

Environmental Law Association Newsletter 14

4 April 2014

ACTS

National Health Act 61 of 2003 - Proc 21 in GG 37501 of 31 March 2014 - Date of commencement of ss. 36, 37, 38, 38 & 40 - 1 April 2014

BILLS

National Water Amendment Bill [B3-2014]

[http://www.gov.za/documents/index.php?term=&dfrom=&dto=&yr=0&tps\[\]=2&subjs\[\]=0](http://www.gov.za/documents/index.php?term=&dfrom=&dto=&yr=0&tps[]=2&subjs[]=0)

NOTICES

National Environmental Management: Waste Act 59 of 2003– GN 142 in GG 37383 of 28 February 2014 - Fee structure for consideration and processing of applications for waste management licenses, transfer and renewal thereof commences 1 April 2014

https://www.environment.gov.za/sites/default/files/gazetted_notices/nema_waste_management_licensesfeestructure_37383gon142.pdf

National Environmental Management: Waste Act 59 of 2003 - GN 142 in GG 37383 of 28 February 2014 - Fee structure for consideration and processing of applications for waste management licenses, transfer and renewal thereof - commences 1 April 2014

https://www.environment.gov.za/sites/default/files/gazetted_notices/nema_waste_management_licensesfeestructure_37383gon142.pdf

National Environmental Management: Air Quality Act 39 of 2004 - GN 201 in GG 37461 of 28 March 2014 - Declaration of temporary asphalt plants as a controlled emitter and establishment of emission standards

LEGISLATION

Provinces

Eastern Cape

National Environmental Management: Integrated Coastal Management Act 24 of 2008 – Gen Notice 83 in PG 3150 of 26 March 2014 - Eastern Cape Coastal Management Programme

KwaZulu

Constitution of the Republic of South Africa, 1996 and Local Government: Municipal Systems Act 32 of 2000 - MN 22 in *PG* 1121 of 28 March 2014 - Standard Draft By-laws - Municipal Standing Rules and Orders By-law; Pounds By-law; and Cemetery, Crematoria and Undertakers By-Law

Limpopo

Disaster Management Act 57 of 2002 - Lephalale Local Municipality; Bela-Bela Local Municipality; Thabazimbi Local Municipality; Modimolle Local Municipality; Mogalakwena Local Municipality and Mookgopong Local Municipality – Gen Notice 102 in *PG* 2334 of 28 March 2014 - Declaration of disaster areas

Northern Cape

Northern Cape Heritage Resources Authority Act 9 of 2013 - Proc 6 in *PG* 1791 of 28 March 2014 – commences 1 April 2014 / Noord-Kaapse Erfenishulpbronowerheid 9 van 2013 - AK 35 in *PK* 1791 van 28 Maart 2014)

Western Cape

Land Use Planning Ordinance 15 of 1985 - Swartland Municipality - PN 37 in *PG* 7228 of 20 March 2014 - Repeal and replacement of Zoning Scheme Regulations in the Swartland Municipal area

National Environmental Management: Protected Areas Act 57 of 2003 - PN 88 in *PG* 7244 of 28 March 2014 - Intention to declare nature reserve: Knersvlakte Nature Reserve - for comment

CASES

National

Capricorn District Municipality v SANCO (237/2013) [2014] ZASCA 39 (31 March 2014) <http://www.saflii.org/za/cases/ZASCA/2014/39.pdf>

“High Court granting mandatory interdicts directing municipalities to repair and replace water pipelines and faulty water meters within 12 months and to charge each consumer R70 per month and R50 per month pending such repairs or replacements – Orders incompetent and inconsistent with the principles of legality and separation of powers – such functions falling within municipalities’ executive and legislative powers – High Court order set aside on appeal.”

Xhosana v King Sabata Dalindyebo Municipality & Others (1477/2013 Eastern Cape High Court) attached See also **News**

GB Mining v Commissioner: SARS (903/2012) [2014] ZASCA 29 (28 March 2014) attached

“Summary: Revised tax assessments issued by respondent – appellant lodging objection – objection disallowed – appeal to Pretoria Tax Court dismissed – on appeal held:

- Payments as part of an attempted financial rescue offer not deductible.
- Disposal of rights to a mineral tailings dump by appellant resulted in a capital gain. ...
- Disposal of an asset to a joint venture resulted in a capital gain.
- Disposal of an interest in a joint venture resulted in a capital gain.
- Partial remission of additional tax granted.

Assessments based on tax returns and financial statements by appellant – appellant failing to prove incorrect – effect thereof – assessments upheld.”

