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23 May 2007

MPRDAB 5

Attention: Shanaaz Isaacs

Committee Secretary, PC Minerals and Energy
3rd Floor, 90 Plein Street
P.O. Box 15
Cape Town
8000

**RE: COMMENTS ON MINERAL and PETROLEUM RESOURCES DEVELOPMENT
AMMENDMENT BILL (B10-2007)**

Dear Shanaaz

I have gone through the Bill and there is one VERY PERTINENT issue that is not being addressed by the Bill which is to do with Cleaner Development Mechanism (CDM).

Mines are emitting a lot of pollutants especially Smelters. They are also consuming a lot of Energy i.e. ELECTRICITY and DIESEL, plus other forms of non-renewable energy. Therefore since South Africa has an obligation towards the reduction of Green House Gasses in line with the UNFCCC, the IPCC and the Kyoto Protocol, we should be seen to be doing something.

For example, mines should be forced to use at least a third of their energy requirements from renewable sources, or at least support CDM projects. They should somehow be encouraged to go for Carbon Credits otherwise the Designated national Authority (DNA) which is part of the DME is not being well supported. I think this is the best time to include this into the Bill.

For more comments, you can contact me on the above address or cell number, 072 422 8541.

Yours faithfully

T. P. Sithole

**Projects Manager
Sub-Committee Member DNA**

DIRECTORS: T. GOPO, TS CHIVIZHE, Q GOPO



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MPRDAB 6

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**Department of Minerals and Energy
 Committee Secretary
 PC on Minerals and Energy
 P O Box 15
 CAPE TOWN
 8000**

Attention: Shanaaz Isaacs

Per facsimile: (021) 403 2808

Dear Sirs

COMMENTS BY THE South African National Roads Agency Limited ("SANRAL") WITH REGARD TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL ("MPRDA Bill")

- 1 SANRAL's comments, as set forth herein, should be viewed in light of the requirements imposed on us pursuant to the provisions of the South African National Roads Agency Limited and National Roads Act, No. 7 of 1998 ("Roads Act"), which require SANRAL, within the ambit of Government policy, to exercise responsibility over and perform all strategic planning with regard to the South African National Roads system, as well as the design, construction, operation, rehabilitation and maintenance of the National Roads in the Republic of South Africa.
- 2 Although SANRAL does have certain comments and suggestions with regard to the practical implementation and administrative effect of the Mineral and Petroleum Resources



Development Act, No. 28 of 2002 ("the Principal Act"), as read with the MPRDA Bill and which would assist SANRAL in fulfilling its obligations under the Roads Act, it is SANRAL's view that these comments and suggestions properly fall to be dealt with in subsequent discussions with the Department of Minerals and Energy ("DME") and the results thereof recorded in a memorandum of understanding between the DME and SANRAL.

- 3 In the circumstances SANRAL's comments, as recorded herein, shall deal solely with the legal effect, insofar as it relates to SANRAL, of certain aspects of the proposed MPRDA Bill.
- 4 With regard to section 41 of the Principal Act and the proposed amendment thereto in terms of the MPRDA Bill and the proposed insertion of the new section 41A therein, SANRAL records the following –
 - 4.1 SANRAL is an organ of State, with the State as its sole shareholder;
 - 4.2 the effect of the financial provision section of the Principal Act, as read with the MPRDA Bill, will be that SANRAL would be indemnifying the State, through the Minister of Minerals and Energy, with regard to the rehabilitation or management of the environmental impact in question;
 - 4.3 SANRAL, as an organ of State, is obliged to comply with the requirements of the Public Finance Management Act 1999, insofar as it relates to incurring financial obligations and/or indemnifying against loss or damage. This may prevent SANRAL from binding itself to the type of financial provisions contemplated in the Principal Act, as read with the MPRDA Bill;
 - 4.4 SANRAL, as an organ of State and as an entity incorporated by legislation, is and does not have the

systems to bind itself to the type of financial provisions contemplated in the Principal Act and the MPRDA Bill.

