

**Johannesburg Office**

15<sup>th</sup> Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa  
PO Box 9495 • Johannesburg 2000 • South Africa  
Tel: (011) 836 9831 • Fax: (011) 836 8680 • Website [www.lrc.org.za](http://www.lrc.org.za)  
PBO No. 930003292  
NPO No. 023-004

# LRC

Legal Resources Centre

Our Ref: L Limacher/LRC

Date: 14 February 2019

**TO: MINISTER OF MINERAL RESOURCES:**  
**Mr G Mantashe**  
Department of Mineral Resources  
Trevenna Campus Building 2C  
c/o Meintjes and Francis Baard Street  
(012) 444 3000

*By email:* [Mandisi.Mavata@dmr.gov.za](mailto:Mandisi.Mavata@dmr.gov.za)

**DEPUTY MINISTER OF MINERAL RESOURCES:**  
**Mr G Oliphant**  
Department of Mineral Resources  
Trevenna Campus Building 2C  
c/o Meintjes and Francis Baard Street  
(012) 444 3000

*By email:* [kefilwe.chibogo@dmr.gov.za](mailto:kefilwe.chibogo@dmr.gov.za)

**DIRECTOR GENERAL:**  
**Adv T Mokoena**  
Department of Mineral Resources  
Trevenna Campus Building 2C  
c/o Meintjes and Francis Baard Street  
(012) 444 3880

*By email:* [Thabo.Mokoena@dmr.gov.za](mailto:Thabo.Mokoena@dmr.gov.za)  
[Mamabefu.Modipa@dmr.gov.za](mailto:Mamabefu.Modipa@dmr.gov.za)

**DEPUTY DIRECTOR GENERAL FOR MINERAL REGULATIONS**  
**Adv M Malebe**  
Department of Mineral Resources  
Trevenna Campus Building 2C  
c/o Meintjes and Francis Baard Street  
(012) 444 3977

*By email:* [Mmadikeledi.Malebe@dmr.gov.za](mailto:Mmadikeledi.Malebe@dmr.gov.za)

**CHIEF DIRECTORATE AND REGIONAL MANAGER FOR GAUTENG**

Mr S Mabaso  
Department of Mineral Resources  
Mineralia Building  
Cnr De Korte and De Beer Street  
Braamfontein, 2017  
(011) 358 9700

*By email:* [Sunday.Mabaso@dmr.gov.za](mailto:Sunday.Mabaso@dmr.gov.za)  
[Mashudu.Maduka@dmr.gov.za](mailto:Mashudu.Maduka@dmr.gov.za)  
[Carol.Khanyile@dmr.gov.za](mailto:Carol.Khanyile@dmr.gov.za)

**CHIEF DIRECTORATE FOR COMPLIANCE AND ENFORCEMENT:**

**Adv M Malebe**  
Department of Mineral Resources  
Trevenna Campus Building 2C  
c/o Meintjes and Francis Baard Street  
(012) 444 3000

*By email:* See above

**CHAIR OF THE GOVERNMENT TASK TEAM ON MINING:**

**Mr M Madubane**  
Department of Mineral Resources  
Trevenna Campus Building 2C  
c/o Meintjes and Francis Baard Street  
(012) 444 3000

**COPIES TO: PORTFOLIO COMMITTEE ON MINERAL RESOURCES**

**Honourable Chairperson Mr Sahlulele Luzipo**  
Parliament Street  
Cape Town  
*By email:* [aboss@parliament.gov.za](mailto:aboss@parliament.gov.za)

**AND TO: MR ANIL SINGH  
DEPUTY DIRECTOR GENERAL FOR DEPARTMENT OF WATER AND  
SANITATION**

Sedibeng Building  
10<sup>th</sup> Floor, Room 1029  
185 Francis Baard Street  
Pretoria

*Per email:* [SinghAn@dws.gov.za](mailto:SinghAn@dws.gov.za)

**AND TO: MR S MTHEMBU**

**HEAD OF GAUTENG PROVINCE**

Sedibeng Building  
10<sup>th</sup> Floor, Room 1029  
185 Francis Baard Street  
Pretoria

*Per email: [MthumbuSi@dws.gov.za](mailto:MthumbuSi@dws.gov.za)*

**AND TO: MR KEET  
CHIEF DIRECTOR: MINE WATER/WATER QUALITY MANAGEMENT,  
CHIEF DIRECTORATE: MINE WATER MANAGEMENT,  
DEPARTMENT OF WATER AND SANITATION: NATIONAL OFFICE**  
Sedibeng Building  
10th Floor, Room 1029  
185 Francis Baard Street  
Pretoria