Macrae v State (93/2013) [2014] ZASCA 37 (28 March 2014) attached

Criminal law and procedure – baboon – seizure in terms of ss 20 and 21 of the Criminal Procedure Act 51 of 1977 (CPA) – obligations of police in respect of seized animal – theft – requirements – defeating or obstructing administration of justice – fair trial where accused not represented – duties of prosecutor restated

International

Whaling in the Antarctic: Australia v Japan: New Zealand Intervening International Court of Justice, March 31, 2014 <http://www.icj-cij.org/docket/files/148/18136.pdf>

National Association of Homebuilders et al v US Fish and Wildlife Service et al Civ. Action No. 12-2013 (EGS) United States District Court for the District of Columbia attached

Court rejects challenge to endangered species listing settlement

INTERNATIONAL DOCUMENTS

ISA draft regulations for Deep Seabed Mining – <http://www.indeep-project.org/sites/indeep-project.org/f/document/ISA-SSurvey.pdf>

The International Seabed Authority is starting a process of stakeholder consultation in advance of developing draft regulations for the exploitation of polymetallic nodules. The consultation includes issues relating to the environmental management of deep-sea mining. The document is available for comment.

The Cook Islands Seabed Policy -
<http://www.seabedmineralsauthority.gov.ck/index.php/laws-policies-and-regulations/cook-islands-seabed-minerals-policy>

PUBLICATIONS

Juta Sentencing Reports (Online) <http://jutralaw.co.za/products/jutas-sentencing-reports>

Badenhorst, Wessel “Dykes, potholes and rolling reef: mining law” 2014 *Without Prejudice* 14:1

<http://www.withoutprejudice.co.za/index.php/issues/category/february-3>

Gilder Andrew “Climate change negotiations as a source of legal dynamism” 2014 *Without Prejudice* 14:1

<http://www.withoutprejudice.co.za/index.php/issues/category/february-3/3>

Burnell Matthew “The Infrastructure Development Bill1: will it achieve anything?” 2014 *Without Prejudice* 14:2

<http://www.withoutprejudice.co.za/index.php/issues/category/march-6>

Levetan Stephen et al “Evolving South Africa’s environmental legal practice” 2014 *Without Prejudice* 14:2

<http://www.withoutprejudice.co.za/index.php/issues/category/march-6/2>

Strydom van Dyk Melissa “Developments in South African Waste Law” 2014 *Without Prejudice* 14:2

<http://www.withoutprejudice.co.za/index.php/issues/category/march-6/2>

Promethium Carbon Report *Carbon Trading in South Africa Trading Offsets against the Proposed Carbon Tax* (March 2014)

<http://www.promethium.co.za/wp-content/uploads/2014/02/2014-02-26-Tax-and-Trade-Final-Report-submitted.pdf>

Verchick RRM and Johnson LR “When Retreat is the Best Option: Flood Insurance after Biggert-Waters and Other Climate Change Puzzles” 2014 47 *John Marshall Law Review*

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2418089

IPPC Report: *Climate Change 2014 Impacts, Adaptation and Vulnerability* (released 30 March 2014) <http://www.ipcc.ch/report/ar5/wg2/>

Kuiper Timothy R & Parker Daniel M. “Elephants in Africa: Big, grey biodiversity thieves?” 2014 *South African Journal of Science* March/April

<http://www.sajs.co.za/elephants-africa-big-grey-biodiversity-thieves/timothy-r-kuiper-daniel-m-parker>

Cohen Brett & Winkler Harald “Greenhouse gas emissions from shale gas and coal for electricity generation in South Africa” 2014 *South African Journal of Science* March/April <http://www.sajs.co.za/greenhouse-gas-emissions-shale-gas-and-coal-electricity-generation-south-africa/brett-cohen-harald-winkler>

Dhansay Taufeeq, De Wit Maarten J & Patt Anthony “An evaluation for harnessing low-enthalpy geothermal energy in the Limpopo Province, South Africa” 2014 *South African Journal of Science* March/April <http://www.sajs.co.za/evaluation-harnessing-low-enthalpy-geothermal-energy-limpopo-province-south-africa/taufeeq-dhansay-maarten-j-de-wit-anthony-patt>

Maina Paul “Engine emissions and combustion analysis of biodiesel from East African countries” 2014 *South African Journal of Science* March/April <http://www.sajs.co.za/engine-emissions-and-combustion-analysis-biodiesel-east-african-countries/paul-maina>

Van Zyl Pieter G et al “Assessment of atmospheric trace metals in the western Bushveld Igneous Complex, South Africa” 2014 *South African Journal of Science* March/April <http://www.sajs.co.za/assessment-atmospheric-trace-metals-western-bushveld-igneous-complex-south-africa/pieter-g-van-zyl-johan-p-beukes-grizelda-du-toit-desmond-mabaso-johan-hendriks-ville-vakkari-petri>

BLOGS/WEBSITES/VIDEOS,ETC

New EIA application forms

“Note that the Department of Environmental Affairs EIA application form, Application for Integrated Environmental Authorisation and Application for amendment of Environmental Authorisation have been amended and are available on the DEA website at the following link:”

https://www.environment.gov.za/documents/forms#legal_authorisations

Department of Environmental Affairs South Africa *2050 Emissions Pathway Calculator* <http://2050calc.ercresources.org.za/your-pathway/>

IUCN Eastern and Southern Africa

<http://www.iucn.org/about/union/secretariat/offices/esaro/>

IUCN Western Africa Knowledge Platform (only in French)

http://www.iucn.org/fr/propos/union/secretariat/bureaux/paco/programmes/prezoh/premi/connaissances_africaines_pour_l_environnement/

