

ANKER COAL – STEENKOOLSPRUIT (STATE v VENTER & OTHERS)

Importance:	This case, one of two separate prosecutions being brought against Anker Coal and Mineral Holdings (Pty) Ltd and its director and servants, is of high importance for being the first to invoke the criminal provisions of the National Environmental Management Act 107 of 1998 (NEMA), the National Water Act 36 of 1998 (NWA) and the environmental provisions of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) against a mining company. It will also be important for establishing whether misrepresentations made in an environmental management plan (EMP), and made during the course of the public consultation process for obtaining a prospecting right, constitute the common law crime of fraud.
Parties:	State v Gray Venter (person in charge of drilling operations on the farm Steenkoolspruit in terms of the agreement between Anker Coal and ACS CORE DRILLING COMPANY); (2) Nhambo Jambi (a senior geologist of Anker Coal who instructed Accused No. 1 where to drill and was also responsible for drilling operations and procedures); (3) Albrecht Frick (a director of Anker Coal); and (4) Anker Coal and Mineral Holdings (Pty) Ltd (as represented by Frick). The charges were laid by the Highveld Waters Protection Group.
Alleged Facts:	Anker Coal appears to have been granted a prospecting right for coal on the farm Steenkoolspruit near Amsterdam in Mpumalanga (owned by Dr Collins Forbes) by the Department of Minerals. To this end, it submitted a Prospecting and Works Programme as well as an Environmental Management Plan (EMP) to the Regional Manager in the period May to August 2005. The charges arose from drilling subsequently undertaken on the farm between January 2009 and April 2010. It was alleged that drilling was conducted in contravention of a number of provisions of NEMA, the NWA and the environmental provisions of the MPRDA. These included drilling a borehole within 10 metres from the banks of the Usutu River, causing groundwater to flow continuously from the borehole, failing to fill and cap all boreholes properly, failing to remove core drillings from the drilling sites, drilling boreholes within a wetland, failing to manage environmental impacts in accordance with the approved EMP and failing to comply with a notice issued by the DMR to rectify and rehabilitate the damage caused. Albrecht Frick and Anker Coal and Mineral Holdings were also charged with fraud relating to various representations made, inter alia, to Collins Forbes and to the Regional Manager, Mpumalanga. This included, in particular, a number of misrepresentations made in the EMP (including statements to the effect that the proposed operation would be more than 60 m from open water and that consultation with Dr Collins Forbes took place).
Forum:	Regional Magistrates Court for Ermelo, Mpumalanga
Issues for decision:	The court will be required to decide whether Accused 1 – 4 are guilty on the following counts and, if so, impose an appropriate sentence: <ul style="list-style-type: none"> • Count No. 1: Contravention of s 28(14)(a) of the National Environmental Management Act 107 of 1998 (failure to comply with the duty of care and remediation of environmental damage). • Count No. 2 (applicable only to Accused 3 & 4): Contravention of s 24F(1)(a) of the National Environmental Management Act 107 of 1998 (failure to conduct an environmental authorization for a listed activity,

	<p>namely Activity 13 – the abstraction of groundwater at a volume where any general authorization issued in terms of the National Water Act will be exceeded).</p> <ul style="list-style-type: none"> • Count No. 3: Contravention of s 151(1)(j) of the National Water Act 36 of 1998 (commission of an act or omission that detrimentally affected or was likely to affect a water resource). • Count No. 4: Contravention of s 38(1)(c) of the Mineral and Petroleum Resources Development Act 28 of 2002 (failure to comply with an environmental management plan). • Count No. 5: Contravention of s 98(a)(vi) of the Mineral and Petroleum Resources Development Act 28 of 2002 (failure to comply with a notice issued by the Regional Manager, Mpumalanga (Department of Minerals) to take immediate rectifying steps to rehabilitate all boreholes that had been left unsealed, to remove all the core materials which had been dumped in the wetland, and to submit a rehabilitation plan and strategy within 14 days). • Count No. 6 (applicable only to Accused 3 and 4): That the accused are guilty of fraud (read in each instance with section 103 of the Criminal Procedure Act 51 of 1977) arising from misrepresentations made to Collins Forbes, the owner of Steenkoolspruit. • Count No. 7 (applicable only to Accused 3 and 4): That the accused are guilty of fraud arising from misrepresentations made to the Regional Director regarding the entity that would conduct the drilling operations. • Count No. 8 (applicable only to Accused 3 and 4): That the accused are guilty of fraud arising from misrepresentations made to the Regional Director and/or Collins Forbes regarding statements made in the environmental management plan (EMP) submitted for purposes of obtaining a prospecting right). • Count No. 9 (in respect of Accused 2: That the accused is guilty of fraud arising from misrepresentations made to a DMR official (Sonia Chipu) regarding the extent to which boreholes had been sealed in terms of the EMP.
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Document	Author /Originator	Date
Annexure A to charge sheet setting out nature of the charges	DPP	N/D
Joint Media Release by CER/FSE on the prosecution of Anker Coal and Mineral Holdings (Pty) Ltd	CER/FSE	22 February 2011