



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Mr Waheed Sulaiman  
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By email: [waheed@wescoal.com](mailto:waheed@wescoal.com)

Copied to: Mr Vikesh Dhanooklal  
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Dear Mr Sulaiman

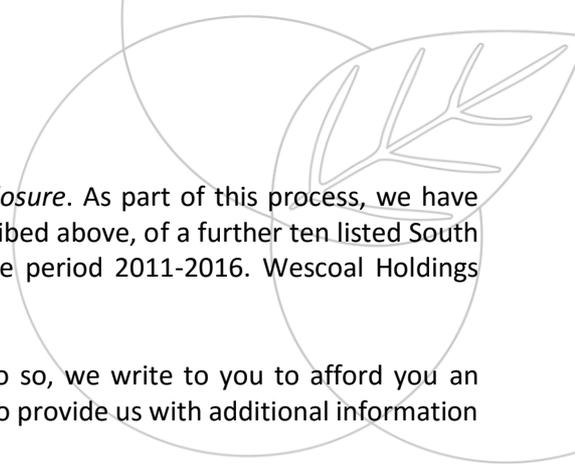
## Centre for Environmental Rights' baseline assessment of corporate environmental compliance

1. The Centre for Environmental Rights (CER) is a non-profit company and law clinic based in Cape Town. The CER's vision is a South Africa where every person's Constitutional right to an environment that is not harmful to health or well-being, and to have the environment protected for future generations, is fully realised. Our mission is to advance the realisation of environmental rights as guaranteed in the South African Constitution by providing support and legal representation to civil society organisations and communities who wish to protect their environmental rights, and by engaging in legal research, advocacy and litigation to achieve strategic change.
2. In September 2015, the CER released a report called *Full Disclosure: The Truth about Corporate Environmental Compliance in South Africa*.<sup>1</sup> The report contained the findings of the CER's baseline assessment of 20 listed South African companies with significant environmental impacts that had regularly appeared on the JSE's Socially Responsible Investment Index. The purpose of the assessment was to ascertain the extent of compliance by these companies with environmental laws, as well as the extent to which non-compliance with environmental laws was disclosed by these companies to their shareholders. The period covered by the assessment was 2008 to 2014.
3. All of the information used in the assessment was publicly available. We studied, where applicable, the Department of Environmental Affairs' National Environmental Compliance and Enforcement Reports (NECERs), the annual reports of the companies assessed, academic studies, media reports and various other sources of publicly available information.

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<sup>1</sup> <http://cer.org.za/full-disclosure>.

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4. The CER is now in the process of updating and expanding *Full Disclosure*. As part of this process, we have conducted baseline assessments, using the same methodology described above, of a further ten listed South African companies with significant environmental impacts, over the period 2011-2016. Wescoal Holdings Limited is one of the companies that we assessed.
  5. We will publish the results of our assessment online. Before we do so, we write to you to afford you an opportunity to respond to our findings (attached to this letter), and to provide us with additional information should you deem this relevant.
  6. This letter will be published together with our research results, as will your response to this letter, provided we receive your response before Tuesday 25 October 2016.
  7. Wescoal makes minimal information on environmental compliance and impacts available to its shareholders. It is particularly concerning to note that Wescoal's 2012, 2013, 2014 and 2015 annual reports each repeat identical paragraphs on waste management and safety, health and environmental practices. In relation to the latter, all that is said is the following:

*“Monthly internal audits and reports are undertaken under the SHE system, covering safety, occupational hygiene, occupational health and the environment. Regular external visits and/or audits are conducted by the DMR. Occasionally, the DWS will visit, and sometimes the Department of Environmental Affairs. No reports are written if compliance and administration are adhered to, however, directives are given if non-compliance is discovered”.*

8. This kind of “cut and paste” reporting is wholly inadequate for a listed company, the operations of which have significant environmental impacts in an area of South Africa which is already severely compromised by the negative impacts of coal mining. These impacts were exhaustively demonstrated in the CER's 2016 report, *Zero Hour: Poor governance of mining and the violation of environmental rights in Mpumalanga (Zero Hour)*.<sup>2</sup> Wescoal provides no information as to whether “compliance and administration are adhered to”, or whether any non-compliances have been found during these inspections, or any directives have been issued.
9. Wescoal also fails to disclose to its shareholders that the Department of Water and Sanitation has laid criminal charges against the company for failure to comply with the National Water Act.<sup>3</sup>
10. Wescoal's 2012 and 2013 annual reports state that “Wescoal has met all rehabilitation requirements, including an additional 71,245m<sup>2</sup> at the Khanyisa Colliery”. No information is provided to support this claim, and it is unclear what rehabilitation of “additional” areas refers to.
11. In Wescoal's 2013 annual report (and referred to again in the 2014 report), Wescoal states that at the Intibane mine:

*“Wescoal is mining alongside farming activity in partnership with the farmer. This means that once Wescoal has rehabilitated the land after mining for coal, the farmer will have the right of first refusal to buy back the land for farming purposes. This is just one of the ways in which Wescoal is striving to ensure the sustainability of land in South Africa, as well as acting as a responsible corporate citizen”.*

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<sup>2</sup> Available at <http://cer.org.za/news/zero-hour>.

<sup>3</sup> *Zero Hour*: <http://cer.org.za/news/zero-hour> at p63.

12. The report does not specify what kind of farming activity Wescoal envisages will be conducted on this land post-mining. As described in *Zero Hour*, there is very little likelihood that post-coal mining land use can include the growing of crops:

*“Mpumalanga produces a significant proportion of South Africa’s staple foods, such as soya beans, maize and dry beans. Agriculture is a significant contributor to the economy and a key job creator in the province. However, the unbridled expansion of mining is eroding Mpumalanga’s arable land, and there are rising concerns about the impact of mining on agricultural production. Water, soil and air pollution from mining affect agricultural yields, and pose a threat to food security. ...*

*Mining is so destructive that soils can never be rehabilitated back to their full potential after they have been mined. The Bureau for Food and Agricultural Production (BFAP), 2012 Report states that “the social and environmental impact of mining activities ... are in many instances so severe, that farming activities cannot be sustained on the land that is left between the mining activities.*

*Soil degradation as a result of mining is unavoidable, particularly because mining requires the removal of huge quantities of topsoil essential for cultivation. Soil can lose its fertility and become sterile because of acidification, and heavy machinery and the movement of wet soil causes compaction, where roots can no longer penetrate deeply and organic material is smothered. This means water is no longer available to the plants and the soil is not sufficiently aerated.”<sup>4</sup>*

13. Wescoal’s cut and paste approach to reporting on environmental compliance should be of great concern to shareholders and other stakeholders, particularly in an industry with such significant environmental impacts.

We look forward to hearing from you.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:



**Tracey Davies**

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<sup>4</sup> See *Zero Hour* at p7.