

TRANSLATION FROM BULGARIAN

CELE No.66 – 18.08.2008

TO THE SUPREME ADMINISTRATIVE COURT
THROUGH THE MINISTER OF ENVIRONMENT AND WATER

Appeal

From

- 1) CENTER FOR ENVIRONMENTAL INFORMATION AND EDUCATION,
with office address: 1421 Sofia, No.67 “Tsanko Tserkovski” str., entr. V, fl. 2,
app. 3, represented by Milena Emanuilova Dimitrova
- 2) ASSOCIATION ECOFORUM, represented by Radi Yankov Radev,
- 3) “ZA ZEMYATA” (FOR THE EARTH) ENVIRONMENTAL NON-
GOVERNMENTAL ORGANIZATION, represented by Ivaylo Ivanov
Hlebarov and Todor Draganvo Todorov,
- 4) “ZELENI BALKANI” (GREEN BLAKANS) ENVIRONMENTAL NON-
GOVERNMENTAL ORGANIZATION, with office address: Plovdiv, No.160
“Shesti Septemvri” Str. (in the building of “Aleko Konstantinov” Community
Center), represented by Valentina Mincheva Fidanova,

5) "PODZEMNI BOGATSTVA"(MINERAL RESOURCES) ASSOCIATION,
represented by Nikola Boyanov Bonchev,

6) INSTITUTE FOR GREEN POLICY, represented by Petko Kostadinov
Kovachev

With address for subpoenas and messages: for appellant 1 and 4 - their office
addresses, for the other ones - 1463 Sofia, No.16 "Skobelev" blvd., entr. B, app. 14,
attorney at law Alexander Kodjabashev, tel: 852 69 56

Against:

Ruling for Assessment of Environmental Impact No.8/2008 of the Minister of
Environment and Water for the approving of investment proposal "Expansion of
copper-gold ores processing from ore deposit "Chelopech" to 3 million tons and
metal production from concentrate"

On the grounds of Art.99, Para 6 of Environmental Protection and Preservation Law
in relation to Section I of Administrative Procedure Code

Honourable Madams/Sirs Supreme Judges,

We are displeased with the Ruling for the Assessment of Environmental Impact
No.8/2008 of the Minister of Environment and Water, and on the grounds of that we
appeal it in front of you in time and we plead you to cancel it and by virtue of
Art.173, Para 2 of the Administrative Procedure Code to send the correspondence of
the administrative authority with the provisions for application of the law - Art.3,
Item 1, 2, 4, 8 and 10 of the Environmental Protection and Preservation Law, as well
as of Art.95, Para 3 and Art.97, Para 1 of the Environmental Protection and
Preservation Law, Art. 98 of the Environmental Protection and Preservation Law and
of Regulation No.7 of the Ministry of Health from May 25, 1992 for the hygiene
requirements for health protection of populated areas.

The grounds for canceling the aforesaid administrative act are: considerable violations of the administrative procedure regulations, contradiction with the material legal proceedings and inconformity with the purpose of the law - grounds for cancelation on Art.146, Item 3, 4 and 5 of the Administrative Procedure Code.

I. Violations of the administrative procedure regulations

Committed errors during the procedure for Assessment of Environmental Impact, which are significant violations of the administrative procedure regulations - grounds for cancelation on Art.146, Item 3 of the Administrative Procedure Code.

I.1.The competitive authority, in violation of Art.99, Para 2 of the Environmental Protection and Preservation Law, ruled out on the Assessment of Environmental Impact more than two years after the last of the public deliberations.

Art. 99, Para 3 of the Environmental Protection and Preservation Law foresees that the competitive authority must rule out on the Assessment of Environmental Impact **in 3-month period** (bolded by me) after conducting the public deliberation.

In the processed case the ruling on the Assessment of Environmental Impact is made in 2008, while the last public deliberation was conducted in 2006.

I.2. As it is pointed further in the appeal, the investment proposal concerns considerably larger number of municipalities and their population. For example, the air pollution affects all municipalities in the region Zlatitsa-Pirdop. And the water contamination (during regular activity or after a potential accident) includes practically all municipalities along the river valley of Maritsa, which flows into the Topolnitsa River, after running through the dam lake Topolnitsa. The dam lake Topolnitsa for many years till the present moment functions as depositor for the contaminated with heavy metals and arsenic waters, coming from tailings ponds of the ore-dressing factories in Chelopech, Pirdop and Zlatitsa.

