



NEWSLETTER- MAY 2017

Dear Readers,

We would like to wish all our readers a very warm Winter.

The May edition of the newsletter will look at updates in the environmental, mining and natural resources sector while also focussing on cases, law and news.

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NATIONAL LEGISLATION

The Environmental Impact Assessment Regulations of 2014 as well as Listing Notice 1,2 & 3 were amended on 7 April 2017 in Government Gazette 40772 and commenced on the date they were published. Please find below the links for a copy of the amendments:

EIA Regulations: http://www.gov.za/sites/www.gov.za/files/40772_gon326.pdf

Listing Notice 1: http://www.gov.za/sites/www.gov.za/files/40772_gon327.pdf

Listing Notice 2: http://www.gov.za/sites/www.gov.za/files/40772_gon325.pdf

Listing Notice 3: http://www.gov.za/sites/www.gov.za/files/40772_gon324.pdf

NATIONAL CASE LAW

***Earthlife Africa Johannesburg and another v Minister of Energy and others* [2017] ZAWCHC 50**

In April 2017, a decision by the Western Cape High Court was handed down, in which it declared that the Minister of Energy's decision to table the Russian international agreements before Parliament in terms of Section 231(3) of the Constitution to be unlawful and unconstitutional and were subsequently set aside.

The Court also declared the Minister's decisions to table the Agreement for Co-operation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy; and the Agreement between the Government of the Republic of Korea and the Government of the Republic of South Africa regarding Co-operation in the Peaceful Uses of Nuclear Energy as unlawful and unconstitutional and thus they were set aside.

In conclusion, Government's attempts to secure 9.6 GW of nuclear energy were unlawful, including the initial determination to procure nuclear energy in 2013, the cooperation agreements signed with Russia, the US and South Korea, as well as former energy Minister Tina Joemat-Pettersson's decision to hand over the procurement of nuclear energy to Eskom late last year.

Boswell v Member of the Executive Council for the Department of Economic Development, Tourism and Environmental Affairs (KwaZulu-Natal) and others [3792/16P]

In this matter, Mr Boswell's application for a permit in terms of the National Environmental Management: Biodiversity Act, 2004 to export three captive elephants to an undisclosed facility in Dubai was refused by Ezemvelo KZN Wildlife and the MEC for the Department of Economic Development, Tourism and Environmental Affairs (KwaZulu-Natal) on the basis that such an export is prohibited by the National Norms and Standards on Management of Elephants in South Africa (Norms and Standards). Mr Boswell took the refusal on review and challenged the legality of the Norms and Standards. Both of Mr Boswell's challenges failed.

NATIONAL NEWS

SLAPP suits

An Australian mining company has sued two environmental lawyers and a local community activist for defamation, claiming a total of R1.25m in damages. A Saturday Star report says the firm's subsidiary, Mineral Resources Commodities (MRC) – which wants to mine the mineral sands at Xolobeni on the Wild Coast – claims the two attorneys at the Centre for Environmental Rights (CER), Tracey Davies and Christine Reddell, along with West Coast activist Davine Cloete, made defamatory statements about Mineral Sands Resources' 'environmentally destructive' Tormin mineral sands mine on the West Coast. But the CER has branded the legal action a 'Slapp' suit, or strategic lawsuit against public participation, which is 'intended to censor, intimidate and silence critics' by burdening them with the cost of a legal defence until they abandon their criticism or opposition. In the summons, filed on 28 April, the company alleges that CER attorneys and Cloete made defamatory statements about Mineral Sands Resources and its director Zamile Qunya during presentations at UCT's Summer School in January. MSR has claimed R250 000 in damages from each of the attorneys, and R750 000 from Cloete.

(Article sourced from Full Saturday Star report (subscription needed) Legalbrief Today 8 May 2017)

Karoo fracking

In a previous Gunn Attorneys Newsletter, we brought your attention to the fact that fracking in the Karoo had received the green light. Concerns have been raised by environmental groups about water contamination and depletion. These environmental groups have said they will fight tooth and nail to make sure it does not happen.

The Department of Water and Sanitation intends issuing fracking licences by September, but may be stopped by court cases brought by the groups.

Royal Dutch Shell, Falcon Oil & Gas and Bundu Gas and Oil Exploration are eyeing the exploration of natural gas trapped in shale rock formations in the Karoo.

Matthew Burnell, director of the environmental practice at Herbert Smith Freehills, says the environmentalists have huge support from communities in the Karoo and could take the issue to court in the hope that the companies will be discouraged from going ahead with the project.

The process is already lengthy. After licences are issued, there will be exploration for two to three years, then construction for another two to three years. It could take between seven and 10 years before production starts.

Burnell says that although the companies must meet government requirements and conduct consultations, environmentalists will still oppose fracking as their mandate is conservation. "It's not a question of mitigating the environmental impact; they just don't want it at all."

Although there are economic benefits to fracking, including socioeconomic upliftment, jobs and the lease of land, environmentalists say the risks outweigh them.

Herman Neethling, Shell SA GM for upstream and liquefied natural gas, says there are several opportunities for a good energy mix in SA. Although there are no cost estimates yet, shale gas generally sells at low prices and the project will create about 60,000 jobs.

He says Shell will have "continuous engagement" with stakeholders about meeting the requirements and standards for safety and responsibility.

There are no official estimates on the volume of shale gas in the Karoo, how much it will cost to extract it and for how many years the gas can contribute to the energy mix in the country.

Frost & Sullivan energy and environmental analyst Tilden Hellyer says SA has coal reserves that can produce 35,000MW to 70,000MW of electricity and gas will never replace coal — even if huge shale gas reserves are found. He says SA intends to use only about 4,000MW of gas power from the Karoo.

If the environmental concerns are addressed, the environmentalists may start seeing the benefits, he says.

"It's about companies overstepping or pushing boundaries — or even corrupt officials and municipalities passing these laws, that is the problem. There are ways to mitigate this if we

have the right scientific measures in place and if we mitigate this properly we would be okay," Hellyer says.

Neethling says: "Producing gas at commercial scale will positively contribute to changing SA's energy mix and could potentially be a significant and much needed contributor to the economy."

The main concerns flagged by the environmental groups are water contamination and water shortages.

Burnell says in 10 years' time, when fracking comes on stream, there may be better technology and environmental concerns may be obsolete.

(Article sourced from BusinessDay <https://www.businesslive.co.za/bd/national/2017-05-29-karoo-fracking-may-get-bogged-down-in-court/>)

INTERESTING FACTS

Are you aware of some of the animals that became extinct in 2016? Below is a list of some of these animals:

The Bramble Cays Melomys;
The Rabb's Treefrog;
The Stephan's Riffle Beetle and Tatum Cave Beetle;
The Barbados Racer.

For an extensive read on the above and to find out more about local extinctions go to the following article: <http://www.livingalongsidewildlife.com/2016/12/the-animals-that-went-extinct-in-2016.html>

ABOUT GUNN ATTORNEYS

Gunn Attorneys was established in 2014 by Adam Gunn, leveraging on many years of experience in the natural resources sector. Amongst other things Adam was legal counsel to Ridge Mining and First Uranium Corporation and a partner at Edward Nathan Sonnenbergs and Eversheds. The vision of the firm continues to be to provide exceptional service to our clients in the natural resources sector.

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Disclaimer:

This newsletter does not aim to provide a summary of all the legal developments in the environmental, mining and natural resources sectors. For professional legal advice on any particular issue, please contact us.

