



NEWSLETTER- SEPTEMBER 2017

Dear Readers,

GUNN ATTORNEYS HAS MOVED TO 11 GREENWAY ROAD, GREENSIDE.

We wish you a very super Spring!

The September 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

Environmental Assessment Practitioners

On 1 September 2017 the Minister of Environmental Affairs published her intention to appoint the Environmental Assessment Practitioners Association of South Africa as the single registration authority for a period of five years in terms of section 24H(6) of the National Environmental Management Act 107 of 1998. (*Government Gazette 41084 Notice Number 953*).

Waste Tyres

On 29 September 2017 in Government Gazette 41157 Notice Number 1064 the Minister of Environmental Affairs published the Waste Tyre Regulations 2017. These new regulations come into effect immediately and repeal the 2009 Waste Tyre Regulations

NATIONAL CASE LAW

Buffalo Veterinary Procedural Notice

In March 2014 the Department of Agriculture, Forestry and Fisheries (“**DAFF**”) introduced the Veterinary Procedural Notice for Buffalo Disease Risk Management in South Africa (the “**VPN**”). The VPN provides policies for the management of the veterinary risks associated with the keeping and movement of African buffalo in South Africa. This includes procedures for registration, disease testing, movement, control of stray buffalo and contingency planning

and control measures for disease outbreak in buffalo. Where a buffalo tests positive for a disease as set out in the VPN, the property where the buffalo are kept is placed under quarantine and the buffalo cannot be moved or sold.

After its implementation, it became apparent to many buffalo owners that the terms of the VPN regarding testing for TB, were unscientific and unclear. This led to the VPN tests for TB being extremely oversensitive. Further, comparative tests that would eliminate false reactions in the tests were no longer taken into account. It is said that half of the country's buffalo population would test positive for TB in terms of the current VPN standards.

In 2014, Unyati Wildlife Reserve was placed under quarantine when a buffalo bull, which was bought from a state reserve at auction in 2011 that at the time had been declared by State Veterinarians to be free from tuberculosis (TB), tested positive for TB. This meant that since 2014, Unyati Wildlife Reserve has not been able to sell or move buffalo from their game farm.

However, the Unyati Wildlife Reserve and well-known game farmer, Jaco Troskie, decided to challenge the VPN and applied for an urgent application to have the VPN set aside. In late September, the Pretoria High Court set aside the controversial VPN and ordered that the VPN be set aside pending submission made by Troskie to the Minister, so that an acceptable proposal for a new regulation, which is in co-operation with farmers, veterinarians and the state, can be drawn up. In the interim, the Court ordered that the previous protocol (protocol no 20) shall be utilized for controlling the movement of buffalo in South Africa.

Barberton Mine

Nature conservation and geology are the biggest winners after the Constitutional Court upheld a decision of the SCA, which dismissed a mining company's application to prospect for gold in a nature reserve. The hallmark decision in effect prohibits mining in protected areas and gives a bite to the National Environmental Management: Protected Areas Act, 57 of 2003.

Barberton Mines, a subsidiary of JSE-listed Pan African Resources, is already producing 150 000 ounces of gold a year at its three mines – Fairview, Sheba and Consort – and operates a gold tailings retreatment plant in Mpumalanga's gold-rich Barberton area. The mining company wanted to extend its operations into the 27 808.5-hectare Barberton Nature Reserve after the Department of Mineral Resources granted it a prospecting permit in 2006, but the Mpumalanga Tourism and Parks Agency and Mountainlands Estate Owners' Association objected by lodging an appeal with the department which dismissed it in 2012. The Gauteng High Court (Pretoria) granted the mining company an interdict in 2015 to prevent the agency and the association from denying it access to prospect in the area. The SCA ruled against the mining firm in March last year.

INTERNATIONAL CASE LAW

United States District Court for the District of Oregon, Eugene vs Kelsey Cascadia Rose Juliana et al Case No 17-71692

Below is an extract of the statements made in the above case and the effects that climate change may place on us.

The Plaintiffs brought this constitutional case against the Defendants because the affirmative aggregate and systemic actions of Defendants infringe the Plaintiffs' fundamental rights to life, liberty, and property.

In the case, the Defendants admitted their actions imperil Plaintiffs with "dangerous, and unacceptable economic, social, and environmental risks," and that "the use of fossil fuels is a major source of [greenhouse gas] emissions, placing our nation on an increasingly costly, insecure, and environmentally dangerous path."

Further, the Defendants' witnesses independently confirm that current levels of atmospheric CO2 and climate change are "dangerous," and that our nation is in an "emergency situation." The head of the federal climate research program testified he is "fearful," that "increasing levels of CO2 pose risks to humans and the natural environment," and that he does not "think current federal actions are adequate to safeguard the future."

(The full case can be obtained at <https://static1.squarespace.com/static/571d109b04426270152febe0/t/59a4bfcdff7c50210a275ace/1503969299812/Doc+14+Plaintiffs+Answer+to+Petition.pdf>)

NATIONAL NEWS

Rhino Horn Online Auction

South Africa's first online rhino horn auction was held recently, a major event in the ongoing fight by private rhino owners to be able to sell legal horn stocks. A statement by the organiser indicated there were very few bidders for the 264 horns.