*Per email: [KeetM@dws.gov.za](mailto:KeetM@dws.gov.za)*

**AND TO: MR GOVENDER  
MINE WATER/WATER QUALITY MANAGEMENT, CHIEF  
DIRECTORATE: MINE WATER**  
Sedibeng Building  
10th Floor, Room 1029  
185 Francis Baard Street  
Pretoria

*Per email: [GovenderB@dws.gov.za](mailto:GovenderB@dws.gov.za)*

**AND TO: MR MATSEBA  
MANAGER: INSTITUTIONAL ESTABLISHMENT, GAUTENG  
PROVINCE, DEPARTMENT OF WATER AND SANITATION**  
Sedibeng Building  
10th Floor, Room 1029  
185 Francis Baard Street  
Pretoria

*Per email: [MatsebaE@dws.gov.za](mailto:MatsebaE@dws.gov.za)*

**AND TO: COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**  
DTI Campus, Block F  
77 Meintjies Street

Sunnyside  
Pretoria  
Tel: 086 100 2472

Per email: CoR135.1complaints.co.za

**AND TO: NATIONAL NUCLEAR REGULATOR**  
C/O Glades Office Park  
Eco Glades 2 Block G  
Witch Hazel Avenue  
Highveld Ext 75  
Eco Park  
Centurion

*Per email:* [PEMohajane@nnr.co.za](mailto:PEMohajane@nnr.co.za)  
[BMTyobeka@nnr.co.za](mailto:BMTyobeka@nnr.co.za)  
[Johnp@nnr.co.za](mailto:Johnp@nnr.co.za)  
[Ajoubert@nnr.co.za](mailto:Ajoubert@nnr.co.za)

**AND TO: DEPARTMENT OF TRADE AND INDUSTRY**  
DTI Campus  
77 Meintjies Street  
Sunnyside  
Pretoria

**AND TO: DR KHOROMBI**  
**COMPLIANCE AND ENFORCEMENT: ACTING CEO: PROTO VAAL**  
**CMA**  
Sedibeng Building  
10th Floor, Room 1029  
185 Francis Baard Street  
Pretoria

*Per email:* [KhorombiK@dws.gov.za](mailto:KhorombiK@dws.gov.za)

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**RE: FINAL DEMAND FOR URGENT INTERVENTION BY THE DEPARTMENT OF  
MINERAL RESOURCES AND DEPARTMENT OF WATER AND SANITATION FOR  
THE POLLUTION OF MINING RIGHT 132, 133 AND 206**

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1. We act for and on behalf of the Federation for Sustainable Environment (“our client”).
2. We refer to our previous correspondence, which is listed below for your convenience:
  - 2.1. A letter dated 19 September 2017 from the Legal Resources Centre (“LRC”) to the Department of Mineral Resources, the Department of Environmental Affairs, the Department of Water and Sanitation, the National Nuclear Regulator (“NNR”) and the Mogale City Local Municipality. The letter gave a background on the violations and non-compliance of Mintails Mining SA (Pty) Ltd. The letter also made a final request for the state to direct Mintails Mining SA (Pty) Ltd to be compliant with the environmental laws in South Africa. A copy the letter marked “LM1” is attached for your reference.
  - 2.2. A letter dated 6 August 2018 from the LRC to the Minister of Mineral Resources: Mr G Mantashe, the Deputy Minister of Mineral Resources: Mr G Oliphant, the Director General: Adv T Mokoena, Deputy Director General for Mineral regulations: Adv M Malebe, Chief Directorate and Regional Manager for Gauteng: Mr S Mabaso, Chief Directorate for Compliance and Enforcement: Adv M Malebe, Chair of the Government Task Team for Mining: Mr M Madubane. The letter had four purposes which were to:
    - 2.2.1. Inform the Department of Mineral Resources (“DMR”) that Mintails Mining SA (Pty) Ltd had applied for final liquidation and would be heard in Court on 7 August 2018;
    - 2.2.2. Request the DMR to intervene in order to protect the environment from further being harmed and for the rehabilitation of the Mintails Mining SA (Pty) Ltd ’s mining area;
    - 2.2.3. To request the DMR that should they intervene that they must keep our client informed; and
    - 2.2.4. To inform the DMR that in terms of the National Environmental management Act 107 of 1998 (“NEMA”) that should the DMR fail to intervene to protect the environment, that our client will institute legal action to ensure the environment is protected and prevent

communities living around the mine from being impacted by a derelict mine. (our client however decided to not institute legal action due to the parliamentary portfolio intervention)