Because of that the investor should have conducted consultations with the interested public on Art.95, Para 3 of the Environmental Protection and Preservation Law and public deliberations on Art.97, Para 1 of the Environmental Protection and Preservation Law considerably more municipalities - Zlatitsa, Pirdop, Panagyurishte, Pazardjik, Plovdiv, etc.

The investor conducted only two public deliberations - in the village of Chavdar and Chelopech.

That is the reason why the absence of consultations with the interested public on Art.95, Para 3 of the Environmental Protection and Preservation Law and of public deliberation of the Assessment of Environmental Impact Report with the concerned municipalities is a significant violation of the administrative procedure regulations of the Assessment of Environmental Impact procedure, as well as of the principle on Art.3, Item 4 of the Environmental Protection and Preservation Law - public participation and transparency in the decision making process in the environmental sphere.

II. Contradiction with the material legal proceedings and inconformity with the purpose of the law

Committed errors in the content of the Assessment of Environmental Impact Report, which lead to contradiction with the material legal proceedings and make the ruling groundless and ruled out in inconformity with the purpose of the law - grounds for cancelation on Art.146, Item 4 and 5 of the Administrative Procedure Code.

II.1 The Assessment of Environmental Impact Report is incomplete and inaccurate, because in violation of Art.96, Para 1, Item 3 and 4 of the Environmental Protection and Preservation Law in the Assessment of Environmental Impact Report there is no health evaluation of the population in the region of Zlatitsa-Pirdop. In the Assessment of Environmental Impact Report **they are not considered at all.**

A) The existing pollution of the air in the region of Pirdop-Zlatitsa with heavy metals and the impact of the investment proposal on the current situation. It is not considered also the impact of the polluted air in the region of Zlatitsa-Pirdop on the affected population. In table 3.2.4 of the Assessment of Environmental Impact Report are presented only the values of sulphurous dioxide, without presenting information for the dust, hydrogen sulphide, aerosols of the sulphuric acid and arsenic in the atmosphere of Zlatitsa and Pirdop. The omission of the authors of the Assessment of Environmental Impact Report not to include the existing air pollution in the region of Pirdop-Zlatitsa with heavy metals and the impact of the investment proposal on the population and the environment in the said region is violation on Art.96, Para 1, Item 3 and 4 of the Environmental Protection and Preservation Law.

Besides that, it is also violated the Regulation No.50 of the Council of Ministers from 16.03.1994, in which is accepted a list with 14 regions environmental problems, perceived as ecological "hot" spots with priorities: solving of health issues, caused by the environmental pollution, preserving of natural resources with biological variety, decreasing of air pollution and water contamination with toxic metals.

The approach of the authors of the Assessment of Environmental Impact Report to exclude the debate on the investment proposal in Chelopech as part of the economic activity in the region Zlatitsa-Pirdop contradicts the Regulation of the Council of Ministers 50/16.03.1994, because from geographic point of view Chelopech is part of a common air basin with Zlatitsa and Pirdop.

It is also violated Art.3, Item 8 of the Environmental Protection and Preservation Law that obligates the administrative authorities to apply legislation with a view to "recovery and improvement of the quality of the environment in the contaminated and damaged regions".

As a result from the committed violation the issued ruling for the Assessment of Environmental Impact, in addition to violating the law, also includes the false conclusion that *“there are not expected changes in the micro climate characteristics of the region”* and that *“in regular exploitation it is not expected the forming of photochemical smog and acid precipitations”*.

B) In contradiction to Art.96, Para 1. Item 3 and 4 of the Environmental Protection and Preservation Law, the Assessment of Environmental Impact Report does not regard the water contamination (in regular exploitation and in emergencies) – surface and underground, as well as the impact of such contamination on the population in the municipalities along the river valley Topolnitsa River and Maritsa River – after the place of the investment proposal. For example in section Waters of the Environmental Protection and Preservation Law there are no results, data or information for the arsenic values in the surface, underground and waste waters in the catchment basin of Topolnitsa River and the dam lake Topolnitsa.

