

Env Authorisation and Env Rights

Section 24 of our Constitution gives protection to people's environment by stating that 'everyone has the right to an environment that is not harmful to their health or wellbeing.'

In the video on mining rights and consultation, we said that a company must get a mining right from the Department of Mineral Resources in order to mine.

In addition to a mining right, a mining company must also get environmental authorisation and related authorisations in order to begin mining.

A mining company must do an environmental impact assessment and create an environmental management plan as part of their application for environmental authorisation. The impact assessment is an investigation by an independent expert on the environmental, social and economic effects of mining. Included in this report must be a study of alternative land uses for the area to see whether mining is an appropriate use of the land. An environmental management plan details how the mining company is going to manage and reduce its impact on the environment, the local population and economy. The mining company must consult with a local community as part of the impact assessment and management plan. The mining company must seriously consider comments and concerns made by the community and must include these comments and concerns in their application when it is submitted to the authorities.

The Department of Mineral Resources is the government body that approves or denies environmental authorisation for mining. The Department of Environmental Affairs deals with environmental authorisation for all other activities. This is problematic as the Department of Mineral Resources has a track record of ignoring the environmental hazards of mining. However, the situation is not so bad, as communities can appeal environmental authorisations granted over their land for mining by sending their objections to the Department of Environment Affairs, which is more likely to have a sympathetic ear and is more cautious about environmental hazards.

There are other environmental licences that mining companies may have to get before they can start mining. For example, most mining uses a lot of water and most companies have to get a water use license. Mining often includes large amounts of waste and most companies must get a waste management licence. Most mining companies must get a license for dust and smoke emissions. The land must also be rezoned for mining use. There may be more licences needed, depending on the situation.

If the mining company does not have any of these licenses, it is likely that it cannot legally mine and must stop mining unless it gets the missing license.

If the mining company is polluting or degrading the environment for example by dust, smoke or water contamination, the people affected by such pollution or degradation can notify the Department of Mineral Resources, Department of Environmental Affairs or their local municipality to investigate the problem. The authorities must investigate a complaint of environmental pollution or degradation. If there is significant pollution or degradation, of the environment, the authorities can order the mining company to stop mining and to fix the problems. The Department of Mineral Resources has the power to cancel the company's mining right if they do not comply. The authorities can also take action themselves if the mining company does not comply with their order. The mining company is liable for any costs for rehabilitating the environment and can be prosecuted for causing significant damage to the environment.

Mining companies must provide a plan and funds to rehabilitate the land after the company stops mining. The funds are held by the Department of Mineral Resources. In order to get the funds back, the mining company must obtain a closure certificate from the Department. A closure certificate will only be given if the land is returned to its original state, as far as possible, and there are no safety or environmental risks remaining.

However, mining causes such destruction to the land that it is often not possible to rehabilitate the land for agricultural or natural use, afterwards. Also, mining companies are often guilty of abandoning mines without rehabilitating them and the Department of Mineral Resources has a history of not enforcing compliance. In 2017, the Department held R60 billion in funds for rehabilitation but had not used the fund to rehabilitate even one mine despite there being around 6000 mines that have not been rehabilitated in South Africa.

Mining companies are still liable for environmental damage caused by their mine, even if they have received a closure certificate.