

**ANKER COAL/GOLFVIEW MINING – LELIESFONTEIN (STATE v KRUGER & OTHERS)**

<b>Importance:</b>	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 programme submitted for purposes of obtaining a mining right constitute the common law crime of fraud.
<b>Parties:</b>	State v Sonita Kruger (environmental officer at Golfview Mining (Pty) Ltd); (2) Robert Pryde (mine manager at Golfview Mining (Pty) Ltd); (3) Albrecht Frick (a director of Golfview Mining (Pty) Ltd); (4) Anker Coal and Mineral Holdings (Pty) Ltd (as represented by Frick); and Golfview Mining (Pty) Ltd (as represented by Frick). The charges were laid by the Highveld Waters Protection Group.
<b>Alleged Facts:</b>	Anker Coal/Golfview Mining was granted a mining right in respect of coal on the farm Leliesfontein in Mpumalanga. The charges arose from mining operations undertaken on the farm between 4 March 2009 – 17 August 2010. It was alleged that the mining was conducted in contravention of a number of provisions of NEMA, the NWA and the environmental provisions of the MPRDA. These included: Diversion of the Holbankspruit, as well as an unnamed tributary; mining within 100m of such water resources; mining within the 1:100 year floodline of these water resources; the non-existence of pollution control dams on the site; failure to separate clean and dirty water; constructing and using a washing bay on-site, downslope of the afore-mentioned water resources; mining in a wetland; failure to deposit the run of coal within each boxcut area; and failure to obtain a water use licence for taking water from a water resource, storing water, discharging waste or water containing waste into a water resource, disposing waste in a manner that can impact on a water resource, and altering the bed, banks, course or characteristics of the water resource. Most of these activities were also conducted contrary to commitments made in terms of the environmental management programme (EMP). The charges included procedural infractions such as failing to notify the Department of Water and Environmental Affairs of the intention to open a new mine or commence a new activity regulated by the GN 704 regulations, as well as contravention of the requirement against submitting inaccurate, incorrect or misleading information in the mining application/EMP. In this regard, accused 3 – 5 had maintained in the EMP that there were no wetlands on the property to which the mining right pertained and that no wetland or river would be mined.
<b>Forum:</b>	Regional Magistrates Court for Ermelo, Mpumalanga
<b>Issues for decision:</b>	<p>The court will be required to decide whether Accused 1 – 5 are guilty on the following counts and, if so, impose an appropriate sentence:</p> <ul style="list-style-type: none"> <li>• Count No. 1: Contravention of s 28(14)(a) or alternately (b) of the National Environmental Management Act 107 of 1998 (failure to comply with the duty of care and remediation of environmental damage).</li> <li>• Count No. 2: Contravention of s 151(1)(a) of the National Water Act 36 of 1998 (using water in a manner otherwise permitted in terms of the Act).</li> </ul>

- Count No. 3: Contravention of s 151(1)(i) of alternately 151(1)(j) of the National Water Act 36 of 1998 (unlawful and intentional/negligent commission of any act or omission which pollutes or is likely to pollute or detrimentally affects or is likely to detrimentally affect a water resource).
- Count No. 4: Contravention of s 67(1)(a) or alternately (b) of the Mpumalanga Nature Conservation Act 10 of 1998 (prohibits the dumping of any substance or thing, whether solid, liquid or gaseous that is, or is likely to be or to become injurious to aquatic and associated biota; and carrying on a business that has these effects without taking the necessary steps to prevent such substance from entering or percolating into such waters). Note: This Act allows for a continuing offence of R10 000 for each day the offence continues.
- Count No. 5: 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. 6: Contravention of s 42(1) alternately 42(2) of the Mineral and Petroleum Resources Development Act 28 of 2002 (failure to manage residue stockpiles and residue deposits in the prescribed manner on a site demarcated for that purpose, alternately, temporarily or permanently depositing any residue stockpile or deposit on a site other than the demarcated site).
- Count No. 7: Contravention of regulation 2 of GN 704 *Government Gazette* 20119 of 4 June 1999, issued in terms of the National Water Act 36 of 1998 (Regulations on Use of Water for Mining and Related Activities Aimed at the Protection of Water Resources) (failure to notify Dept of Water and Environmental Affairs of intention to operate any new mine or conduct any new activity not less than 14 days before the start of such operation or activity).
- Count No. 8: Contravention of regulation 4(a) of GN 704 Regulations (prohibits locating any residue deposit, dam or reservoir within the 1:100 year floodline or within a horizontal distance from 100m from a water resource).
- Count No. 9: Contravention of regulation 4(b) of GN 704 Regulations (prohibits locating any residue deposit, dam or reservoir within the 1:50 year floodline or within a horizontal distance from 100m from a water resource, whichever is the greatest).
- Count No. 10: Contravention of regulation 6(a) of GN 704 Regulations (requires confining unpolluted water to a clean water system, away from any dirty area).
- Count No. 11: Contravention of regulation 6(c) of GN 704 Regulations (requires collecting the water arising within any dirty area, including the water seeping from mining operations, outcrops or other activity, into a dirty water system).
- Count No. 12: Contravention of regulation 7(a) of GN 704 Regulations (requires taking reasonable measures to prevent water containing waste or any substance which is likely to cause pollution of a water resource from entering that resource, whether by natural flow or seepage, and also

	<p>requires that the waste-containing water or substance be collected for re-use, evaporation, purification or disposal)</p> <ul style="list-style-type: none"> <li>• Count No. 13: Contravention of regulation 7(b) of GN 704 Regulations (requires taking reasonable measures to design, modify, locate, construct and maintain water systems – including residue deposits – in any area so as to prevent the pollution of any water resource and to restrict the possibility of damage to the riparian or in-stream habitat through erosion or sedimentation, or the disturbance of vegetation, or the alteration of flow characteristics).</li> <li>• Count No. 14: 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, namely Activities 1, 4 and 12 of GN 386 <i>Government Gazette</i> 28753 of 21 April 2006).</li> <li>• Count No. 15 (in respect of accused number 3 – 5): : Contravention of s 98(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 (prohibition against submission of inaccurate, incorrect or misleading information in connection with any matter required to be submitted in terms of the Act, including information submitted in the application for a mining right or in the environmental management programme). Alternately, that accused 3 – 5 are guilty of fraud in terms of s 103 of the Criminal Procedure Act 51 of 1977.</li> <li>• Count No. 16: Contravention of s 24F(2)(e) of the National Environmental Management Act 107 of 1998 (requirement to comply with an approved environmental management programme).</li> </ul>
--	--

**Paper Trail:**

<b>Document</b>	<b>Author /Originator</b>	<b>Date</b>
Annexure A to charge sheet setting out nature of the charges	DPP	N/D