



## **NEWSLETTER- SEPTEMBER 2016**

Dear Readers,

We would like to wish all our readers a HAPPY 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.

Gunn Attorneys has published its new website, please go have a look: [www.gunnattorneys.co.za](http://www.gunnattorneys.co.za)

Follow Gunn Attorneys on social media for updates and information, click on the icon below:



### **INTERNATIONAL ENVIRONMENTAL NEWS**

#### **Air emissions**

A Court in Germany has ruled that a class complaint against Volkswagen may proceed. This class action was launched on behalf of multiple investors who lost money following the diesel emissions cheating scandal. In terms of the German law, a German court must choose one case to decide and then apply to the ruling to other cases. The district court has received 170 investor lawsuits alleging that VW failed to inform investors of the impending scandal. The lawsuits add up to approximately €4 billion, and the district court will choose a pilot case by the end of the year.

Last month, a judge for the US District Court for the Northern District of California gave preliminary approval to a \$15 billion settlement between VW and the US Environmental Protection Agency, California officials and consumers. In June, VW agreed to spend up to \$14.7 billion to settle allegations of cheating emissions tests and deceiving customers in a settlement with US regulators. In March, the Federal Trade Commission filed suit against VW for false advertising.

(Further articles can be accessed on: <http://www.jurist.org/paperchase/2016/08/germany-court-lawsuits-against-volkswagen-may-proceed.php>)

## **NATIONAL ENVIRONMENTAL NEWS**

### **Nuclear Energy**

Environmental organizations challenging SA's nuclear co-operation agreement with Russia, are still waiting for government to provide them with the relevant documents for their court case to proceed.

The South African Faith Communities Environmental Institute and Earthlife Africa want the Western Cape High Court to declare unlawful and unconstitutional the controversial 2014 decision to enter into a nuclear co-operation agreement with Russia.

In court papers, the two organizations say the procurement of a number of nuclear power plants would be the largest procurement to date by SA, and the cost could exceed R1-trillion. Yet it had occurred without fulfilling any of the necessary statutory and constitutional requirements.

It has emerged from the government's answering affidavit that crucial documents were missing from the record of the decision. The record is made up of the documents considered by the government in the decisions being challenged in court.

"The case has been drawn out since October 2015, with government reluctant to provide the information necessary for a fair hearing," she said.

(Article sourced from: <http://businessday.newspaperdirect.com>)

### **Rhino Poaching**

The Department of Environmental Affairs has the latest rhino poaching numbers as well as number of arrests. These numbers can be found at:

[https://www.environment.gov.za/projectsprogrammes/rhinodialogues/poaching\\_statistics](https://www.environment.gov.za/projectsprogrammes/rhinodialogues/poaching_statistics)

### **Rhino horn bust**

On 24 September 2016, the Green Scorpions, the Hawks and other security officials at OR Tambo International Airport, arrested a suspected rhino horn smuggler.

The suspect was intercepted after attempting to take a transit flight to Hong Kong. Three rhino horns, with a total mass of 9.4kg and an estimated value of R12.2 million, were seized. The horns were discovered after the suspect's luggage was screened by border and customs officials. The 48-year-old suspect; a Chinese national was expected to appear in court today.

Consequently, efforts in the fight against rhino horn trade have yielded further arrests in the last week. Four Mozambican and two South African suspected rhino poachers in relation to two separate incidents in the Kruger National Park were arrested. Between 1 January and the end of August 2016 a total of 414 alleged poachers have been arrested in South Africa – of which 177 were in the Kruger National Park and 237 for the rest of the country.

We would like to applaud the combined efforts of the Department of Environmental Affairs, the South African National Defense Force (SANDF), the South African Police Service (SAPS), South African State Security Agency, Justice and Correctional Services Department, South

African National Parks (SANParks), South African Revenue Service (SARS) and provincial conservation agencies.

## **NATIONAL ENVIRONMENTAL CASE LAW**

### **Energy: Tariff increases**

The North Gauteng High Court has decided to set aside the National Energy Regulator's decision to grant it a tariff increase. However, the Court did rule that the revenue allowed for 2016/2017 tariff will remain in force. The High Court ruled that the correct methodology had not been followed by Eskom when it requested an additional tariff increase for 2016 using the Revenue Clearing Account (RCA).