- 5 By virtue of that set forth in 4 above, SANRAL would request that they be exempted from the type of financial provisions contemplated in the Principal Act and the MPRDA Bill. In this regard however, -
 - 5.1 SANRAL would undertake, in respect of any right or permit granted to it, to rehabilitate and to manage any impact on the environment;
 - 5.2 SANRAL records that where it contracts the activities under which a right or permit has been granted, to a third party contractor, SANRAL receives a performance bond which it will utilise, if necessary, to rehabilitate and manage any impact on the environment, or which could be ceded to the DME for purposes of giving effect to the financial provision section of the Principal Act, as read with the MPRDA Bill.
- 6 With regard to the exemption granted to certain organs of State (including SANRAL) from the provisions of section 16 (Prospecting Right), section 20 (Permission to Remove and Dispose of a Mineral), section 22 (Mining Right) and section 27 (Mining Permit) of the Principal Act, SANRAL records that -
 - 6.1 with regard to sections 16 and 22, although SANRAL and other organs of State are exempted from the provisions thereof (other than for the submission of reports and plans as contemplated in section 39 to obtain an environmental authorisation) by virtue of the provisions of section 106 of the Principal Act, no alternative procedure is specified as to how SANRAL would go about applying to be granted a prospecting right and which then would be granted in terms of section 17. This can perhaps be

dealt with in the memorandum of understanding contemplated in 2 above, however, the preference would be to regulate this in terms of section 106 (which provides for the exemption);

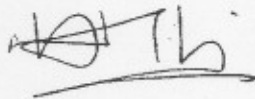
6.2 with regard to section 27, yet again SANRAL is exempted from the provisions thereof (other than in respect of the environmental authorisation provisions), by virtue of the provisions of section 106 of the Principal Act. In this regard however, and unlike in respect of a Prospecting Right and Mining Right (which deals therewith in subsequent sections from which SANRAL is not exempted) section 27 deals with the granting/issuing and duration of a mining permit, in section 27 (ie. the exempted section) itself. Accordingly, it is not certain how SANRAL (as it is exempted from the provisions of section 27) would be issued with a mining permit and/or what the duration of such permit would be. This issue is of significant importance to SANRAL as a number of its quarries and borrow pits (for road construction) would fall within the category of Mining Permits. SANRAL believes that it may (as in the case of Prospecting Rights and Mining Rights) be necessary to deal with the issue and duration of a Mining Permit in different sections of the Principal Act, to which SANRAL is not exempted.

7 As an organ of State, and the fact that SANRAL is dealing with road construction, and small scale, short term mining activity, SANRAL would not necessarily be in a position to comply with the requisite requirements of the prescribed social and labour plan. However, SANRAL's policy and standard practice includes a targeted labour policy, in compliance with the BEE scorecard, as well as provision (in our contracts) for entrepreneurial, and technical training of our contractors, including AIDs awareness campaigns. These issues can

however be discussed with the DME pursuant to that contemplated in 2 above.

- 8 Should you require any further comments and/or clarification with regard to either that contained in this letter or in the manner in which SANRAL operates then we shall be happy, on request, to provide such comments and/or clarification to you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nazir Alli', with a horizontal line underneath the name.

Nazir Alli

MPRDAB 7

mprdab7

SOUTH AFRICAN DIAMOND PRODUCERS ORGANISATION (SADPO)

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24 May 2007

COMMENDS ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL (B 10 – 2007)

SADPO represents the alluvial diamond diggers in the Northern Cape, North West and Free State provinces.