According to a research of the National Centre of Hygiene, Medical Ecology and Nutrition from 1990 (enclosed report) the debauchment of the waste waters in Topolnitsa River leads to the contamination of the dam lake Topolnitsa, which is used for watering farming areas in the Pazardjik region. The main pollutant of the vegetable production in the region of Zlatitsa-Pirdop is arsenic. The territories of Zlatitsa-Pirdop, as well as some of the territories of Chelopech and Anton are the most affected by this pollution. The increased concentration of copper and arsenic in the fodder causes problems for the stock-breeding in the region. It has been proven the increased presence of arsenic in the hairs, nails and urine of children in Zlatitsa and Pirdop.

The pointed omission in the Assessment of Environmental Impact Report seriously contradicts the conclusions from the last accidents in the mine that apply the cyanide technology.

For example the accident in the gold mine in Baia Mare in Romania from January 30, 2000 caused the pollution of 2000 square kilometers of the Danube

catchment basin and it affected the water supply of 24 municipalities with population of over 2.4 million people. In these municipalities were also affected the means of living of the population – tourism and fishing were damaged. The cause for the pollution spreading on such large area was the fact that through the mountain river, on which is situated the mine of Baia Mare, was contaminated the Tisa River, and through it - the Danube. In the same way the contamination of the tailing pond of the investment proposal can affect the Topolnitsa River, and through it – the Maritsa River.

The last inundations in Romania from 29.07.2008 lead to the overflow of the tail ponds Cobol II of the mines Baia Borsa and the contamination of a tributary of the Tisa River with heavy metals and cyanide.

Like in the case with the air pollution (see the above letter A), here it is also violated Art.3, Item 4 of the Environmental Protection and Preservation Law.

C) Art. 46, Para 1, Item 4 of the Environmental Protection and Preservation Law is violated by the conclusion in the “reasons” of the Ruling, volume 1, second paragraph “it is not expected harmful health effects on the population of...”. This conclusion repeats the false and groundless conclusion from the Assessment of Environmental Impact Report in the same sense. Up to the present moment in the region Zlatitsa-Pirdop-Chelopech (known for its strong anthropogenic pressure) there have not been used cyanides. At the same time the use of cyanides in other places of the world already causes mass poisoning. For example there is information about mass poisoning of the population in Turkey – the region of the Kishladag mine in 2006 related to the use of cyanides. This information was not regarded in the Assessment of Environmental Impact Report and it is not used as basis for the conclusions of the Assessment of Environmental Impact Report, respectively of the administrative authority.

II.2 In violation of Art.96, Para 1, Item 4, “v” of the Environmental Protection and Preservation Law, the problem with the impact of the cyanides on

the components of the environment and human health remained undetermined. Even without severe accidents, the cyanide technology arouses serious questions regarding the environment and health. Because of their chemical character the cyanides react extremely aggressively with metals, non-metals and organic substances, establishing dozens of compounds with different toxicity level, characteristics and stability. Despite their chemical behavior, they can be controlled and they have exact Threshold Limit Value only for two or three forms /total, free and WAD/. The pointed three are the most harmful, but we should not underestimate the effect of the other cyanide compounds, which are not subject to monitoring and we do not dispose of enough scientific researches of their impact on human health and biological variety.

II.3 It is groundless and scientifically incorrect the conclusion of the Assessment of Environmental Impact Report that *“the technology, subject of the investment proposal, corresponds exactly to the widespread world practice for processing of such type of ores”*

The aforesaid statement is incorrect, because in Europe is produced less than 1 % of the world gold, and the mines, using the cyanide technology, are 3-4. Constantly the technology meets with accidents with considerable consequences for the human health and environment /for the period between 1998 and 2006 there are registered over 20 accidents in gold mines, operating with cyanide/. Similar accidents have occurred repeatedly also in Europe, and the most serious of them happened in Baia Mare on January 30, 2000, the aforesaid one in the appeal. The cyanide technology is applied mainly in desert and semidesert areas – the densely populated Thracian Lowlands in Bulgaria, Turkey and Greece, the high average annual values of precipitations, the severe conditions for inundation and the torrential character of the Topolnitsa River and Arda River, as well as the potential vertical seismic activity in the region are serious arguments against the introducing this technology.

The above listed statement in the Assessment of Environmental Impact Report is incorrect also for another reason – it refers only to ores and concentrates, containing gold and copper. There is no practice in the world that treats concentrates

with such high levels of arsenic (up to five times over the Threshold Limit Value), like the concentrate obtained in Chelopech.

