

A year on, anti-Lynas campaign goes to court
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KUALA LUMPUR, Feb 17 — A nationwide campaign to stop Lynas heads into the courtroom with damaging allegations against the Australian rare earths producer and Malaysia's regulators.

The court filing also accuses Lynas of economic imperialism and points out that until today it does not have a plan to permanently dispose of its waste, some which contain potentially harmful levels of radiation.

A group of 10 Pahang residents have challenged the Atomic Energy Licensing Board (AELB), the director-general of Environmental Quality in the Department of Environment (DoE) and Lynas Malaysia Sdn Bhd in court today for ignoring public pleas to cancel the radioactive rare earths project they say is endangering their lives and livelihood.

The 10 applicants — who live between 3km and 18km of the RM2.5 billion Lynas Advanced Material Plant (LAMP) site in coastal Gebeng on the outskirts of Kuantan — accused government authorities of breaching the Federal Constitution and other regulatory laws in return of a certain cut in revenue from the Sydney-based mining giant, according to court papers of the case obtained by The Malaysian Insider, which are to be filed electronically with the High Court today.

Signboard showing the site of the Lynas plant in Gebeng, which is set to be the world's biggest rare earths refinery.

The AELB's decision is in breach of several Federal Constitution provisions, in particular Articles 5(1), 8 and 13(1) which deal with freedom, equality and rights to property respectively.

They want the court to issue orders to cancel AELB's award of a temporary operating licence (TOL) to Lynas on January 30, which will enable the latter to fire up its refinery soon.

Production at LAMP, reportedly the world's biggest rare earth refinery, is expected to start as early as April.

But Lynas said last week it expects the start of operations to be delayed to the second quarter from the first quarter of this year.

The residents also want a court order to bar the AELB from issuing any more licences, whether temporary or permanent, to Lynas unless and until it hands in a detailed environmental impact assessment (DEIA) report to the government's environmental watchdog, which must be approved.

In their application, they asked too the court to suspend the existing TOL pending the hearing.

The court papers named the applicants as executive Zakaria Abdullah, whose home is the

closest to the LAMP at a distance of only 3km; an ex-seaman, Ramli alias Kamaluddin Awang; production shift manager Ab Sani Ahmad; mechanical fitter Mohd Rasid Hamzah; retired security guard Mansor Bedu; housing contractor Hashim Awang; and four others who are all self-employed, Ali Akbar Othman, Nadarajan Raju, Pang Chee Kian and Tuw Yin Lan.

In his affidavit to support the case, first applicant Zakaria pointed out that the government had promised that public safety remained its priority and it would ensure that Lynas met all safety conditions recommended by the global radiation watchdog, the International Atomic Energy Agency (IAEA).

The father of six, who lives in Balok Makmur — next door to the Gebeng industrial zone where LAMP is sited — noted that key to AELB's issue of the TOL was that Lynas had to submit a comprehensive plan on waste management and that AELB approved it before the start of any operations.

He noted that Lynas itself had admitted it had no prepared any such permanent waste storage facility as required by the AELB's conditions at the time of its TOL application.

"Upon plant closure after 20 years, any remaining residue within the [onsite] RSF [residue storage facility] will be transported off site to a permanent disposal facility (PDF) for long-term storage.

"At the time of report preparation (December 2011), the proposed site for the PDF had not been identified," Zakaria quoted in his affidavit, citing from page 4 of Lynas' radioactive waste management plan.

Part of the court filings included an affidavit by another Kuantan boy and chemical engineer, Dr Lee Chee Hong, who said that "allowing Lynas to start such operation endangers not just the areas of the vicinity of the LAMP site, but the whole of Malaysia with the risk of another environmental disaster... on a much greater scale and magnitude than Bukit Merah".

"In my opinion, the safety assessment conducted by Lynas was not carried out in a professional way which would be acceptable to the highest international standards of safety.

"With the welfare of about 700,000 inhabitants within 30km radius of the LAMP site, and a potentially environmental disaster not being ruled out, I cannot understand why Malaysia is prepared to tolerate the potential hazards to occur here from a plant which will give no substantial benefit of Malaysia because of the pioneer status granted to Lynas for 10 years," the Southeast Asia regional manager of Intetech Ltd said in his affidavit.

Yesterday, AELB said it was satisfied Lynas Corp's rare earths refinery is safe despite concerns raised by a former contractor over its structural integrity.

This was because the Australian miner had shown proof that the facility was certified by a registered engineer, as required under Malaysian law, AELB director-general Raja Abdul Aziz Raja Adnan said.

"So under Malaysian law, if it's certified by an engineer registered in Malaysia, it is taken as proof," he told reporters at AELB headquarters in Dengkil.

"Therefore, if anything else happens, in due process of law, we will take it up with the engineer if there is any incompetence within the report. That's the normal procedure."

The New York Times reported earlier this month that AkzoNobel, a key contractor, withdrew from the project in the third quarter of last year after it was told that fibreglass liners using its resin would be installed in concrete-walled tanks that did not meet safety standards.

The Dutch multinational is said to have refused to supply resins as the tanks — which will be used to mix hundreds of tonnes of rare earths with extremely corrosive acids — have problems with rising dampness in the floors and cracks in the walls.

Lynas has said its decision to go with another resin supplier was purely a “business decision” as AkzoNobel does not certify the application of its resin.

Raja Abdul Aziz also said today that the “pre-operating stage” of the plant, which will begin once Lynas fulfils several key conditions of its temporary operating licence (TOL), was necessary to decide if a permanent waste disposal facility (PDF) was needed.

“The permanent disposal site is only for the worst-case scenario if Lynas cannot sell recycled waste... We will be able to determine if their declaration is right or the worst-case scenario is right,” he said.

But he stressed that Lynas will have to specify a site and submit plans for the PDF even before it begins operations, or risk losing its TOL.

On February 1, AELB granted a TOL to Lynas for its rare earth plant in Gebeng after almost a year of sustained public protests.

The radiation regulator stressed, however, that Lynas will not be allowed to fire up its controversial refinery until it fulfils the conditions of the pre-operating licence within the next 10 months.

These include paying the first of five instalments on its US\$50 million (RM155 million) deposit to the government and the appointment of an independent third-party assessor by AELB, which Lynas will pay for.

It added that even once these conditions have been fulfilled, the Australian mining company will have to obtain a separate permit to import the raw material from Mount Weld, Australia.

Following that, the plant will be monitored for two years, during which Lynas must meet safety requirements before AELB issues a full licence to ramp up operations.

Plans to start operations in September last year were scuppered when Putrajaya bowed to public pressure last April and put the project on ice pending the review by the International Atomic Energy Agency (IAEA).

In July last year, the AELB adopted 11 recommendations set out by the review of the refinery and said it would not allow Lynas to begin operations or import rare earth ore until all conditions, which include a comprehensive, long-term and detailed plan for managing radioactive waste, were met.

Lynas Corp failed to meet any of the conditions in its first proposals, according to the regulator.

The Sydney-based miner is looking to break China’s 90 per cent chokehold on rare earth metals crucial to the manufacture of high technology products such as smartphones,

energy-efficient light bulbs and fuel-saving cars.

Anti-Lynas groups are planning a mammoth rally in Kuantan on February 26 to pressure Putrajaya to terminate the project.

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