


Judge stops fracking exploration

News | 4 May 2017, 10:41pm

 Bernadette Wolhuter

In what has been described by KwaZulu-Natal agricultural union (Kwanalu) as a “massive victory” for local farmers, a Western Cape High Court judge this week set aside a decision taken to accept a company’s application to search for oil and gas in northern KwaZulu-Natal.

In his ruling, Judge Daniel Dlodlo said proper procedures had been flouted in how the South African Agency for Promotion of Petroleum and Exploitation (Pasa) had accepted an application for an exploration right made by Rhino Oil and Gas Exploration SA.

Exploration can lead to hydraulic fracturing (known as fracking), which has faced stern resistance from SA communities, particularly in the Karoo.



Fracking protesters will welcome a Western Cape High Court judge’s ruling to set aside a decision to accept a company’s application to search for oil and gas in northern KwaZulu-Natal. Picture: Brenton Geach

Judge Dlodlo set aside Pasa’s acceptance of Rhino’s application and interdicted the company from forging ahead with the broader process.

The judge was dealing with a court case brought by Normandien Farms against Pasa, a state-owned company that controls the granting of exploration rights, Rhino Oil and Gas and the minister of mineral resources. Normandien owns various farms in and around northern KZN.

"The founding papers reveal that (Normandien) incurred a capital investment of, in the region of, R40 million to set up a water-bottling plant on the farm, Albany," Judge Dlodlo said on Tuesday. "It is feared that if the exploration right is granted, it could well affect such operation." Rhino lodged its application for an exploration in mid-2016 and Pasa subsequently accepted same.

But Normandien maintained in its case before the court that the processes followed to notify the public about the acceptance of the application had not been done properly.

During proceedings, Rhino's legal team contended that what Normandien was complaining about constituted either "administrative actions" or "merely preliminary steps taken en route to administrative act". Its lawyers maintained that the company had complied with what was required of it.

Judge Dlodlo said that in accordance with the Mineral Resources Development Act: "Within 14 days after accepting an application lodged Pasa must make known and publish this fact." He said the notices that were sent out were defective as they did not refer to specific properties affected by the application. Judge Dlodlo emphasised that the Act allowed for "serious inroads upon the rights of a surface owner".

Kwanalu said that Rhino Oil and Gas submitted notices of applications for exploration in the KZN Midlands and in northern KZN, in late 2015 and early 2016 respectively. "Both applications covered a total area of more than 1600000ha and in excess of 15000 farms," the union said.

Union chief executive Sandy La Marque said the judge's ruling was "a huge relief".

With regard to the KZN Midlands exploration right application, La Marque said: "We are at the advanced stages of instituting legal intervention."

Rhino was not available for comment.