

## 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*

####

### *FEITEBLADSY: HOFSAK TEEN OLIE- EN GASVERKENNING AAN KWAZULU NATAL-KUS*

### *South Durban Community Environmental Alliance (SDCEA) teen Minister van Bosbou, Visserye en die Omgewing, Eni South Africa BV en Sasol*

*Last update: June 2021*

#### **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**.

#### **AGTERGROND EN BETROKKE PARTYE**

*Die ‘South Durban Community Environmental Alliance’ (SDCEA) het die Minister van Omgewing voor die hof gedaag oor die magtiging om voort te gaan met verkennende boorwerk aan die Kwa-Zulu Natalse kus.*





*Die Minister het Eni South Africa BV ('n filiaal van Eni, 'n Italiaanse maatskappy) en Sasol gemagtig om vir olie en gas te soek aan die kuslyn.*

*Hierdie magtiging is ingevolge die Wet op Nasionale Omgewingsbestuur, 108 van 1996 uitgereik.*

*Indien die boorwerk sou voortgaan, sal die projek lei tot die boor van ses eksplorasië- en evalueringputte in die offshore-blok ER236. Hierdie blok is aan die Kwa-Zulu Natalse kus tussen Oos-Londen en St Lucia.*

*Die putte sal geboor word in twee focus areas binne die blok, maar die presiese ligging binne elke blok sal nog bepaal word.*

*'n Skip met boor toerusting sal gedurende die proses gebruik word, wat sal lei tot verskeie beplande en onbeplande afvoer in die see omgewing.*

*Die projek is nog nie aan die gang en sou daar enige aanduiding bestaan dat die projek sal begin, sal SDGOA die Hooggeregshof nader vir 'n interdik om te verhoed dat daar met die boorwerk begin word.*

*SDGOA word ondersteun deur 'Natural Justice' en 'Green Connection' en word verteenwoordig deur die regsfirma, Cullinan & Associates.*

*Die saak sal gehoor word in die Pretoria hooggeregshof.*

## 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.*

## BELANGRIKE DATUMS

**Augustus 2019:** Adjunk-direkteur-generaal (DDG) vir mynbou, minerale en energie gee toestemming vir die eksplorasiëprojek.

**Oktober 2019:** SDCEA, sowel as 46 ander individue en organisasies, appelleer teen die magtiging.

**Desember 2020:** Minister van Bosbou, Visserye en die Omgewing verwerp alle beswarings.





**Junie 2021:** SDCEA dien 'n hersieningsaansoek aan in die hooggeregshof in Pretoria om sowel die magtiging asook die verwerping van die appèl te hersien.

*Die Minister en ander partye het drie weke tyd om aan te dui of hulle die aansoek sal teenstaan.*

*Die hofdatum sal mettertyd bepaal word.*

## **POTENTIAL THREATS TO THE ENVIRONMENT AND PEOPLE**

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.

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.

## **MOONTLIKE DREIGEMENTE VIR DIE OMGEWING EN MENSE**

*Moontlike boorplekke is naby gebiede wat geïdentifiseer was as "beskermingswaardig". Dit sluit in verskeie mariene beskermde gebiede (MPA's), kritieke biodiversiteitsareas (CBA's) en ekologiese en biologiese beduidende gebiede (EBSA's).*

*Moontlike gevolge kan deur koraalriwwe (insluitend diepsee-korale wat baie stadig vorm en sensitief is), walvisspesies soos die bultrug en suidelike-regs walvisse, visspesies en voëlspesies gevoel word.*

*Boorwerk kan ook die 'sardienloop' impak, 'n belangrike ekologiese proses en 'n sosio-ekonomiese bydraer tot die ooskus en sy gemeenskappe.*

*Die projek kan ook 'n impak hê op visvang, branderplankry en ander gemeenskappe wat die see gebruik vir ontspannings- en werksgeleenthede.*





*Kenners is van mening dat in die geval van 'n katastrofiese uitbarsting, sal olie die beskermde gebiede sowel as die kuslyn bereik, wat langdurige nadelige gevolge sal inhou vir mense in kusbegemeenskappe sowel as mariene organismes.*

*Die oliemaatskappye beoog dat die tot volle ontginning sal lei wat sal lei tot hoër kweekhuisgasvrystellings, wat sal bydra tot klimaatsverandering.*

### **THE COURT ARGUMENTS AGAINST THE AUTHORISATION OF 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; and National 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.

### **DIE HOF ARGUMENTE TEEN DIE MAGTIGING VAN DIE PROJEK**

*SDCEA se argumente is gebaseer op verskeie wette: die Wet op die Nasionale Omgewingsbestuur; Nasionale Omgewingsbestuur: Wet op Geïntegreerde Kusbestuur; Nasionale Omgewingsbestuur: Wet op Beskermde Gebiede; en Nasionale Omgewingsbestuur: Wet op Biodiversiteit.*

*Hierdie wette poog om die kus en oseaan te bewaar en te beskerm vir huidige en toekomstige generasies.*

*Die Staat is op grond hiervan verplig om die kussonne en die biodiversiteit daarin, te bewaar en te beskerm, wat namens alle Suid-Afrikaners, insluitende toekomstige generasies, deur die staat in ‘trust’ gehou word.*

*SDCEA is argumenteer dat die Wet op die Geïntegreerde Kusbestuur vereis dat die regering in ag moet neem die langtermyn-gevolge wat olieëksplorasië en -boorwerk sal hê op mense en ander*





*lewende organismes wat afhanklik is van mariene en kus-ekosisteme. Dit word 'n 'eko-sentriese' benadering tot besluitneming genoem.*

*SDCEA argumenteer ook dat die Minister moet in ag neem die implikasies van olie en gas op die klimaat, insluitend die uitlatings wat voortspruit uit die beoogde ontginning van die fossielbrandstowwe. Suid-Afrika het sekere klimaatsverandering verpligtinge wat vereis dat dit kweekhuisgas vrystellings verminder.*

*Die hofsaak voer ook aan dat gas nie noodsaaklik is om die nasionale elektrisiteitsnetwerk aan te vul nie, aangesien hernubare energie 'n betroubare en koste-effektiewe energiebron is.*

*Verder kan die impak op seelewe, sowel as kusgemeenskappe, baie nadelig wees.*

*SDCEA meen dat hierdie projek nie voordelig sal wees nie en dat dit slegs risikos vir die groter publiek inhou.*

## **WHAT WOULD BE THE 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.

## **WAT SAL DIE IMPAK VAN DIE WINS VAN DIE SAAK WEES?**

*As SDCEA die saak wen en die besluit om magtiging te verleen word tersyde gestel, sal dit verhoed dat die projek verder gaan, tensy daar aansoek gedoen word vir 'n nuwe omgewingsmagtiging. Die nuwe omgewingsimpakstudie moet egter meer omvattende wees as die vorige een en moet baie probleme in ag neem, soos 'n ekosentriese benadering tot die see, klimaatsverandering en die impak op gebiede soos beskermde mariene gebiede.*

*As die regter die argumente aanvaar, sal dit 'n invloed hê (en of dit hoegenaamd so sal wees) hoe die soeke en produksie van diepsee-olie en -gas in Suid-Afrika gedoen mag word.*

*Dit mag ook ander sake beïnvloed wat te doen het met die impak van klimaatsverandering op projekte. Die hofse beslis nou meer dikwels dat die impak op klimaatsverandering deur die produksie van kweekhuisgasse oorweeg moet word wanneer projekte goedgekeur word.*