SADPo's Vision:

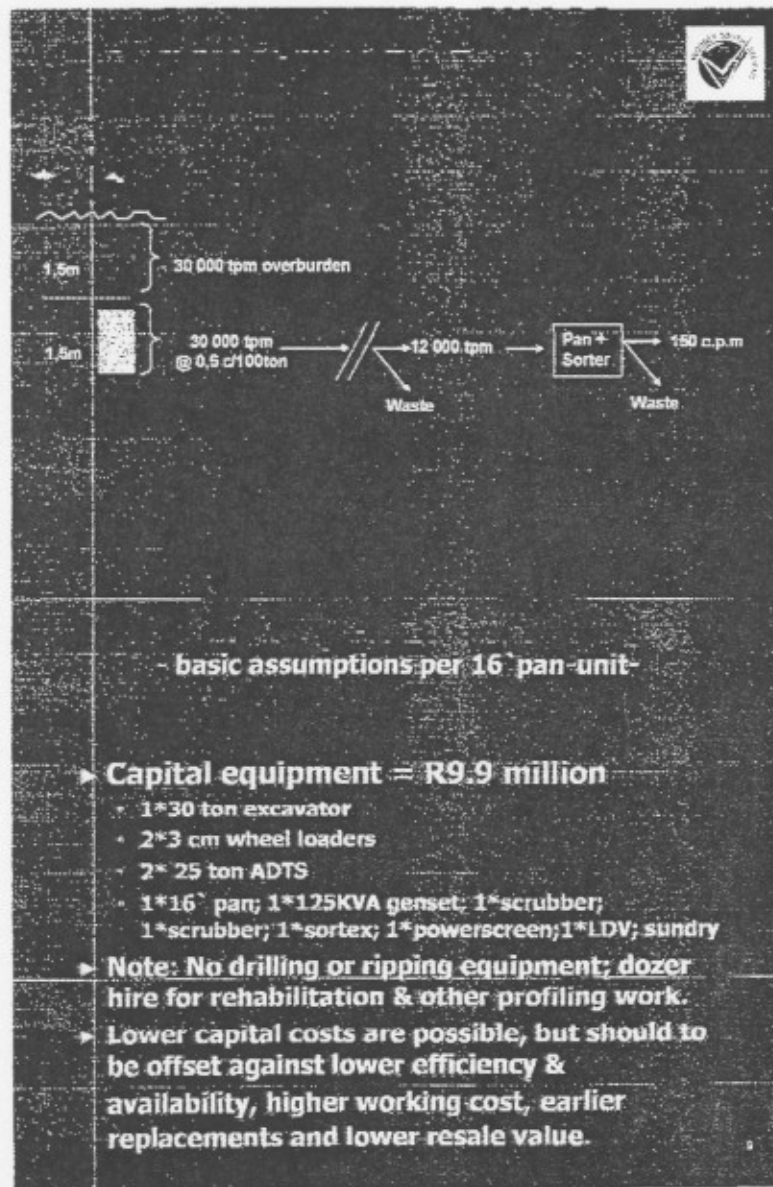
- Promote the sustainability of RSA's alluvial diamond industry
- Negotiating on behalf of diggers with all stakeholders
- Build the image of the alluvial diamond industry
- Play an active role in the socio economic development of the provinces

Key activities to date:

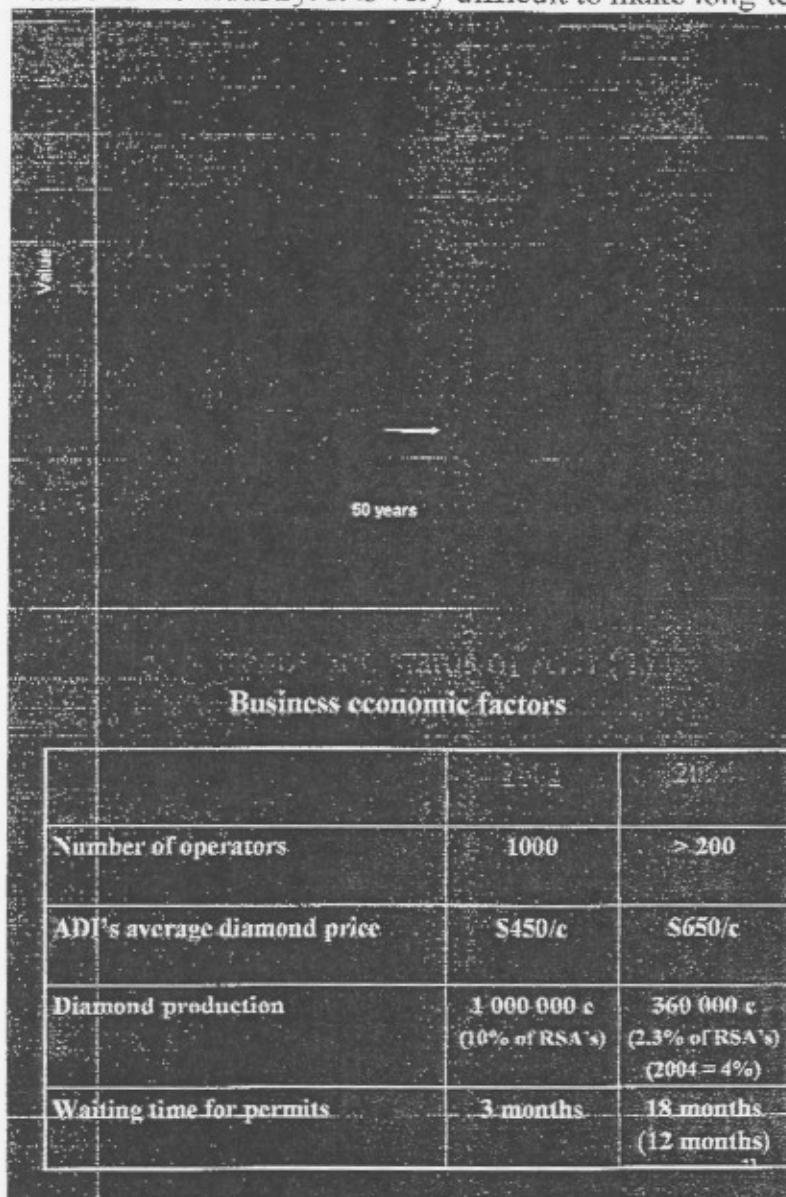
- Obtain broad based consensus on diggers problems and vision
- Commissioned an independent mining economic assessment on the alluvial diamond diggers – first of its kind in 130 years
- To establish a working relation with Chamber of Mines, DME, SMA and other stakeholders.

The next slides will provide a more in-depth look at the economic assessment of the alluvial diamond diggers.

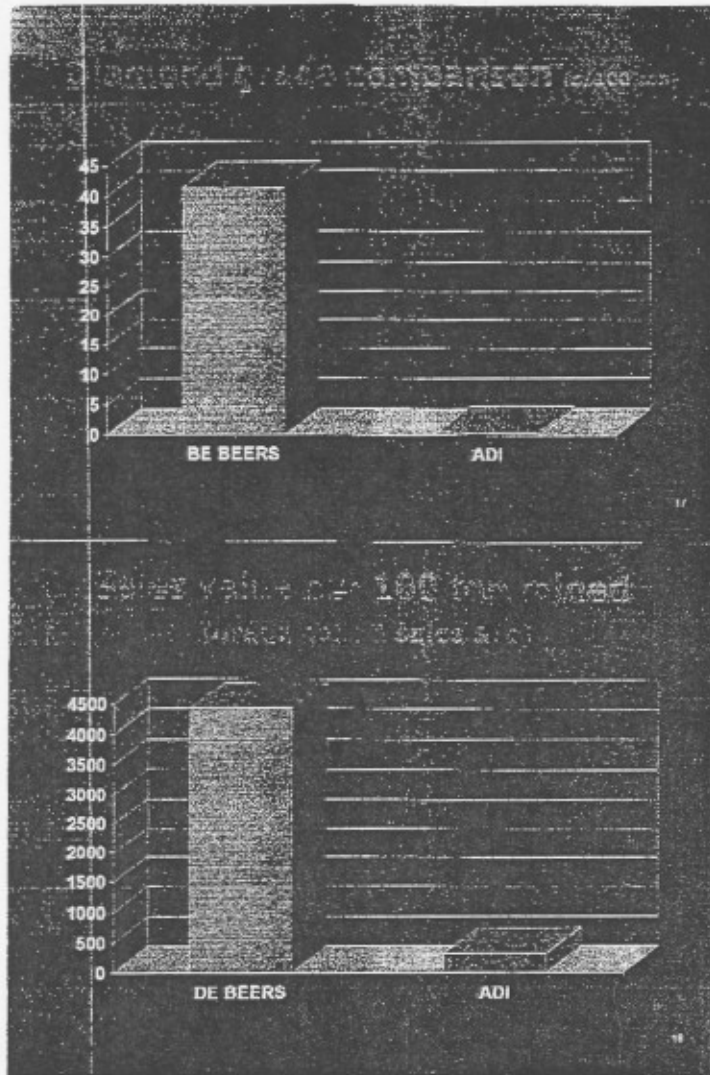
Economical sustainable operations in terms of economics of scale look like this.