On infrastructure and water ECOWAS (only in French)

http://www.iucn.org/fr/propos/union/secretariat/bureaux/paco/programmes/prezoh/premi/connaissances_africaines_pour_l_environnement/questions_aux_experts/lignes_directrices_pour_le_developpement_dinfrastructures_hydrauliques_en_afrique_de_louest/

TRAINING COURSES / CONFERENCES /SEMINARS

National

IAIA Special Symposium: Resettlement & Livelihoods Kruger National Park | South Africa | 21-22 October 2014

http://iaia.org/conferences/iaia_resettlement/index.php?AspxAutoDetectCookieSupport=1

Across the world, land access for public and private sector projects often causes significant physical and economic displacement of communities. Resettlement is typically fraught with challenges, risks and controversy. Poorly undertaken resettlement can result in a number of impoverishment risks, like landlessness, marginalization, food insecurity and social disarticulation. The symposium will improve understanding of land access and resettlement issues, share lessons learned and discuss opportunities to improve performance.

Registration: 15 July 2014

Imbewu: Introduction to the Practical Implementation of Environmental Law & Recent Legislative Developments

Date: 22 May 2014

Place: Intaka Island Eco Centre (Century City) – Cape Town

Time: 09:00-16:30

Register before 30 April to qualify for discount.

Contact: Lulu@imbewu.co.za or www.imbewu.co.za **West University: Certificate Courses** www.westerncape.ac.za

Centre for Environmental Management: North-

Place: CEM, NWU, Potchefstroom; Durban; Cape Town

- CEM-01.1: Introduction to Environmental Management – An Overview of Principles, Tools and Issues
23-27 June 2014 - Potchefstroom
- CEM-02.1: Environmental Law for Environmental Managers
(Saturday - 3 Hour Examination)
2-7 June 2014 – Cape Town
- CEM-02.6.4: An Introduction to the Legal Framework for Contaminated Land: Chapter 8 of the National Environmental Management Waste Act
30 June -1 July 2014 - Potchefstroom
- CEM-04.1.1: Environmental Management System ISO 14001 Audit: A Lead Auditor Course Based on ISO 19011 and ISO 17021 -(SAATCA Registered)
9-13 June 2014 – Potchefstroom
- CEM-04.2.1: Occupational Health and Safety Management System OHSAS 18001 Audit: A Lead Auditor Course based on ISO 19011 and ISO 17021 -(SAATCA Registered)
9-13 June 2014 – Potchefstroom

- CEM-06.1.1a: Handling, Storage and Transportation of Dangerous Goods and Hazardous Substances
23-27 June 2014 – Durban
- CEM-06.3.2: Essential Air Quality Management
17-19 June 2014 - Potchefstroom
Contact: Ms Theresa Bowen (018) 299 2714 / Theresa.Bowen@nwu.ac.za / <http://www.nwu.ac.za/cem/traininghe>

International

UKERC International Energy Summer School 2014, final week of registration

The UK Energy Research Centre (UKERC) is holding its tenth annual Energy Summer School from 6-11 July 2014 at the University of Warwick in the English Midlands. There will be 100 places available for UK and international students which are quickly filling up.

The School has been specifically designed to give second year PhD students an opportunity to look beyond their own research and develop an understanding of energy systems as a whole and pathways to low-carbon and resilient energy systems.

The School is professionally facilitated to provide continual support for participants, and includes a number of networking opportunities as well as social events.

We welcome applications from those engaged in energy-related research including technical, physical, social, economic, environmental and business aspects of energy and energy systems.

The School is conducted in English, and as it is highly interactive a good standard of comprehension and spoken English is essential.

For more information go to http://www.ukerc.ac.uk/support/tiki-index.php?page_ref_id=2823

Global Environmental Constitutionalism at Widener-DE

On Friday, April 11, 2014, Widener School of Law in Delaware is hosting a symposium, “Global Environmental Constitutionalism.” As you may know, most people live under constitutions that protect environmental rights, including by committing to environmental, stewardship, recognizing a basic right to a quality environment, guaranteeing a right to, water or natural resources, and ensuring public participation in environmental decision making. This symposium will examine whether and the extent to which to adopt constitutional protections of substantive or procedural rights to a quality environment in national and/or subnational instruments. Everyone is welcome to attend. (E-card and agenda attached). Speakers/topics include (in order of appearance):

Legitimacy of Global Environmental Constitutionalism (“GEC”): Klaus Bosselmann, PhD, Professor of Law, Founding Director, New Zealand Centre for Environmental Law, University of Auckland; Donald Anton, Professor of Law, Chair, ANU E Press Law Board, Co-Director, International Exchanges and

Programs; Erin Daly, Vice Dean, Interim Co-Dean, Professor of Law, Widener University School of Law.