- 2.2.5. The DMR has failed to undertake any real action under NEMA read with section 37 and 38A of the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**").
  - 2.2.6. At this point the Mintails Mining SA (Pty) Ltd's environmental liabilities will be externalized to the State who will then be responsible for rehabilitation costs in the range of 300 million rands.
  - 2.2.7. A copy of the letter marked "**LM2**" is attached for your reference.
- 2.3. A letter dated 6 August 2018 from the LRC to the Minister of Energy: Mr Radebe, the Deputy Minister of Energy: Ambassador Majola, the Director General: Mr Zulu and the NNR. The purpose of the letter was twofold:
- 2.3.1. To inform that Mintails SA (Pty) Ltd has applied to the high court for a final liquidation and the matter will be heard on 7 August 2018;
  - 2.3.2. To request the Department of Energy and the NNR to intervene in order to prevent any impact from current mines dumps have on the radioactive levels that may be born onto the community living on or around the area.
  - 2.3.3. A copy of the letter marked "**LM3**" is attached for your reference.
- 2.4. A letter dated 6 August 2018 from the LRC to the Minister of Water and Sanitation: Mr Gugile Nkwinti, the Deputy Minister of Water and Sanitation: Ms Pamela Tshwete, the Deputy Director General: Mr Anil Singh, the Chief Directorate: Mine Water/Water Quality management, Chief Directorate: Mine water Management, Department of Water and Sanitation: National Office: Mr Keet, the Mine Water/Water Quality Management, Chief Directorate Mine

Water: Mr Govender, Manager: institutional Establishment, Gauteng Province, Department of Water and Sanitation: Mr Matseba, Compliance and Enforcement: Acting CEO: Proto Vaal CMA: Dr Khorommbi. The purpose of the letter was twofold:

- 2.4.1. To alert the Department of Water and Sanitation that Mintails Mining SA (Pty) Ltd had applied for final liquidation and the matter would be heard in the High Court on 7 August 2018.
  - 2.4.2. To request the Department of Water and Sanitation to intervene in order to protect the water sources from being further harmed and for the proper rehabilitation to occur.
  - 2.4.3. A copy the letter marked "**LM4**" is attached for your reference.
- 2.5. A letter dated 29 August 2018 was sent from the LRC to the Portfolio Committee on Mineral Resources: Honourable Chairperson Mr S Luzipo. The purpose of the letter was to give a background of the issues regarding Mintails Mining SA (Pty) Ltd and request our client to be allowed to be present at the Portfolio Committee on Mineral Resources. A copy of the letter marked "**LM5**" is attached for your reference.
- 2.6. A letter dated 19 September 2018 from the LRC to the Portfolio Committee on Water and Sanitation. The purpose of the letter was twofold:
- 2.6.1. To give a general background on the issue regarding the Mintails Group of Companies ("**Mintails Group**") ; and
  - 2.6.2. To request that our client be allowed to be present at the next Portfolio Committee on Water and Sanitation meeting.
  - 2.6.3. A copy of the letter marked "**LM6**" is attached for your reference.
- 2.7. A letter dated 25 September 2018 from the LRC to Minister of Mineral Resources: Mr G Mantashe, the Deputy Minister of Mineral Resources: Mr G Oliphant, the Director General: Adv T Mokoena, Deputy Director General

for Mineral regulations: Adv M Malebe, Chief Directorate and Regional Manager for Gauteng: Mr S Mabaso, Chief Directorate for Compliance and Enforcement: Adv M Malebe, Chair of the Government Task Team for Mining: Mr M Madubane and the Portfolio Committee on Mineral Resources: Honourable Chairperson Mr Sahlulele Luzipo. The purpose of the letter was to ascertain the next steps of the DMR in light of the unopposed final liquidation of Mintails Mining SA (Pty) Ltd. It was noted that the DMR failed to respond to the LRC's letter dated 6 August 2019. An urgent meeting was requested with the relevant representatives from the DMR to discuss solutions. A copy of the letter marked "LM7" is attached for your reference.