Operations are relatively short term (3 to 5 years) because of the unpredictable nature of the industry. It is very difficult to make long-term commitments.



The next slides will provide greater inside in the production of alluvial diggers versus the total production of diamonds in SA



Comments on the amendments of the MPRDA is from the perspective of a small and medium mining operation.

1. Amendment of section 5(4)(c)

This section deals with the Legal nature of Rights been issued and the rights of holders thereof.

Paragraph 4 (d) the omission of the fraise (notifying and consulting with) and the insertion of (given the landowner At least 21 days written notice.)

It is a requirement during the application process to notify and consult with effected parties.

The interpretation of DME officials is that it is not a necessity because the Minister does not have to consider it when issuing a right in terms of the MPRDA.

The implication is that an applicant will spend a lot of money during the application process and after a right is granted, may face legal actions from landowners before access can be secured. This process will be time consuming and more costly, putting more constrains on small operators.

SADPo's submission is to keep the consulting and notification in place because eventually it will speed up the process.

2. Amendment of sections 16 (2)(b), 22(2)(b) and 27(3)(b)

These sections deal with the principal that only one permit or right can be issued for any mineral on the same area.

The problem relates to the situation where you can subtract two minerals with the same process.

Situations like Iron ore and manganese, alluvial diamonds and sand.

I am sure there will be other examples.

To be able to subtract sand during the alluvial diamond recovery process opens the door for new entrance in the mining sector and promote BEE

..... subtracting sand and even taking

projects. There are many alluvial operations extracting sand and even taking it further into the making of cement bricks. It makes sense to use these opportunities to promote new entrance and support BEE in separate business entities.

These sections deal with the refusal of the minister to grant rights.

In terms of the administrative act, the minister must give reasons for refusals. The principle was in the above-mentioned sections. It also forms part of the appeal process in terms of section 96 (Internal appeal process and access to courts). You need to know the grounds of refusal to appeal.

The amendments only state that the minister must notify in writing of the decision to refuse but take away the obligation to give reasons for the decision.

4. Amendment of section 27

Application for, issuing and duration of mining permit.

The question is why is it necessary for a secondary producing permit outside the perimeters of a mining right.

The rationale behind this is the fact that the compliance factor is too onerous for a certain part of the mining sector.

It is therefore important that the structure of the mining permit achieve what it is designed for, to give a legal framework for sustainable small and medium scale mining.

The 1.5 ha in the MPRDA was designed to promote small-scale mining. The problem for the alluvial mining sector is that you have to do your own financing through financing institutions. The financing of equipment is over a period of 5 years. It is important that you need at least a permit that will last 5 years to be able to do a 5-year business plan for a sustainable mining operation. To achieve this, alluvial diamond diggers need at least 25ha. Submissions from Mintec, the CSSIR and Wits suggested this area to be at least 50 ha.