GEC in Africa: Louis J. Kotzé, Professor of Law, North West University; Tumai Murombo, Director, Associate Professor, Mandela Institute, School of Law, University of the Witwatersrand; Ngozi F. Stewart, PhD, Senior Lecturer, University of Benin; and Scott O. McKenzie, Esq., International Water Resources Association

GEC in Asia: Badrinath Rao, J.D., PhD, Associate Professor, Kettering University; Josh Gellers, PhD Candidate, Political Science, University of California, Irvine; Afshin Akhtarkhavari, PhD, Associate Professor of Law, Reader in Law, Griffith Law School; and Itzchak E. Kornfeld, Thomas Girardi Fellow, Faculty of Law, The Hebrew University of Jerusalem

GEC in North America: Jack R. Tuholske, Esq., Co-Director, Vermont Law School Water and Justice Program; Blake Hudson, Associate Professor, Joint Appointment, LSU Law Center, LSU School of the Coast and Environment; John C. Dernbach, Distinguished Professor of Law, Widener University School of Law, Co-Director, Widener Environmental Law Center

GEC in South and Central Americas: Nicholas S. Bryner, Visiting Attorney, Environmental Law Institute, Executive Officer, IUCN World Commission on Environmental Law; Daniel Bonilla, Associate Professor, Universidad de los Andes School of Law; Lisa Benjamin, PhD Candidate, Assistant Professor, College of The Bahamas; and Michael Stevenson, Associate Professor, College of The Bahamas; Hugo Echeverría, Lecturer of environmental law, Colegio de Jurisprudencia, Universidad San Francisco de Quito

GEC in Europe and Oceanic: Emma A. Imperato, Researcher in Comparative Public Law, University of Naples l'Orientale; Elizabeth F. Brown, Assistant Professor, Georgia State University; Dante B. Gatmaytan, Associate Professor, University of the Philippines, College of Law; and Catherine J. Iorns Magallanes, Senior Lecturer in Law, Victoria University of Wellington

The Next Generation of GEC: Robert V. Percival, Robert F. Stanton Professor of Law, Director, Environmental Law Program, University of Maryland Francis King Carey School of Law; John E. Bonine, B.B. Kliks Professor of Law, University of Oregon; and James R. May, Symposium Chair, Professor of Law, Widener University School of Law, Co-Director, Widener Environmental Law Center

To register, please contact Rosemary E. Callahan

Phone: 302-477-2014, E-mail: recallahan@widener.edu

IUCN Academy of Environmental Law eJournal Issue 6, 2015

The editors would like to invite contributions for inclusion in the sixth issue of the IUCNAEL eJournal, which will be published in May 2015.

The Journal accepts four different forms of contributions:

- (1) Substantive articles. These articles should add to knowledge and understanding at the global level. They may be on an aspect of domestic or international law, but should be of interest to and accessible to an international audience. Maximum length: 8000 words.

- (2) Country reports. These reports should canvas recent interesting legal and policy developments in members' jurisdictions – preferably developments that have taken place in the past 6-12 months. Maximum length: 3000 words.
- (3) Short Notes/Insight Pieces. Short punchy notes/opinion pieces on preferably controversial topics, the purpose of which is to invoke debate. Maximum length: 1000 words.
- (4) Book Reviews. Book reviews should critically consider texts in the field of environmental law that have been published in the past 6-12 months. Maximum length: 1000 words.

The full details regarding the length and nature of these contributions are available on the eJournal's website (<http://www.iucnael.org/en/e-journal/>). So too are issues 1 to 4 of the eJournal (issue 5 is due for publication in May 2014) which should give all a good idea of the nature and form of the different contributions.

We look forward to receiving your contributions and should you have any queries please do not hesitate to contact us (IUCNAELJournal@gmail.com).

Please note that the due date for substantive articles is 1 November 2014

The due date for all other forms of submission is 1 December 2014.

Elizabeth Kirk and Amanda Kennedy

Human Rights, Environmental Sustainability, Post-2015 Development, and the Future Climate Regime

*3rd UNITAR-Yale Conference on Environmental Governance and Democracy
Yale University, 5-7 September 2014*

*Announcement and Call for Abstracts: **Extended deadline: 20 April 2014***

The 2014 *Conference on Human Rights, Environmental Sustainability, Post-2015 Development, and the Future Climate Regime* will take place from 5-7 September 2014 at Yale University, New Haven, Connecticut. The Conference is organized by Yale and the United Nations Institute for Training and Research (UNITAR), in collaboration with the United Nations Environment Programme (UNEP), the United National Development Programme (UNDP), the World Resources Institute (WRI), and the UN Independent Expert on Human Rights and the Environment, as well as other interested partners. It will bring together more than 150 scholars and policy experts to discuss state-of-the-art knowledge concerning the following themes at the nexus of human rights and the environment:

1. Constitutional Environmental Rights: A Driver for Environmental Policy Making?
2. Human Rights and Environmental Justice: Cases from Countries and the Field
3. Procedural Environmental Rights: Why and How Do They Matter?
4. Human Rights, Environment, and Corporate Responsibility
5. Effective Participation of Civil Society and Vulnerable Groups
6. Environmental Rights, Post-2015 Development, and the Future Climate Regime

The Conference will feature a combination of policy discussions in plenary and parallel sessions to discuss contributions and topics in more depth. The organizers invite policy experts, scholars, and practitioners to submit abstracts for three types of papers:

- *Synopsis Papers* highlight key outcomes and conclusions from relevant past events such as workshops, consultations, expert meetings, etc.
- *Review and Discussion Papers* succinctly review state of the art knowledge concerning a particular theme or question addressed by the Conference.
- *Case Study Papers* describe, analyze, and draw conclusions from a particular situation/case (e.g. national, local).