II.4 Several provisions of Regulation 7 of the Ministry of Health from May 25, 1992 for hygiene requirements for health protection of populated areas are violated.

Regulation 7/1992 foresees the following hygiene-protective zones for:

Chemical production practices

III. Hygiene-protective zone – 1000 m.

27. Production practices, related to excretion of arsenic and its non-organic compounds.

28. Production practices, related to excretion of hydrocyanogen and its non-organic compounds.

Ore extraction and processing

II. Hygiene-protective zone – 2000 m.

184. (new, Official Gazette, issue 20 from 1999) Depositing of industrial non-dangerous waste in tailing ponds, slime ponds and hydro-slag ponds with exploitation period of the depot up to 10 years (including)

184 a. (new, Official Gazette, issue 20 from 1999) Depositing of industrial non-dangerous waste in tailing ponds, slime ponds and hydro-slag ponds exploitation period of the depot over 10 years

IV. Hygiene-protective zone – 500 m.

194. Ore dressing factories with drenched processes of ore dressing

In the processed case for <<drenched processes of ore dressing>> the distance is 500 m. The distance from the village of Chelopech (residential buildings) to the ore dressing factory is 430 m, and to the existing tailing pond – 2 283 m.

The hygiene-protective distance from the newly built tailing pond (just next to the already existing tailing pond) to the nearest residential buildings will be: from the

village of Chelopech – 1842 m, from the village of Chavdar – 1 567 m and from the village of Karlievo – 1 421 m, with existing requirement for hygiene-protective zone of 2000 to 3000 m.

II.5 The processing ruling is issued contrary to the principle of stable development – Art.3, Item 1 of the Environmental Protection and Preservation Law.

The reasons for that are:

A) In the Ruling is missing the necessary information for the quantities of the reserves and the conditions, in which they were determined.

In the Assessment of Environmental Impact Report, on page 86, table 1.10, is pointed the total amount of the reserves of copper-gold ore in the ore deposit of 23 598,6 thousand tons, determined in conditions without the required economic basis. This contradicts the world and European concept for stable development and the Underground Natural Resources Law – for the earth bowels preservation and the rational use of the underground natural resources. There contradiction is even more striking with a view to the huge price increase of copper, gold and silver on the international markets and the future trends in this respect.

B) The permission for the increase of ore extraction to 3 million tons and the related to that decrease by three times of the exploitation period of the ore deposit leads to unfavorable social consequences for the region and to damages for the national economy from omitted future benefits in long term period.

II.6 The administrative authority allowed also many violations of Directive 2006/21/EU on the management of waste from the mining industries. For example the competent authority did not obligate the investor to conduct public deliberations on the emergency and transport plan for cyanides.

There are also violated another two normative documents – the Convention from Espoo for the Assessment of Environmental Impact in transboundary context

and the Cyanide code - combination of norms for the use of cyanide, the investor have voluntarily agreed to observe.

As for the Convention from Espoo for the Assessment of Environmental Impact in transboundary context, the violation lies in the fact that the interested public in the neighbor countries was not informed of the procedure for the Assessment of Environmental Impact - violation of Art.98, Para 1 of the Environmental Protection and Preservation Law, and this violation leads to violations on Art.98, Para 2 of the Environmental Protection and Preservation Law.

The numerous and severe violations of the provisions of the Environmental Protection and Preservation Law and of the specialized normative acts - basically of Regulation No.7/1992, reach the conclusion that the ruling out of the normative act contradicts the purpose of the law - Art.146, Item 5 of the Administrative Procedure Code.

On the grounds of the aforesaid reasons we plead you to cancel the pointed Ruling of the Minister of Environment and Water, along with the legal consequences from that.

We enclose: copies of the appeal for the defendant and the interested party.

The city of Sofia, 18.08.2008

With respect:

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| 1) | 2) | 3) |
| 4) | 5) | 6) |

I, the undersigned Vanya Stoyanova Dimitrova, do hereby certify that the foregoing is a true and faithful English translation of the Bulgarian original of Appeal CELE No.66 - 18.08.2008. The translation consists of 7 (seven) pages.

TRANSLATOR:

/Vanya Stoyanova Dimitrova/