- 2.8. A letter dated 14 November 2018 from the LRC to the Chief Directorate and Regional Manager for Gauteng and Compliance and Enforcement Officer: Mr S Mabaso and Ms M Maduka. It was advised that our client seeks for those responsible to be held to account to the full extent of the law and will not compromise of the amount owed towards rehabilitation. Our client requested that the recent directives issued during October 2018, be enforced and upheld in terms of NEMA. A copy of the letter marked "LM8" is attached for your reference.
- 2.9. A letter dated 21 November 2018 from the LRC the Deputy Director General: Mr Anil Singh, the Head of the Gauteng Province: Mr S Mthembu, the Chief Directorate: Mine Water/Water Quality management, Chief Directorate: Mine water Management, Department of Water and Sanitation: National Office: Mr Keet, the Mine Water/Water Quality Management, Chief Directorate Mine Water: Mr Govender, Manager: institutional Establishment, Gauteng Province, Department of Water and Sanitation: Mr Matseba, Compliance and Enforcement: Acting CEO: Proto Vaal CMA: Dr Khorommbi. The purpose of the letter was twofold:
- 2.9.1. To state on record that the LRC had received no response from the previous letter sent on 6 August 2018;



- 2.9.2. What action will the Department of Water and Sanitation take to protect the water resources and water courses from the impact of the liquidation application.
- 2.9.3. A copy of the letter marked "LM9" is attached for your reference.
- 2.10. A letter dated 2 December 2018 from the LRC to the NNR. A site visit had been done with our client's Advocate, Samantha Martin, and the police on 27 November 2018. Mintails Mining SA (Pty) Ltd is in liquidation with an unfunded environmental liability of R460 000 000.00 which has a radioactive/nuclear element. A copy of the letter marked "LM10" is attached for your reference.
- 2.11. A letter dated 20 December 2018 from the LRC to the Chief Directorate and Regional Manager for Gauteng; Mr S Mabaso. It listed serious violations that were viewed and recorded on 20 December 2018. It requested that the Department issue directives to the liquidators to start remedial action as well as provide a copy of the mining right for mining right 132, 133 and 206. A copy the letter marked "LM11" is attached for your reference..
- 2.12. A letter dated 20 December 2018 from the Legal Resources Centre ("LRC") to S Mabaso, the Chief Directorate and Regional Manager for Gauteng. It listed serious violations that were viewed and recorded on 20 December 2018. It requested that the DMR issue directives to the liquidators to start remedial action as well as provide a copy of the mining right for mining right 132, 133 and 206. A copy of the letter marked "LM12" is attached for your reference..
- 2.13. A letter dated 28 January 2019 was sent from LRC to Mr Anil Singh, Mr S Mthembu, Mr Keet, Mr Govender, Mr Matseba and Dr Khorommbi. The letter gave details of serious violations that were viewed and recorded on 20 December 2018. It further advised the Department of Water and Sanitation ("DWS") to issue directives to the liquidators of Mintails Mining SA (Pty) Ltd to start remedial action. A copy of the letter marked "LM13" is attached for your reference.

- 2.14. The NNR was on the site visit held on 20 December 2018 with our client. Our client requested a report and plan of action. However, to date our client has not received any response.
3. We note that the following directives have been issued:
- 3.1. On 25 October 2006 the Department of Minerals and Energy issued a directive in terms of section 39(5) of the MPRDA regarding the required information, compilation and format of the environmental management programme covering certain portions of the farms Uitvalfontein 244 IQ, Randfontein 247 IQ, Luipaardsvlei 246Q, Kagiso 273 IQ and Witpoortje 245IQ, District of Krugersdorp, Roodepoort and Randfontein. A copy of the directive marked "**LM14**" is attached for your reference.
  - 3.2. On 3 March 2009 the Department of Minerals and Energy issued an instruction in terms of section 93(b)(i) of the MPRDA to Durban Roodepoort Deep Ltd. A copy of the directive marked "**LM15**" is attached for your reference.
  - 3.3. On 13 December 2013 the DMR issued a directive. The mine was to be directed in terms of section 29(b) of the MPRDA. A copy of the directive marked "**LM16**" is attached for your reference.
  - 3.4. On 23 January 2014, the Department of Water Affairs sent a notice of intention to issue a directive in terms of section 19 of the National Water Act 36 of 1998 to Mintails SA (Pty) Ltd. A copy of the directive marked "**LM17**" is attached for your reference.
  - 3.5. On 11 August 2014, Mintails Mining SA (Pty) Ltd sent a letter to the residents of Mindalore informing of rehabilitation efforts in response to a directive issued by the Inspector of Mines. A copy of the letter marked "**LM18**" is attached for your reference.
  - 3.6. On 18 December 2014, the DWS sent a notice to Mintails Mining SA (Pty) Ltd: Mogale Gold stating that non-compliance was recorded during an inspection done and Mintails Mining SA (Pty) Ltd has 14 days to respond to