The outcomes and conclusions of the Conference are expected to inform: (1) the discussion on sustainable development goals and a post-2015 development agenda by the 69th UN General Assembly in 2014/2015; (2) the negotiation of a future climate change regime by the end of 2015 under the UNFCCC; (3) the 2014 World Conference on Indigenous Peoples; and (4) the 2015 report of the UN Independent Expert on Human Rights and the Environment whose mandate was initiated by the Human Rights Council in 2012.

Details concerning the Conference are included in the Information Note http://unitar.org/sites/default/files/2014_unitar-yale_conference_information_note_long_march_final.docx

Individuals interested in participating in, and receiving more information about the Conference are requested to complete an Expression of Interest form <https://docs.google.com/spreadsheets/viewform?fromEmail=true&formkey=dHRpeHQ2a1ZVZnpGN2k4S1N0VVA1bEE6M>

The extended deadline for submitting abstracts is 20 April 2014. All Abstracts should be sent to envdem.yale@gmail.com with cc to envdem@unitar.org, using the [standard template](#).

NEWS

ICJ and whaling

“Nearly four years after the initial filings, the International Court of Justice just came down with a decision on Japan’s whaling program in Antarctica (JARPA II). Japan has been making use of the scientific permit exception to continue whaling since the moratorium launched in the 1980s. I have pasted below the relevant excerpts from the opinion. The bottom line is that 12 of the 16 justices were not persuaded that Japan’s whaling has been reasonably related to its scientific research objectives.

The decision represents a huge victory for anti-whaling advocates and countries. It leaves open the question, though, of whether Japan will continue with smaller but better-justified whaling programs as well as uncertain political implications for countries such as Norway and Iceland that entered reservations to the moratorium ... In response to the opinion, a spokesman from the Japan Japanese Foreign Affairs Ministry stated that, ‘as a state that respects the rule of law ... and as a responsible member of the global community, Japan will abide by the ruling of the court.’” Prof James Salzman, Nicholas Institute Professor of Environmental Policy, Duke University, USA

IUCN welcomes judgement on whaling by the International Court of Justice, March 31 2014

“IUCN welcomes the ruling by the International Court of Justice issued in The Hague on 31 March 2014. The extent to which the “scientific purposes” clause in the International Convention for the Regulation of Whaling (ICRW) may be used as a loophole to catch whales in large numbers has been a long-running source of controversy in the International Whaling Commission and other fora. In IUCN’s view, the Court’s ruling brings much needed clarity to the question. The Court has ruled that it is not sufficient merely to declare catches to be for scientific purposes, but that the actual number and species of whales taken must be justified on scientific grounds. IUCN expects that all nations engaged in whaling on scientific grounds will abide by the ruling, and that any further catches for scientific purposes in the Antarctic and elsewhere will be strictly in accordance with the criteria specified by the Court. IUCN further notes that the Court stipulated that if whaling does not meet these requirements for “scientific purposes”, then it must satisfy the regulations for commercial whaling contained in the ICRW Schedule (unless it is aboriginal subsistence whaling). IUCN has for many years maintained the position that if any whaling takes place, it should be legal and sustainable, regardless of the purpose of the use, be it commercial, indigenous, subsistence or scientific. IUCN also draws attention to [Recommendation 4.115](#) from the 4th IUCN World Conservation Congress in 2008 which among other things highlights the socioeconomic importance of non-lethal utilization of whales. IUCN notes that the catches of whales which were under dispute in this case were taken within the Southern Ocean Sanctuary, which was adopted in 1994 with the support of IUCN (further reiterated in 2008 in [Recommendation 4.118](#)), and which is due for its 2nd 10-year review this year. IUCN further notes that the threats facing whales and other marine life in the 21st century are much broader than was envisaged when the ICRW was agreed back in 1946. IUCN welcomes the huge advances in non-lethal techniques and technologies for studying whales and other marine species that have been achieved in recent years, and the efforts of the 10-nation Southern Ocean Research Partnership to co-ordinate and advance non-lethal research on whales and their environment in the Southern Ocean. IUCN strongly encourages former whaling nations to continue their whale research on a non-lethal basis and to participate in these efforts.

The IUCN Red List of Threatened Species contains assessments of the status of whale species and populations worldwide, and during 2014 the Cetacean Specialist Group of the IUCN Species Survival Commission will be reviewing and updating the status of many cetacean species. IUCN maintains specific [Guidelines](#) intended to promote responsible collecting of threatened species by researchers.”

