

AELB gave Lynas nod for share in revenue, court papers claim
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KUALA LUMPUR, Feb 18 — Malaysia's radiation watchdog is alleged to have awarded Lynas Corp a licence to fire up its RM2.5 billion plant in Pahang for a cut of the Australian firm's earnings.

The Atomic Energy Licensing Board (AELB) put itself in a position of conflict when it gave the rare earths producer a temporary operating licence (TOL) after agreeing to a revenue-sharing deal to fund radiation research, according to court filings by residents who want the project axed.

"The Board placed itself in a conflict of interest position when it agreed to be paid 0.05 per cent of the revenue to be generated by Lynas from its LAMP site," Balok Makmur resident, Zakaria Abdullah, said in his affidavit to support the group's suit against the radiation regulator and two others.

Lawyers for a group of 10 Pahang residents filed a suit at the High Court yesterday against the AELB, the director-general of Environmental Quality in the Department of Environment (DoE) and Lynas Malaysia Sdn Bhd for ignoring public pleas to call off the radioactive rare earths project they say is endangering their lives and livelihood.

According to court papers of the case obtained by The Malaysian Insider, the 10 applicants live between three and 18km of the RM2.5 billion Lynas Advanced Material Plant (LAMP) site in coastal Gebeng, on the outskirts of Kuantan.

They accused the two government authorities of breaching the Federal Constitution and other regulatory laws in return for 0.05 per cent of revenue from the rare earths producer based in Sydney.

"My solicitors advise me and I verily believe that if such a promise was made by Lynas to the Board, then the Board placed itself in a conflict of interest position because it would financially benefit from granting a TOL to Lynas so that the Board can be paid from the revenue generated by Lynas at the LAMP site," Zakaria said, in his affidavit.

"In consequence, the Board's decision is invalid because the Board was no longer independent in the exercise of its statutory discretion. My solicitors advise me that in such circumstances, the decision is void because it is clearly ultra vires," the father of six added.

Zakaria in his affidavit had referred to several news articles and research papers on the Lynas project and highlighted a New York Times (NYT) report dated June 29, 2011 written by Keith Bradsher.

"In this article, he wrote that Lynas intended to produce rare earth worth US\$1.7 billion per year from the LAMP site and that 'Lynas agreed to pay 0.05 per cent of the plant's revenue each year to the Malaysian Atomic Energy Licensing Board for radiation research'," Zakaria said.

Raja Abdul Aziz previously said he was unaware of financial deals with Lynas. He related that the group had carried out in-depth research on the Internet but could not find any statements from Lynas Corp's top management to correct or deny the NYT report.

But AELB director-general Raja Datuk Abdul Aziz Raja Adnan had prior to the court filing denied agreeing to any deal to get money from Lynas for a scholarship or research.

"I don't know anything about it. Ask MITI," he told The Malaysian Insider when contacted, referring to the Ministry of International Trade And Industry.

Zakaria is among the 10 applicants named in the court papers. His home is just three km away from the LAMP site in the Gebeng industrial zone.

The others are an ex-seaman named Ramli @ 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.

They want the court to issue an order to cancel AELB's award of a TOL to Lynas on January 30, according to the demands stated in the court papers.

Last week, Lynas said it would fire up its refinery by the second 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.

They also want the court to suspend the existing TOL pending the hearing.

The Sydney-based miner is looking to break China's 90 per cent chokehold on the supply of rare earth metals crucial to the manufacture of high technology products such as smartphones, energy-efficient light bulbs and fuel-saving cars.

The Malaysian Insider had previously reported that Lynas Corp foresees that it will be able to generate RM8 billion annually through its rare earths exported from Kuantan.

But the Pahang residents pointed out in their court filings that Malaysia was unlikely to benefit directly from Lynas because the mining giant had been given a 10-year tax holiday by the federal government, or indirectly as the plant would only employ some 350 jobs to locals.

"We contend that the absolute lack of any economic or financial benefits to the people of Malaysia if the LAMP site starts operations is a relevant consideration that the Board ought to have taken into account when considering the application by Lynas for a TOL," Zakaria said in his affidavit.

"Its failure to do so renders its decision void in law," he stressed.

Lynas's mammoth refinery project, touted to be the largest in the world outside China, hit the headlines last year and drew widespread public condemnation from Malaysians, many of whom still remember the Bukit Merah rare earths disaster.

The Japanese-owned Mitsubishi Chemical's Asian Rare Earth (ARE) facility in Perak was the site of Malaysia's first rare earths plant nearly 20 years ago, and was until last year reported to be still involved in a RM300 million clean-up.

A radiation outbreak there has been linked to eight cases of leukaemia, seven resulting in death.

Anti-Lynas groups have been growing in force over the past one year, further spooked by the recent nuclear plant meltdown in Fukushima, Japan that hit headlines worldwide around the same time.

The movements have joined forces and are planning a mammoth street rally in Kuantan on February 26 to pressure Putrajaya to terminate the project.

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