the findings. A copy of the notice marked "LM19" is attached for your reference.

- 3.7. On 30 May 2017, the DMR sent a letter to Mogale Gold Limited stating that a site visit had been conducted on 8 February 2017 and that it was discovered that the mine does not have a proper annual rehabilitation plan. A copy of the letter marked "LM20" is attached for your reference.
- 3.8. During October 2018, the DMR served the following directives:
  - 3.8.1. Directive in terms of section 93(1)(B)(l) of the MPRDA: Regarding non-compliance on mining rights 133MR and 206MR issued to Mintails Mining SA (Pty) Ltd addressed to the Directors of Mintails Mining SA (Pty) Ltd, attention to Gideon Harbour. A copy of the directive "LM21" is attached for your reference;
  - 3.8.2. Directive issued in terms of Section 28 of NEMA, duty of care for remediation of environmental damage caused by mining activities undertaken by Mintails SA (Pty) Ltd; addresses to the Directors of Mintails SA (Pty) Ltd, and attention was drawn to Gideon Harbour. A copy of the directive marked "LM22" is attached for your reference;
  - 3.8.3. Directive in terms of section 93(1)(B)(l) of the MPRDA: Regarding non-compliance on mining rights 133MR and 206MR was issued to Mintails Mining SA (Pty) Ltd addressed to the liquidators of Mintails Mining SA (Pty) Ltd, the attention was drawn to all liquidators of Mintails Group. A copy the directive marked "LM23" is attached for your reference;
  - 3.8.4. Directive in terms of section 93(1)(B)(l) of the MPRDA: Regarding non-compliance on mining right 132MR and the liquidation of the Mintails Group addressed to the Directors of West Wits Monarch (Pty) Ltd, attention to Mr Hulmes Scholes. A copy of the directive marked "LM24" is attached for your reference.

4. To date, despite the fact that a number of directives have been issued, the DMR has failed to taken action as required in terms of the law as stated below:

- 4.1. In terms of section 28(1) of NEMA that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring read with section 2(4)(p) which states that the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimizing further pollution, environmental damage or adverse health effects must be paid by those responsible for harming the environment in other words polluter pays principle;
- 4.2. In terms of section 28(4) of NEMA the Director-General responsible for mineral resources, after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who is causing, has caused or may cause significant pollution or degradation of the environment to cease any activity, operation or undertaking; investigate, evaluate and assess the impact of specific activities and report; commence taking specific measures and complete those measures before a specified date. Provided that should urgent action be necessary to protect the environment, issue such directive and consult and give an opportunity to inform as soon thereafter as possible.
- 4.3. In terms of section 28(7) of NEMA if a person fails to comply or inadequately comply with a directive under subsection (4), the Director-General or provincial head of department may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.
- 4.4. In terms of section 28(8) of NEMA the Director-General of the department responsible for mineral resources or provincial head of department or the responsible authority may recover costs for reasonable remedial measures to be undertaken before such measures are taken and all costs incurred from the following persons:

- 4.4.1. Any person who is responsible for, or who indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
  - 4.4.2. The owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;
  - 4.4.3. The person in control of the land or any person who has or had a right to use the land at the time when the activity or the process is or was performed or undertaken or the situation come about;
  - 4.4.4. Any person who negligently failed to prevent the activity or process being performed or undertaken or the situation form coming about.
- 4.5. In terms of section 28(12) of NEMA any person may, after giving the Director-General of the department responsible for mineral resources or provincial head of department 30 days' notice, apply to a competent court for an order directing the Director-General of the Department responsible for mineral resources or any provincial head of department to take any steps as listed in subsection (4) if the Director-General of the department responsible for mineral resources or provincial head of department fails to inform such person in writing that he or she has directed a person in subsection (8) to take one of those steps.
- 4.6. In terms of section 45 of the MPRDA if any mining right causes or results in ecological degradation, pollution or environmental damage, or as in contravention of the conditions of the environmental authorisation, or which may be harmful to health, safety or well being of anyone and requires urgent remedial measures, the Minister, in consultation with the Minister of Environmental Affairs and Tourism, may direct the holder of the relevant right in terms of this Act or the holder of an environmental authorisation in terms of NEMA to investigate, evaluate, assess and report on the impact of any pollution or ecological degradation or any contravention of the

