No. 107 of 1998 (NEMA). Protracted negotiations between the DMR and DEA to align their legislation and environmental regulation standards, in line with good cooperative governance principles, remain unresolved.
- Access to information on the mining sector is notoriously poor. Most information is not disclosed to the public and is very difficult to access, either through mining houses themselves or through the DMR. In addition, the regulated public participation procedures through the MPRDA fall far short of the standards set out in other environmental legislation in South Africa and the expectations of society.

Collaborative solution building:

As with all of WESSA's programmes and initiatives, it is recognised that we cannot work on our own, and that our work does not happen in isolation. Therefore, WESSA seeks to work collaboratively with all sectors of society to build solutions where collaboration adds impact and value to the work in furtherance of WESSA's Mission.

WESSA is part of the Mining-Environment-Community Alliance, a coalition that works together to implement a civil society legal strategy to promote environmental compliance, transparency and accountability in the mining sector⁴.

REFERENCES

Bernstein, J. (2000). *Tracking the Global Governance Reform Agenda*. In: *World Business Council for Sustainable Development* (ed) *Designing Better Governance: An Issue in Dialogue*. WBSCD, Geneva.

Centre for Environmental Rights: <http://cer.org.za/home/> [Accessed 22 November 2012].

Department of Mineral Resources (2011). Annual Report 2010/2011.

Department of Mineral Resources <http://www.dmr.gov.za/> [Accessed 19 November 2012].

Digby Wells and Associates, Growth Lab and the Council For Geoscience (2008). *Mining and Environmental Impact Guide*. Gauteng Department of Agriculture, Environment and Conservation Johannesburg.

Endangered Wildlife Trust: Mining Toolkit: <http://www.miningtoolkit.ewt.org.za/> [Accessed 20 November 2012].

Framework of the New Economic Growth Path, 23 November 2010.

<http://www.info.gov.za/view/DownloadFileAction?id=135748> [Accessed 19 November 2012].

The Government of the Republic of South Africa (2011). *National Climate Change Response White Paper, October 2011*.

International Association for Impact Assessment: http://www.iaia.co.za/News/News_details.asp?art_ID=127 [Accessed 19 November 2012].

International Council on Mining and Metals (2003). *Mining and Protected Areas Position Statement*.

Mineral Commodity summaries: <http://minerals.usgs.gov/minerals/pubs/mcs/> [Accessed 19 November 2012].

Mineral Commodity Summaries, 2008: <http://minerals.usgs.gov/minerals/pubs/commodity/gold/mcs-2008-gold.pdf> [Accessed 19 November 2012].

Mining Weekly: <http://www.miningweekly.com/article/shabangu-says-sa-mineral-resources-valued-at-r296tr-2012-11-15> [Accessed 19 November 2012].

Mining Weekly: <http://www.miningweekly.com/article/investment-perception-of-sa-worse-than-reality-says-ey-2012-11-08> [Accessed 19 November 2012].

Mining Weekly: <http://www.miningweekly.com/article/mining-sector-has-varying-opinions-on-climate-change-2011-11-04> [Accessed 22 November 2012].

Nelson, J. and Schuchard, R. *Adapting to Climate Change: A guide for the mining industry*. BSR industry series. www.bsr.org/adaptation. [Accessed 22 November 2012].

South Africa's coal future looks bright: http://www.platts.com/Coal/highlights/2006/coalp_ee_091106.xml [Accessed 22 November 2012].

South Africa.info: <http://www.southafrica.info/business/economy/sectors/mining.htm> [Accessed 19 November 2012].

Wikipedia: http://en.wikipedia.org/wiki/Mining_industry_of_South_Africa [Accessed 19 November 2012].

WWF-World Wide Fund For Nature (Formerly World Wildlife Fund) (2012). *Financial Provisions for Rehabilitation and Closure in South African Mining: Discussion Document on Challenges and Recommended Improvements (Summary)*. Cape Town, South Africa.

WWF-World Wide Fund For Nature (Formerly World Wildlife Fund): http://wwf.panda.org/what_we_do/where_we_work/borneo_forests/borneo_rainforest_conservation/greenbusinessnet_work/industry/mining/ [Accessed 19 November 2012].

¹ Best available technology refers to the regulations limiting pollutant discharges with regard to a mitigation strategy. http://en.wikipedia.org/wiki/Best_available_technology [Accessed 22 November 2012].

² Opportunity cost is the cost of any activity measured in terms of the value of the alternative that is forgone. It is the sacrifice related to the second best choice available to someone, or group, who has picked among several mutually exclusive choices. Investopedia: <http://www.investopedia.com/terms/o/opportunitycost.asp> [Accessed 22 November 2012] and Wikipedia: http://en.wikipedia.org/wiki/Opportunity_cost [Accessed 22 November 2012].

³ WESSA considers good environmental governance as characterised by:

- Participation, which implies that all stakeholders have a voice in influencing decision-making;
- Transparency, which implies that the procedures and methods of decision-making should be open and transparent so that effective participation is possible;
- Accountability of decision-makers to the public and to key stakeholders;
- Effectiveness and efficiency in carrying out key functions;
- Responsiveness to the need of all stakeholders;

And it is grounded in the rule of law, which implies that legal frameworks guiding decision-making must be fair and enforced impartially.

⁴ Participants in the Alliance include:

- Batlhabine Foundation
- Bench Mark Foundation
- BirdLife South Africa
- Centre for Applied Legal Studies, University of the Witwatersrand
- Centre for Environmental Rights
- Conservation South Africa
- Earthlife Africa Johannesburg (Acid Mine Drainage Working Group)
- Endangered Wildlife Trust
- Environmental Monitoring Group
- Federation for a Sustainable Environment
- groundWork
- Kommagas Community
- Lawyers for Human Rights
- Legal Resources Centre
- Madadeni Mining Committee
- Open Democracy Advice Centre
- Socio-Economic Rights Institute
- South African History Archive
- South Durban Community Environmental Alliance
- Sustaining the Wild Coast
- Vaal Environmental Justice Alliance
- Wildlife and Environment Society of South Africa
- Wilderness Foundation
- WWF South Africa
- University of the Witwatersrand Law School
- University of KwaZulu-Natal Law School

For more information on the Alliance, see: <http://cer.org.za/home/>.