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Privaatsak / Private Bag X180 Centurion 0046, Tel +27 (0)12 643 3400, Faks/ Fax +27 (0)12 663 3178

Skaliegas regulasies deur Oos-Kaapse Hooggeregshof ter syde gestel Fracking regulations set aside by Eastern Cape High court

17 Oktober/October 2017

Skaliegas regulasies deur Oos-Kaapse Hooggeregshof ter syde gestel

Die regering se planne om met 'n skaliegas industrie by wyse van hidrouliese breking voort te gaan het Dinsdag, 17 Oktober 2017, 'n ernstige terugslag ervaar toe die Oos-Kaapse Hooggeregshof die besluit wat in 2015 deur die Minister van Mineraalhulpbronne geneem is om die Petroleum Eksplorasië en Produksie Regulasies (algemeen bekend as die Hidrobreking Regulasies) te promulgeer retrospektief ter syde te stel. Die Hidrobreking Regulasies, wat sedert Junie 2015 van krag is, is as 'n kritiese voorvereiste beskou vir die toekenning van skaliegas eksplorasië en produksie regte in Suid Afrika.

Die aansoek om die tersydestelling van die Hidrobreking Regulasies is deur die President van Agri Oos-Kaap, Douglas Stern, tesame met 15 ander applikante, insluitende die Graaf-Reinet, Cradock, Jansenville en Buffelshoek Landbou Unies, aanhangig gemaak.

In sy beslissing het Regter GH Bloem die onmiskenbare ernstige moontlike omgewingsimpakte van hidrobreking en skaliegas ontwikkeling aanvaar wat betref lug, grond en waterbesoedeling as gevolg van onbeheerbare gas- of vloeistof vrystellings vanweë sogenaamde uitblasings of stortings, die inbreking op natuurlike krake en barste in die aardkors, boorgat disintegreëring, die roes van boorgat omhulsels, beton disintegreëring, lekkasie van hidrouliese breking vloeistowwe en onbeheerbare afvalwater vrystellings.

Advokate namens die applikante het geargumenteer dat die Minister van Mineraalhulpbronne nie by magte was om die Hidrobreking Regulasies te promulgeer nie, dat dit teenstrydig was met die bepalings van die Nasionale Wet op Omgewingsbestuur en die Nasionale Waterwet en dat die promulgering van die regulasies prosedureel onregverdig was. Die Hof het hiermee saamgestem. Die Hof het ook 'n kostebevel teen die Minister toegeken.

Die Hof het daarbenewens ook uitgevaar teen die Minister se promulgering van die Hidrobreking Regulasies wat eensydiglik die ooreenkoms met die Minister van Omgewingsake en die Minister van Waterwese gewysig het in terme waarvan die regulering van die omgewingsimpakte wat met mynwyse gepaard gaan sedert September 2014 deur die Nasionale Wet op Omgewingsbestuur gereguleer word.

In sy kommentaar op die hofuitspraak het Douglas Stern die volgehoue verzet van die Oos-Kaapse landbougemeenskap teen hidrouliese breking in die provinsie geprys.

Uitgereik deur Agri SA, Direkoraat: Korporatiewe Skakeling

Navrae

Mr Janse Rabie, Hoof: Natuurlike Hulpbronne, Agri SA, 076 451 9601

FRACKING REGULATIONS SET ASIDE BY EASTERN CAPE HIGH COURT

Government's intention to proceed with a shale gas industry through hydraulic fracturing (commonly known as fracking) was dealt a significant blow on Tuesday, 17 October 2017, when the Eastern Cape High Court retrospectively set aside the 2015 decision by the Minister of Mineral Resources to enact Regulations for Petroleum Exploration and Production (commonly known as the Fracking Regulations). The Fracking Regulations, which have been in place since June 2015, were regarded as a vital statutory requirement for the granting of shale gas exploration and production rights in South Africa.

The application for the review and setting aside of the Fracking Regulations was brought by the President of Agri Eastern Cape, Douglas Stern, together with 15 other applicants, including the Graaff-Reinet, Cradock, Jansenville and Buffelshoek Agricultural unions.

In reaching his decision, Judge GH Bloem accepted the undisputed major possible impacts of fracking and shale gas development with respect to air, soil and groundwater contamination due to uncontrolled gas or fluid flows arising from blow-outs or spills, interception of naturally occurring fractures and fissures, well failures, corrosion of casings, cementing failure, leaking fracturing fluid and uncontrolled waste water discharge.

Advocates for the applicants argued that the Minister of Mineral Resources was not authorised to make the Fracking Regulations, that it contravened the provisions of the National Environmental Management Act and the National Water Act and that their making was procedurally unfair. The Court agreed. It also made an adverse costs order against the Minister of Mineral Resources.

The Court further took issue with the Minister of Mineral Resources' enactment of the Fracking Regulations which unilaterally amended an agreement with the Minister of Environmental Affairs and Minister of Water Affairs in terms of which the regulation of the environmental impacts of mining have since September 2014 fully been regulated in terms of the National Environmental Management Act.

In commenting on the judgement, Douglas Stern commended the efforts of the Eastern Cape agricultural community in persevering with their continued opposition to fracking in that province.

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Enquiries

Mr Janse Rabie, Head: Natural Resources, Agri SA, 076 451 9601