conditions of the environmental authorisation, take such measures as may be specified in such directive in terms of MPRDA or NEMA and complete such measures before a date specified in the directive. Should the holder fail to comply, the Minister may by way of ex parte application apply to the High Court for an order to seize and sell such property of the holder as may be necessary to cover the expense, in addition to the application the Minister may use funds appropriated for that purpose by Parliament to cover the expenses of implementing such measures and the Minister may recover an amount equal to the funds necessary to full implement the measures from the holder.

4.7. In terms of section 46(1) of MPRDA should the Minister establish that the holder of the mining right has been liquidated then the Minister in consultation with the Minister of Environmental Affairs and Tourism, may instruct the Regional manager to take the necessary measures to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous health and social occurrences or make an area safe. In terms of section 46(2) the measures in subsection 1 must be funded from financial provision made by the holder of the mining right in terms of NEMA, where appropriate or if there is no such provision or if it is inadequate, from money appropriated by Parliament for the purpose.

4.8. In terms of section 93 of the MPRDA if an authorized person finds that a contravention or suspected contravention of or failure to comply with the provisions of the MPRA or any term of the mining right, such person may be ordered to take immediate rectifying steps or the mining right and/or activities are suspended or terminated.

5. Mintails Mining SA (Pty) Ltd is being held liable for the rehabilitation costs, however in regards to which companies held the mining rights and who is liable we wish to bring the following to your attention:

5.1. Mintails Mining SA (Pty) Ltd was liquidated by urgent application on 7 August 2018 with Mintails Gold (Pty) Ltd. The applications and the orders

are attached hereto as Annexure "LM25" and "LM26". Both companies were previously under business rescue proceedings.

- 5.2. Mintails Mining SA (Pty) Ltd and Mintails Gold (Pty) Ltd are in a group of companies which includes Mintails Limited, the holding company Mintails SA (Pty) Ltd and the subsidiaries Mintails Mining SA (Pty) Ltd, HVH (Pty) Ltd, Luipards Vlei (Pty) Ltd, Witfontein Mining (Pty) Ltd, Mintails SA Randfontein Cluster (Pty) Ltd, Mogale Gold (Pty) Ltd, Durban Roodepoort Deep (Pty) Ltd, Witsand Mining (Pty) Ltd, Autumn Star (Pty) Ltd, Cream Magenta 171 (Pty) Ltd, Mintails Fleet (Pty) Ltd and Mintails Gold (Pty) Ltd ("**the Mintails Group**"). The Mintails Limited structure of the Mintails Group is attached hereto as Annexure "LM27". From the structure it is shown that Mintails SA Randfontein Cluster (Pty) Ltd holds the mining rights for MR132 and MR 133. Further, it shows that Mogale Gold (Pty) Ltd is the holder of the mining right MR206.
  - 5.3. Further, Mintails SA Randfontein Cluster (Pty) Ltd has been provisionally liquidated with a return date on 26 February 2019. The application and order is attached hereto as Annexure "LM28".
  - 5.4. It is clear from the liquidation papers that the Mintails Group is working as one entity and as such should be seen as one entity and all should be held liable for the rehabilitation costs which are outstanding.
  - 5.5. As two companies of the Mintails Group have already been liquidated and the other one is provisional liquidated, we consider this an urgent situation as in section 45 of MPRDA read with section 46.
  - 5.6. In this case, we want the DMR to take action in terms of NEMA to hold the provisional liquidated company responsible than using the MPRDA .
6. In terms of the above sections, certain persons can be held liable for the rehabilitation costs in regard to the Mintails Mining SA (Pty) Ltd. The Minister of DMR is in terms of Section 38A of MPRDA responsible for implementing environmental authorization

provisions in terms of NEMA as it relates to mining activities or activities incidental which includes rehabilitation.

