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11 June 2019

To: Agri SA Affiliates

*JUDGEMENT BY THE SUPREME COURT OF APPEAL (SCA):
RHINO OIL AND GAS EXPLORATION SA (PTY) LIMITED V
NORMANDIEN FARMS (PTY) LIMITED AND ANOTHER*

Due to the lack of sufficient information as to the availability of the significant amounts of water required for oil and gas exploration and production, and concerns with respect to contamination of water resources (particularly where hydraulic fracturing or “fracking” techniques might be applied), Agri SA does not support government’s apparent appetite for an oil and gas production industry in South Africa. We are of the view that fracking could ultimately have a devastating effect on the agricultural sector in this country.

On 31 May 2019, the Supreme Court of Appeal handed down judgement in the matter of Rhino Oil and Gas Exploration SA (Pty) Limited v Normandien Farms (Pty) Limited and Another (the Normandien matter). Agri SA, through its provincial affiliate in KwaZulu-Natal (Kwanalu), provided financial support to Normandien in opposing Rhino in this case.

The matter concerned the validity of the acceptance of an exploration right application by the Petroleum Agency of South Africa (PASA) in terms of the Mineral and Petroleum Resources Development Act, 2002 (MPRDA). Rhino’s application stands to affect some 5 500 farms over approximately 2 million hectares of land in KwaZulu-Natal. The SCA overturned the previous judgment of the Western Cape High Court that the decision of PASA to accept the application was unlawful since material procedures were not followed. The SCA held that Normandien could not ask for the acceptance of the exploration right application to be set aside on review since PASA acceptance of Rhino’s application did not constitute administrative action on PASA’s part and because Normandien was not prejudiced thereby.

While the SCA judgement comes as a disappointment to Normandien Farms, Agri SA and Kwanalu, we respect the court’s ruling.

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Affiliates need to note that Rhino's application still has to be considered and decided upon by PASA. The process will still require a decision by the Minister of Minerals and Energy as to whether or not to grant environmental authorisation for Rhino's proposed exploration activities, which may or may not be appealed (then to the Minister of Environmental Affairs, Forestry and Fisheries) whose decision may, in turn, also form the subject of review proceedings. Prior to any actual drilling taking place, the necessary authorisation processes in terms of, amongst others, the National Water Act will also have to be undertaken. **Agri SA will participate in the deliberations and decision-making processes related to oil and gas exploration and production in South Africa to ensure that government's actions on this divisive issue are properly informed, just and administratively fair.**

Affiliates further need to note that the effect of Normandien Farms (with the support of Agri SA and Kwanalu) taking on this matter has had a significant delaying effect on Rhino's proposed exploration activities in KwaZulu-Natal. Farmers, who undoubtedly stand to be significantly affected by oil and gas exploration and production activities have shown their resolve in opposing an oil and gas production industry in South Africa.

Agri SA recently launched review proceedings in the Pretoria High Court against the dismissal of appeals by the acting Minister of Environmental Affairs in four other applications for environmental authorisations by Rhino covering the Northwest-, Free State-, KwaZulu-Natal and Eastern Cape Provinces. The possible effect of the SCA ruling in the Normandien-matter will be thoroughly considered for purposes of Agri SA's current review application as well for purposes of the current appeal by the Minister of Minerals and Energy against the decision in the Eastern Cape High Court in favour of Agri Eastern Cape as to the invalidity of the Minister's technical regulations related to fracking.

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