

**ESCARPMENT ENVIRONMENTAL PROTECTION GROUP & WONDERFONTEIN
ENVIRONMENTAL COMMITTEE v DEPARTMENT OF WATER AFFAIRS & XSTRATA SOUTH
AFRICA (PTY) LTD, 2011 (UNREPORTED, WT 24/11/2009)**

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| Importance | The comments set out in the case of <i>Gideon Anderson t/a Zonnebloem Boerdery v Department of Water and Environmental Affairs & another</i> 2006 (Unreported, WT 24/02/2010) regarding the approach of the Water Tribunal to the issue of locus standi apply similarly to this case. |
| Parties | First Appellant: Escarpment Environmental Protection Group (EEPOG) Second Appellant: Wonderfontein Environmental Committee First Respondent: Department of Water and Environmental Affairs Second Respondent: Xstrata South Africa (Pty) Ltd |
| Facts | The DWAF issued a water use licence to Xstrata South Africa (Pty) Ltd on 9 December 2009 without at any stage inviting written comments from interested parties or requiring the applicant to call for such comments as envisaged by s 41 of the National Water Act 36 of 1998. The appellants lodged objections with DWAF regarding water use licence before it was issued and made continuous attempts to engage meaningfully with both DWAF and Xstrata mining regarding their objections. The appellants subsequently lodged an appeal against the granting of the licence on 28 April 2010. The issue of the appellants' <i>locus standi</i> was placed in issue by Xstrata South Africa on 30 March 2011. |
| Relief sought | The appellants appealed to the Water Tribunal against the granting of a water use licence to Xstrata South Africa (Pty) Ltd, calling for it to be set aside. |
| Legal Issues & Judgment | The Tribunal's finding that the first and second appellants lacked <i>locus standi</i> to bring the appeal was based on the following arguments: <ul style="list-style-type: none"> • Both a literal and a constitutional interpretation of s 148(1)(f) of the NWA read together with s 41 answer the issue of the appellants' <i>locus standi</i> in the negative. This is because ss 24 and 33 do not necessarily entail the right to follow internal or administrative appeal procedures, such as lodging appeals with the Tribunal. • In the case of <i>Carolyn Nicola Shear v The Regional Head: Gauteng Regional Department of Water Affairs & Eye of Africa Development (Pty) Ltd</i> (unreported WT 19/02/2009) the Tribunal had set out what it considered to be the 'whole appeal scheme' of the NWA, viz. that appeals may only be lodged by persons mentioned in s 148(1); that where no notice was published in the media as contemplated by s 41(4) of NWA, no right of appeal in terms of s 148(1)(f) of the NWA arises in favour of any objector. • Such interpretation does not offend the Constitution and only recognizes the extension of the right of appeal to the Tribunal to a class of persons specified in the NWA. |

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| | <ul style="list-style-type: none">• The Promotion of Administrative Justice Act, 2000 does not confer or make provision for the right to internal appeal procedures. The Tribunal is not a tribunal established for purposes of administrative review, and anyone who wishes to review an administrative action is free to approach the courts to do so. |
| Outcome | The appeal was dismissed and the file closed. |
| Obiter | None. |