7. In terms of section 28(12) of NEMA the Director-General of the department responsible for mineral resources and the provincial head of department have been given 30 days' notice in the form of Annexure LM2 to rectify the situation in terms of section 28(4) of NEMA and have failed to do so.
8. At present further damage is being allegedly being caused, by open pit mining that is continuing on these sites at present, with further damage being done.
9. In terms of NEMA, no public participation or access to information has been granted which are guaranteed in
  - 9.1. Section 2(f) of NEMA that the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
  - 9.2. Section 2(k) of NEMA that decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

10. We demand that:

- 10.1. The DMR enforces the directives issued as mentioned in paragraph 3.1, 3.2, 3.3, 3.7, 3.8.1, 3.8.2, 3.8.3, 3.8.4 as matter of urgency and provides a date by when compliance must be achieved by the liquidators and directors of Mintails Mining SA (Pty) Ltd and the Mintails Group.
- 10.2. The DWS enforces the directives issued as mentioned in paragraph 3.4 and 3.6 as matter of urgency and provides a date by when compliance must be achieved by the liquidators and directors of Mintails Mining SA (Pty) Ltd and the Mintails Group. The DWS, the Minails Group and their violations was an



agenda item on every Wonderfontein Catchment Management Forum meeting with minutes taken. No action was taken by DWS.

- 10.3. The NNR provides to our client, the report and plan of action from the site visit held on 20 December 2019 as advised in 2.14.
- 10.4. The DMR and the DWS issues new directives to the liquidators and directors of Mintails Mining SA (Pty) Ltd and the Mintails Group (in terms of section 28(1) of NEMA read with section 2(4)(p) of NEMA) to start remedial action and contain the toxic sludge that is currently polluting and degrading the environment **as a matter of urgency**.
- 10.5. The DMR issues directives for urgent action to protect the environment to the liquidators and directors of Mintails Mining SA (Pty) Ltd and the Mintails Group in terms of section 28(4) of NEMA.
- 10.6. The DMR takes reasonable measures to remedy the situation or apply to a competent court should the Mintails Group not comply or inadequately comply with the directives in terms of section 28(7)
- 10.7. The DMR intervenes in the provisional liquidation of Mintails SA Randfontein Cluster (Pty) Ltd before 26 February 2019 and has the Mintails Group declared as one entity as well as rescinds the court orders for the liquidations of Mintails Mining SA (Pty) Ltd and Mintails Gold (Pty) Ltd.
- 10.8. We are provided clarity on whether Mintails SA Randfontein Cluster (Pty) Ltd holds the mining rights for MR132 and MR 133 and whether Mogale Gold (Pty) Ltd is the holder of the mining right MR206.
- 10.9. The DMR applies section 45 and 46 of MPRDA and holds the Mintails Group accountable as a matter of urgency, due to the fact that mining is still being done and pollution and environmental damage are still being caused.
- 10.10. Should the Mintails Group not comply with the directives in terms of NEMA, the DMR issues an ex parte application against the Mintails Group to attach

and seize property to cover the expenses of the rehabilitation in terms of section 45 of MPRDA.

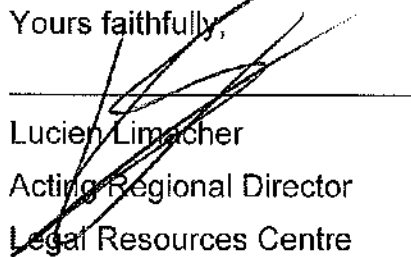
10.11. The DMR and the Commission and Intellectual Property Commission ("**CIPC**") must hold accountable the directors of Mintails for the rehabilitation infringements by bringing a delinquency application against all directors of Mintails in terms of section 162(3) and 162(4) of the Companies Act 71 of 2008 ("**Companies Act**"). The directors of Mintails have grossly abused the position of director, intentionally or negligently inflicted harm upon the company and the subsidiaries, acted in a manner that amounted to gross negligence and have repeatedly been personally subject to directives from the DMR and DWS.

11. Should the above demands not be met and a written response not be received by 22 February 2019, we will proceed to initiate legal action.

12. We trust that you find the above in order and await your urgent response herein.

13. Our client's rights are reserved.

Yours faithfully,

  
\_\_\_\_\_  
Lucien Limacher  
Acting Regional Director  
Legal Resources Centre  
lucien@lrc.org.za / 011 836 8680