



FACTSHEET: COURT CASE AGAINST OIL AND GAS EXPLORATION OFF KWAZULU NATAL COAST

SOUTH DURBAN COMMUNITY ENVIRONMENTAL ALLIANCE VS MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT, ENI SOUTH AFRICA BV AND SASOL

BACKGROUND AND PARTIES

- The South Durban Community Environmental Alliance (SDCEA) has taken the Minister of Environment to court over the authorisation of offshore exploration drilling off the Kwa-Zulu Natal coast.
- The Minister has authorised Eni South Africa BV (a subsidiary of Eni, an Italian-based company) and Sasol to explore oil and gas off the coastline.
- This authorisation was issued in terms of the National Environmental Management Act, 108 of 1996.
- Should it go ahead, the project will result in the drilling of up to six exploration and appraisal wells within Offshore Block ER236. This block sits off the Kwa-Zulu Natal coast between East London and St Lucia.
- The wells will be drilled in two “areas of interest” within the block, but their exact location within each block is still to be determined.
- A drillship will be used in the process, which will result in various planned and unplanned discharges into the ocean environment.
- The project is not yet underway. If there is any indication that the project will commence, SDCEA will approach the High Court for an interdict to stop them from commencing.
- SDCEA is supported by Natural Justice and Green Connection, and represented by the law firm, Cullinan & Associates.
- The case will be heard in the Pretoria High Court.

KEY DATES

- **August 2019:** Deputy Director General (DDG) of Mining, Minerals and Energy authorises the exploration project.
- **October 2019:** SDCEA, as well as 46 other individuals and organisations, appeal the authorisation.
- **December 2020:** Minister of Forestry, Fisheries and the Environment rejects all appeals.
- **June 2021:** SDCEA files a review application in the Pretoria High Court to review both the authorisation and the rejection of the appeal.

The Minister and other parties have 3 weeks to indicate whether they will oppose the application.

The court date will be determined in due course.

POTENTIAL THREATS TO PEOPLE AND ENVIRONMENT

- Potential drilling sites are located close to areas identified as “protection worthy”. These include several Marine Protected Areas (MPAs), Critical Biodiversity Areas (CBAs) and Ecologically and Biologically Significant Areas (EBSAs).
- Potential impacts could be felt by coral reefs (including deep sea corals which are incredibly slow forming and sensitive), whale species like the humpback and southern right whales, fish species and bird species.
- Drilling may also impact the “sardine run”, an important ecological process and socio-economic contributor to the east coast and its communities.



Climate crisis
Marine protected areas
Impacts on ocean species
Sardine Run
Oil spills

- The project may also have an impact on fishing, surfing and other communities who use the ocean for recreational and livelihood opportunities.
- Experts believe that in the event of a catastrophic blow out, oil will reach protected areas as well as the shoreline, causing long-lasting adverse effects for both people in coastal communities, as well as to marine organisms.
- The exploration is intended by the oil companies to reach full exploitation, which will lead to even higher greenhouse gas emissions, which contribute to climate change.

COURT ARGUMENTS AGAINST THE PROJECT

- SDCEA bases their arguments on various laws:

National Environmental Management Act

National Environmental Management: Integrated Coastal Management Act

National Environmental Management: Protected Areas Act

Environmental Management: Biodiversity Act

- These laws intend to preserve and protect the coast and ocean for present and future generations.
- Based on this, the State is required to preserve and protect the coastal zone and the biodiversity contained within it, which is held in trust by the State on behalf of all South Africans, including future generations.
- SDCEA argues that the Integrated Coastal Management Act requires that the government considers the long-term impacts that oil exploration and drilling would have on both humans and other living organisms which depend on marine and coastal ecosystems. This is called taking an “eco-centric” approach to decision-making.
- SDCEA argues that the Minister should have considered the climate change implications of oil and gas, including the emissions which will arise from the intended exploitation of the fossil fuels. South Africa has certain climate change commitments that require it to reduce greenhouse gas emissions.
- The court case also argues that gas is not needed to supplement the national electricity grid, as renewable energy is a recognised reliable and cost-effective source of energy.
- Furthermore, the impacts on the marine life, as well as coastal communities, could be hugely detrimental.
- SDCEA believes that this project will not bring benefits, only risks to the public at large.

Breaches National Environmental Management Act
State is required to protect the oceans and coastline
What about future generations
Alternative fuels are available like renewable energy
Climate Change impacts

IMPACT OF WINNING THE CASE

If SDCEA wins this case and the decision to grant authorisation is set aside, it will stop the project from going further, unless a new environmental authorisation is applied for. However, the new Environmental Impact Assessment will need to be more substantial than the previous one and take into account many issues, such as an eco-centric approach to the ocean, climate change impacts and impacts on areas like Marine Protected Areas.

If the judge accepts the arguments, it will influence how (and whether if at all) deep sea oil and gas exploration and production in South Africa will be conducted.

It may also influence other cases that deal with climate impacts of projects. The courts are now increasingly ruling that climate change impacts from greenhouse gas production must be considered when projects are approved.