The amendments acknowledge the problem but does not address it. The reason is the time restriction of two years renewable for 3 periods of 1 year each (total 5 years). In certain commodities small-scale miners will not be able to mine the 5 ha in the prescribe periods. To increase the area is going to add problems. For instance saltpans and sand operations, in terms of this act

they are mines. There is no way they can comply with mining right conditions. To apply for a mining permit of 5 ha may help but then the owner have to sell after 5 years because in terms of the act he may not get the permit for a longer time.

It is clear that the issues around small-scale mining has not been debated properly and even in the amendments the real issues has not been addressed. It is very important address the issues properly, so that the right decision can be made.

5. SADPo's submissions in terms of section 27 are as follows:

If the argument is to restrict small scale mining in terms of area, that area cannot be less than 25ha. This will allow a broader spectrum of commodities to comply. As illustrated the restriction in terms of life of mine versus periods in terms of permits then needs attention. It is also noticeable that an applicant does not have to apply for the full area. Only an area that can be productive needs to be applied for. This however does not solve the problems for the saltpans and sand operations in terms of a long-term sustainable environment.

Another way of thinking would be to focus on turnover. DTI's codes of practices can form guidelines. For instance, R 5 mil will mean one category, between R5mil and R35mil will put you in another category and above R35 mil will mean full compliance. Important to keep in mind that the categories used in the DTI codes was based on general businesses. The infrastructure for a cafe on the corner or a one-man electrician working from his house versus the infrastructure needed in terms of mining needs consideration. It is very clear that the different categories need adjustment to cater for the mining sector.

It is also important to mention that joint efforts of different small operations in the same region can have a bigger impact in terms of social responsibilities as required by the Charter. Currently the MPRDA does not cater for this. The idea is to set up development trusts and let different operations contribute to

3. Amendment of sections 17(3) and 23(4)

These sections deal with the refusal of the minister to grant rights.

In terms of the administrative act, the minister must give reasons for refusals. The principle was in the above-mentioned sections. It also forms part of the appeal process in terms of section 96 (Internal appeal process and access to courts). You need to know the grounds of refusal to appeal.

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It is therefore important that the structure of the mining permit achieve what it is designed for, to give a legal framework for sustainable small and medium scale mining.

The 1.5 ha in the MPRDA was designed to promote small-scale mining. The problem for the alluvial mining sector is that you have to do your own financing through financing institutions. The financing of equipment is over a period of 5 years. It is important that you need at least a permit that will last 5 years to be able to do a 5-year business plan for a sustainable mining operation. To achieve this, alluvial diamond diggers need at least 25ha. Submissions from Mintec, the CSSIR and Wits suggested this area to be at least 50 ha.

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the trust who then will address social issues in those regions. Resurge to this effect is available.

Although these issues has been raised on various occasions with DME, in the Chamber and with other stakeholders no clear way foreword has been identified for the sustainability of small scale mining. I believe there is an opportunity in this amendment to discuss small-scale mining. I would like to bring the licencing of small-scale miners under the attention of Government.

6. Art 27(3) (c).

Limitations in terms of the act, and the amendment thereof. Only one permit to small miners.

The continuation of business practice is very important. It takes about two years to get closure on a permit. The limitation means that you cannot apply for a new permit unless the old one is closed. What happens in the mean time with employees and commitments to financiers, act?

We need at least a system were you can role over from one permit to another and keep on working while waiting for closure. It is therefore important not to restrict small miners in terms of the number of permits.

7. Other issues not mentioned.

There is a tendency that newly established companies, who want to list, apply for as many prospecting rights as possible. Examples of the same company applying for 20 or more farms in the same area are common. From a small miners perspective this is unfair competition and effectively excludes small miners from future participation in the mining arena. If the limitation of one permit applies to one, it should be applying to all.

We have deal with the environmental issues in the structures in the COM.

Thank you

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M Lotter
Chairperson SADPO