Colyn P “Review of the new Construction Regulations, 2014 as part of the Occupational Health and Safety Act, 1993” *ENSsight* 2 April 2014

<http://www.ensafrica.com/news/review-of-the-new-Construction-Regulations-2014-as-part-of-the-Occupational-Hea?id=1377&STitle=mining%20occupational%20health%20and%20safety%20newsflash>

Development: City ordered to clean up dirty river

“The eThekweni municipality has come under strong pressure from the Department of Water Affairs to clean and avoid more pollution of the Isipingo River estuary – or face criminal charges. A report in *The Mercury* states that documents that came to light last week, through the Promotion of Access to Information Act, show the department sent a letter to eThekweni city manager S’bu Sithole after a sewage leak killed fish in the Isipingo river mouth in January. In the letter, on 7 February, the department’s regional head, Ashley Starkey, said there had been spills in the river mouth since 2006 which appeared to be linked to ‘failing sewerage infrastructure’. Starkey said although the estuary had been degraded over the past 60 years, recent studies had raised concern about the pollution and bacterial contamination at Isipingo. The estuary was also degraded from high levels of nitrogen and phosphorous, along with litter from the Prospecton Canal, which passed through Prospecton, which was heavily industrialised. ‘The department cannot allow the estuary to be managed at this ecologically unacceptable level,’ said Starkey, who invited the city to respond within 30 days, according to the report. He asked eThekweni to provide a time frame regarding when they would take action in line with the Isipingo Estuary Management Plan, the report notes.”

Full report in *The Mercury* (subscription needed) *Legalbrief Environmental* 1 April 2014

Marine: SA developing blue economy strategy

“In order to make full use of its oceans’ potential, SA is developing a blue economy strategy, the Department of Environmental Affairs (DEA) said last week. According to an *Engineering News* report, as part of this process, government, mostly through the DEA, had analysed the economic opportunities for SA and the region, identifying a number of key areas such as aquaculture, marine transport and offshore oil and gas exploration as crucial in growing the country’s economy. ‘The blue economy strategy will enable government to sustainably harness the abundant resources of the ocean and coastal domain,’ the DEA said. Speaking at the Abidjan Convention’s 11th conference of the parties, held in Cape Town from 17 to 21 March, Water and Environmental Affairs Minister Edna Molewa said ‘pioneering’ work was being undertaken to develop environmental standards for offshore exploration and exploitation activities of mining and mineral resources in the region. She encouraged convention member states to embrace the concept of the blue economy, notes the report.”

Full *Engineering News* report *Legalbrief Environmental* 1 April 2014

General: GHG emissions from shale gas lower than that of coal – study

“An independent study commissioned by the Department of Environmental Affairs (DEA) has confirmed a long-argued position of shale gas and hydraulic fracturing proponents – that the volume of greenhouse gases (GHGs) emitted during the production and use of shale gas is lower than that emitted during the use and generation of coal-fired electricity. An *Engineering News* report notes

that the study, completed by consulting firm Environmental Resources Management (ERM) Southern Africa, found that, in comparing the GHG emissions profile of shale gas with conventional fuels, the 'majority of research' suggested that coal-based power generation was between 30% and 55% more emissions intensive."

Full Engineering News report *Legalbrief Environmental* 1 April 2014

Climate change: New IPCC report makes dire warnings

"The negative effects of climate change are already beginning to be felt in every part of the world and yet countries are ill-prepared for the potentially immense impacts on food security, water supplies and human health, a major report has concluded. A report in *The Independent* notes that, in the most comprehensive study yet into the effects of rising levels of carbon dioxide in the atmosphere, released this week, the UN's Intergovernmental Panel on Climate Change (IPCC) warns that global warming could undermine economic growth and increase poverty. The IPCC found that the negative impacts of climate change have already extended beyond any potential benefits of rising temperatures and that they will worsen if global-average temperatures continue to rise by the expected lower limit of 2°C by 2100 – and will become potentially catastrophic if temperatures rise higher than 4°C. 'Throughout the 21st century, climate-change impacts are projected to slow down economic growth, make poverty more difficult, erode food security, and prolong existing and create new poverty traps, the latter particularly in urban areas and emerging hot spots of hunger,' the report states. 'We live in an era of man-made climate change. In many cases, we are not prepared for the climate-related risks that we already face,' said Vicente Barros, co-chair of the IPCC working group II."

Full report in *The Independent*

Report: Climate Change 2014 Impacts, Adaptation and Vulnerability *Legalbrief Environmental* 1 April 2014

Legislation: MPRDA Bill unconstitutional – legal experts

"Two non-profit legal institutions, the Legal Resources Centre and the Centre for Environmental Rights, claim the Mineral and Petroleum Resources Development Amendment Bill is not constitutional, notes a *Business Day* report. They said there had not been proper consultation and potential effects on communities were not adequately considered. The Bill gave the Department of Mineral Resources full environmental management of mines to the exclusion of the provinces, they said. The organisations were also concerned that the department and the Chamber of Mines had reached a back-door agreement outside the public hearings and parliamentary process that had led to last-minute changes. The report notes should this law be successfully challenged in the Constitutional Court, Parliament would have to rework it, which could mean another 12-month delay in regulatory certainty for the mining sector. Henk Smit, of the Legal Resources Centre, said the centre had concerns that the Bill was rushed through the NCOP and not all the provinces had proper public consultations. 'Poor and rural communities will take the Bill to the Constitutional Court as they believe that

the last-minute changes that affect their involvement in new mining projects and water rights have not been properly considered,' he is reported to have said.”
Full Business Day report (subscription needed) *Legalbrief Today* 1 April 2014