The applicants, who brought the application against Eskom before the court, asked the court to declare unlawful NERSA's decision to grant Eskom an additional R11.2 billion in revenue for higher-than-anticipated energy costs and lower sales in 2013/14.

In paragraph 122 of the judgment, the Judge said: 'I agree with the applicants that, even if the RCA increase is set aside, the revenue approved for the 2016/17 tariff will remain in force, as well as the direct tariff to the customers and the tariff to municipalities'.

"Eskom is still studying the court judgment and its implications on our business," said Eskom.

NERSA has indicated that it will announce its position on the matter in due course.

(Article sourced from: <http://www.bizcommunity.com/Article/196/364/149581.html>)

### **Land claims**

On 28 July 2016, the Constitutional Court handed down a unanimous decision in the matter of *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and others* (CCT40/15 [2016] ZACC 22).

The judgment declared The Restitution of Land Rights Amendment Act 15 of 2014, which reopened a new window for claims, invalid, effective from the date of that judgment.

The reason for its finding was that Parliament failed to satisfy its obligation to facilitate public involvement in accordance with section 72(1)(a) of the Constitution of the Republic of South Africa, 1996.

In its decision, the Constitutional Court also interdicted the commission from processing in whatever manner, whatsoever; any claims lodged between 1 July 2014 and 27 July 2016. This means that new claims cannot be accepted from 27 July 2016 nor can be processed. Claims received during this period are protected under the court order in that the commission is entitled to acknowledge receipt of such claims, but that they can only be processed after the old claims have been settled.

## **ABOUT THE GUNN ATTORNEYS TEAM**

### **Adam Donald Gunn**



Gunn Attorneys was founded by Adam Gunn in June 2014. Adam was admitted as an attorney of the High Court of South Africa in 2001, since then gaining over 13 years of experience in providing legal advice to clients in the resources sector.

He started his career at Webber Wentzel Bowens where he obtained valuable experience in commercial, mining, environmental and property law.

Being a serial entrepreneur and with a love of the outdoors, Adam tried his hand at running his own business in the eco-tourism industry, before returning to a career in law.

Adam also served as a director on the boards of client's companies and this has given him first-hand experience of the strategy required to ensure a successful business.

Gunn Attorneys is therefore positioned to provide your business with strategic legal advice.

Gunn Attorneys has also built a niche practice advising clients on issues relating to the agricultural sector and is proud to be able to offer clients a full-service offering in this regard. Please refer to the attached summary of services.

### **Alexa-Rae Sebba**



Alexa-Rae Sebba completed her BA Law LLB at the University of Johannesburg and her LLM in Environmental Law at the University of the Witwatersrand.

In her LLM, Alexa-Rae focused on Environmental & Sustainable Development Law, Energy Law, Prospecting & Mining Law and International Environmental Law. Alexa-Rae's LLM research report focuses on Section 24 of the Constitution of the Republic of South Africa, 1996. It is titled 'Environmental Ubuntu? The inclusion of non-human animals under section 24 of the Constitution of the Republic of South Africa, 1996.'

Alexa-Rae was accepted to present her report at the 2015 Environmental Law Association of South Africa Postgraduate Conference, held at the University of KwaZulu-Natal.

Alexa-Rae is currently carrying out her articles at Gunn Attorneys.

Our contact details:

Adam Gunn

Phone: +27 (11) 788 2000

Mobile: +27 72 533 4399

Physical: 15 Glenhove Road, Melrose, 2196.

e-mail: [adam@gunnattorneys.co.za](mailto:adam@gunnattorneys.co.za)

[alexa-rae@gunnattorneys.co.za](mailto:alexa-rae@gunnattorneys.co.za)

website: [www.gunnattorneys.co.za](http://www.gunnattorneys.co.za)

Gunn Attorneys welcomes your constructive feedback regarding any aspects of our newsletter.

To unsubscribe from this newsletter, please reply to this e-mail with the subject of the e-mail: "unsubscribe"

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.