The auction website had been translated into Vietnamese and Chinese in a bid to attract more bidders.

The biggest block to the success of the auction was that horns legally purchased cannot be exported legally for sale. The Convention on International Trade in Endangered Species or CITES, bans this. Without lifting the ban or changing their regulations, CITES members like South Africa, China and Vietnam cannot trade any horn. Vietnamese or Chinese buyers can buy horn in South Africa but cannot take it out of the country.

Earlier this year, South Africa's Constitutional Court definitively overturned the 2009 government ban on the domestic trade in rhino horn. The decision caused confusion over how horn would be sold, what permits were needed and whether the department would provide the permits. The ability of the government to develop a viable regulatory system for horn is also in question. The department set conditions on issuing permits for Hume's sale, which he agreed to comply with fully. Only permit holders can sell to other permit holders. The permit does not allow international trade. Part of the conditions was that the department must have access to the auction to do the necessary monitoring.

This would appear to be a first step in providing some sort of regulatory framework for domestic sales. It meets South Africa's need to be seen to be complying with the 40-year-old CITES ban on the international commercial trade in rhino horn, but at the same time obeying the court order that domestic sales be permitted.

(Sourced from <http://www.bizcommunity.com/Article/196/628/166706.html>)

Climate Change Legislation

Environmental Affairs Minister Edna Molewa has confirmed that work is still under way on legislation to 'facilitate' the mitigation and adaptation interventions underpinning SA's 'nationally determined contribution' towards a 'low-carbon and climate-resilient future' worldwide. According to her department's 2017/18 annual performance plan, it is expected to be in place before the end of 2019 – for implementation the following year. In addition to addressing 'planning, reporting, accounting, vulnerability assessment and resilience options', the proposed new statute will provide for the 'periodic projection of needs and costs'. This is noting that, according to the Minister, it will not be possible for SA to intervene 'at the scale possible' without international co-operation on 'enabling' access to the necessary finance and technology – a clarion call repeated on Monday by President Jacob Zuma.

Coal Fired Power Stations – Losing the battle?

Earlier this year, the Thabametsi IPP power station was challenged in court for its failure to consider climate change impacts. In that case, the North Gauteng High Court confirmed that there is a legal obligation for the Minister and DEA to ensure that a climate change impact assessment for projects like coal-fired power stations – which are likely to have substantial climate impacts – is conducted before giving approval.

After the successful challenge against Thabametsi, brought by Centre for Environmental Rights (CER) on behalf of various environmental justice organizations, two new court applications have been made against the Minister of the Department of Environmental Affairs.

The applications challenge the decision of the Minister to authorize proposed independent power producers KiPower and Khanyisa coal-fired power stations, without a full assessment of the plants' climate change impacts.

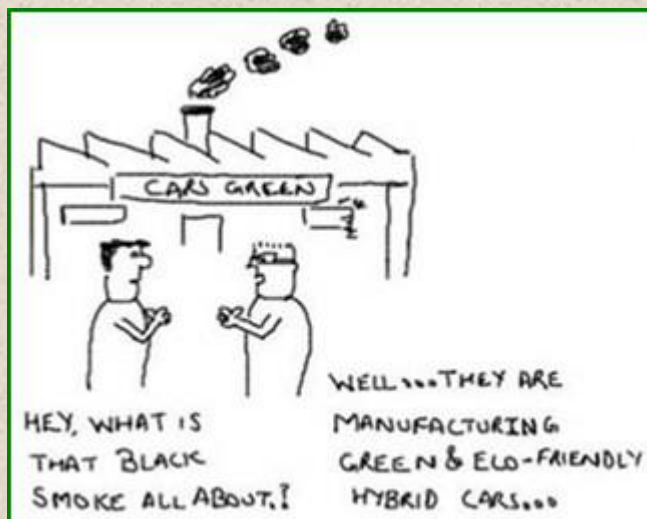
Neither KiPower nor Khanyisa's environmental impact assessments (EIAs) contained a comprehensive assessment of the climate change impacts that the plants will have. Both EIAs identify that there are no economically feasible options to mitigate the plants' GHG emissions. Both KiPower and Khanyisa – given the technology that they propose using – are anticipated to be significant GHG emitters, as Thabametsi's climate change impact assessment has shown.

Both of the power stations have numerous licences outstanding. Importantly, they cannot reach financial close if there are pending legal disputes in relation to their environmental authorisations.

The government respondents in the Khanyisa case now have until 29 September 2017 to file the record of decision – the information that was before the Minister and DEA when they made their decisions that the power station could proceed. The record of decision in the KiPower case is already overdue, but KiPower and Khanyisa have indicated their intention to oppose the litigation.

(Sourced from <https://cer.org.za/news/media-release-another-two-proposed-coal-power-plants-taken-to-court-for-failing-to-consider-climate-impacts>)

JOKE OF THE MONTH



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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