Litigation: Mthatha municipality loses ‘izinyoka’ case

“Mthatha’s King Sabata Dalindyebo municipality has been prevented from stopping the electricity supply to illegal ‘izinyoka’ users because doing so contravenes its own electricity bylaws, says a *Daily Dispatch* report. The municipality was taken to court last year after it disconnected the electricity supply to premises where illegal connections had been uncovered by its electricity inspectors. But the Eastern Cape High Court (Mthatha) has ruled that the municipality’s decision to stop the electricity supply to the illegal users was itself illegal – because municipal electricity bylaws did not specifically allow it to discontinue the supply to premises where ‘izinyoka’ connections had been made. Judge Glenn Goosen held that municipal bylaws dealt with various aspects of illegal connections or tampering with installations. The bylaw only permitted the removal of the unauthorised connection or electricity diversion. The court accepted that a number of other municipalities had legislated specific powers for officials to disconnect electricity. He ruled if the Mthatha municipality intended for its officials to have such authority in the case of ‘izinyoka’ connections, it should have done so in clear and unequivocal terms.”

Full Daily Dispatch report (subscription needed)

Xhosana v King Sabata Dalindyebo Municipality & Others (1477/2013) *Legalbrief Today* 1 April 2014

Litigation: Judge dismisses case due to questionable statements

“Prosecutors have been given a lesson in how to commission statements and affidavits for court proceedings – over their decision to impound a TLB tractor they claim was being used for illegal sand mining on the Kei River, says a *Daily Dispatch* report. Eastern Cape High Court (Mthatha) Judge Igna Stretch accepted the ‘innocent explanation’ of tractor driver Joe Ceba that he was digging foundations for a house on the banks of the river when police and environment officials seized his vehicle in 2011. Prosecutors moved to impound the tractor under the Prevention of Organised Crime laws and formally applied to court for a forfeiture order in July 2012. But Stretch, dismissing the application, said they failed to place ‘the slightest proof’ before the court that the tractor had been used for criminal activities. Stretch said the statements and affidavits presented in the case barely met the requirements for acceptable evidence. Stretch further said the failure to state the source of the information or the grounds for believing the information was a serious irregularity.”

Full Daily Dispatch report (subscription needed) *Legalbrief Today* 1 April 2014

Mutiga Murithi “In Africa, All Conservation Is Local” *New York Times* 26 March 2014

http://www.nytimes.com/2014/03/27/opinion/mutiga-in-africa-all-conservation-is-local.html?emc=eta1&_r=0

Jacques Leslie "Is Canada Tarring Itself?" *New York Times* 30 March 2014
<http://www.nytimes.com/2014/03/31/opinion/is-canada-tarring-itself.html?action=click&contentCollection=Opinion&module=MostEmailed&version=Full®ion=Marginalia&src=me&pgtype=article>

Environmental: Industry 'abusing' air quality standards compliance

"The Department of Environmental Affairs' Thuli Mdluli claims some of SA's heavy industrial companies were 'abusing the law' that allowed firms to defer compliance with air quality standards if they were purchasing equipment that would reduce air pollution, says a *Business Day* report. 'People abuse the law. These standards were first promulgated in 2010. People have had five years to comply, and another five to comply with (standards that are to apply in 2020),' Mdluli said. Although she did not mention specific companies, power utility Eskom has indicated its intention to apply for 'rolling' postponements, in effect asking for complete exemption from certain standards. Mdluli responded that the law did not allow exemption. The report notes Eskom is not the only air polluter to have asked the department for a postponement by the 31 March deadline. Others are ArcelorMittal SA, Northam Platinum, Engen, Shell, PPC, Sasol, and Sasol and Total's Natref refinery in Sasolburg. But Mdluli said that more damaging to human health than industrial polluters was the domestic burning of coal and fuels such as paraffin, clay-brick manufacturing and motor vehicle emissions. This was because in all three cases emissions were in the 'breathing zone' as opposed to hundreds of metres above it."

Full Business Day report (subscription needed) *Legalbrief Today* 3 April 2014

IUCN welcomes Total's 'no-go' commitment in World Heritage sites

"Oil and gas company Total has confirmed that it will not carry out extractive operations within natural World Heritage sites, including Virunga National Park. IUCN welcomes this decision and calls on all oil and gas companies to follow suit. Total's 'no-go' commitment takes some of the pressure off Virunga National Park. It also indicates that the company will respect the current boundaries of the park even if part of the park's protection is removed. Until now, Royal Dutch Shell plc was the only oil and gas company to have made such a commitment. Virunga National Park is home to some 100 remaining mountain gorillas and ranks as one of the top biodiversity sites in Africa. It was established in 1925 as Africa's first national park and in 1979 became one of the first World Heritage sites. It also features on the Ramsar List of Wetlands of International Importance." *PACO News* March 2014

