



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Ref: 02/1/5/2

MINISTER

QUESTION 86 FOR ORAL REPLY: NATIONAL COUNCIL OF PROVINCES

A draft reply to Mrs A N D Qikani (ANC-EC) to the above-mentioned question is enclosed for your consideration.

Mr Fundisile Mketeni
DIRECTOR-GENERAL (ACTING)

DATE:

DRAFT REPLY APPROVED/AMENDED

MRS B E E MOLEWA, MP
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE:

NATIONAL COUNCIL OF PROVINCES

(For oral reply)

QUESTION NO. 86

INTERNAL QUESTION PAPER NO. 10 of 2013 CO225E

DATE OF PUBLICATION: 30 April 2013

Mrs A N D Qikani (ANC-EC) to ask the Minister of Water and Environmental Affairs:

Whether, with regard to the recent judgment by the Nelspruit Regional Court, any other cases of a similar nature are pending or will be brought before the courts in the near future; if not, what is the position in this regard; if so, what are the relevant details?

**Mrs A N D Qikani (ANC-EC)
SECRETARY TO PARLIAMENT
HANSARD
PAPERS OFFICE
PRESS**

THE MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS ANSWERS:

Although the judgment was groundbreaking from an Environmental Impact Assessment (EIA) perspective, this type of order, granted under the Prevention of Organised Crime Act, Act 121 of 1998 (POCA), has previously been used by South African conservation authorities to deprive offenders of the benefits obtained in many wildlife-related crimes.

The case that was before the Nelspruit Regional Court involved the undertaking of a listed activity in the absence of the necessary environmental authorisation. The company commenced with the EIA listed activity without having employed the services of an EIA practitioner or obtaining an environmental authorisation from the relevant authorities prior to such commencement.

In relation to the facts of this case, there are many similar cases in various stages of investigation and already before our criminal courts that involve the commencement of listed activities in the absence of the relevant environmental authorisation. In fact, this type of contravention represents one of the most prevalent environmental crimes currently occurring across the country. However, this was the first case involving the illegal commencement of a listed activity where the court granted a confiscation order as a result of the benefit that accrued to the company in terms of the POCA.

The order granted by the court has sent out a strong deterrent message to people and companies who may be thinking of engaging in similar unlawful activities. The POCA is a suitable tool to deter and prevent companies from evading or avoiding their obligations in terms of environmental legislation. The confiscation order represents an additional financial deterrent, over and above the normal sentence handed down by a court under the penalty provisions of environmental legislation. The judicious application of the POCA will encourage such companies to not only pursue profit, but to also care for our precious environment in undertaking their operations.

The lessons learnt in this case and the way in which the case was argued will be communicated to the environmental authorities (through the Mintech working group) as well as the various Asset Forfeiture Unit offices across the country in order to encourage the use of the POCA in other environmental cases.

It should be noted that the company has submitted its intention to appeal the decision to the High Court and it will be important to see how the High Court views this matter and whether or not it agrees with the initial decision.

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