The Partnership for Environmental Governance in West Africa launched

"Chaired by the Minister of Environment and Sustainable Development, the official launch of the *Partnership for Environmental Governance in West Africa-PAGE* was held on March 24th, 2014 in Ouagadougou, Burkina Faso. The ceremony was attended by technical and financial partners of the program and many representatives of the research community and civil society. PAGE is a regional five-year program aimed at improving the living conditions of the people of West Africa, through strengthened policies and

environmental institutional framework. Funded by the Swedish International Development Cooperation-Sida, it builds on the achievements of the "*Poverty Reduction and Environmental Management Initiative-PREMI*" of which it provides continuity. IUCN through PAGE further strengthen regional partnerships for the conservation and sustainable management of natural resources. The partnership approach developed is to promote the sustainability and the success of the program."

http://www.iucn.org/fr/propos/union/secretariat/bureaux/paco/programmes/prezoh/programme_page_accueil/

<http://www.iucn.org/fr/propos/union/secretariat/bureaux/paco/programmes/prezoh/premi/>

COP 11: for a shared governance and sustainable management of marine and coastal resources and territories

"The 11th Conference of Parties (COP11) of the Abidjan Convention was held in Cape Town, South Africa from March 17th to 21st on the theme "Promoting blue growth in Africa: Towards a sustainable management of marine resources". IUCN and Wetlands International with support from the Canary Current Large Marine Ecosystem-CCLME and PRCM presented their experiences on mangrove conservation their experiences during the side event "Towards an additional Protocol or securing the Charter for a sustainable management of mangroves to the Abidjan Convention". After the trade, it was agreed that the transformation of the mangrove Charter into an additional Protocol to the Abidjan Convention is a relevant and innovative process that requires the commitment and support of Member States to the Convention, in particular those non-signatories to the Charter (Guinea Current Large Marine Ecosystem-GCLME and Benguela Current Large Marine Ecosystem-BCLME). Ratified by all countries in PRCM space and revitalized through the joint efforts of UNEP and IUCN, this convention is on the cooperation for the protection and development of marine and coastal areas in the region of West Africa and Central."

VACANCIES / BURSARIES / FUNDING / COMPETITIONS, etc

The Norton Rose Fulbright South Africa 2014 Tax Thesis Competition Rules National Tax Thesis Competition

Leading commercial law firm, Norton Rose Fulbright, together with co-sponsor the South African Institute of Professional Accountants (SAIPA), has established a National Tax Thesis Competition, now in its sixth year, with the object of -

- promoting research in the subject of taxation
- growing the data base of tax knowledge
- contributing to the debate and development of tax policy
- highlighting the role of tax in the economy

in South Africa.

The competition is open to any person who is reading for a postgraduate tax qualification at a South African university and is required to present a technical report, dissertation, treatise or thesis based on the candidate's own research.

The Heads of the academic departments which convene post graduate tax courses are invited to participate in this prestigious competition and submit the best work of their students at each of the following levels -

- Doctorate
- Masters
- Honours/Higher Diploma.

Sponsors

1.1 Norton Rose Fulbright South Africa (incorporated as Deneys Reitz Inc)

1.2 South African Institute of Professional Accountants (SAIPA)

Prerequisites

The prerequisites for submission are:

1. the work should cover a topic of interest to business, academic or professional members of the tax community in South Africa;
2. the work should have been subject to external examination;
3. the final mark should be at least 75%. We are aware that some universities do not award marks for doctoral theses; in such cases we would rely on the Department concerned to submit only works of sufficient standard;
4. save for appropriately acknowledged citations, the work should be original to the author.

Assessment

The assessment will be based on content, structure and a combination of clarity, readability and style. In this regard it is assumed that, having been through an assessment process already, each work will comply with the recognised format required by reputable academic publications.

4.1 Content

- Adequacy of coverage
- Practical usefulness
- Depth of analysis
- Theoretical consistency
- Adequacy of research
- Use of appropriate techniques

4.2 Structure

- Introduction and Conclusion
- Logical development
- Observation of length constraints imposed by the institution
- Adequacy of referencing

4.3 Clarity, readability and style

- Clarity of argument and logic
- Clear expressive style

Final date for submission 31 May 2014

The competition organisers recognise that postgraduate courses begin and end at different times at different institutions. Therefore, in order to qualify for consideration, a work must have been due for submission, and duly submitted, to the examining department or faculty in respect of the academic year ending not later than 31 May 2014. The final date for submission to the competition will be 31 May 2014 and the submission must be delivered to the offices of Norton Rose

in Johannesburg (marked for the attention of Andrew Wellsted, Cape Town (marked for the attention of Peter Surtees) or Durban (marked for the attention of Natasha Ramiah), on or before that date.

Panel of Judges

A panel of judges will comprise senior tax partners from Norton Rose Fulbright South Africa and in-house tax counsel of the sponsors plus a respected external judge, independent of Norton Rose Fulbright South Africa and SAIPA. The decision of the judges will be final.

Prizes

The winning author will be awarded the following prizes for the best submission in the category of -

Best Doctoral thesis – R25 000

Best Master's thesis – R20 000

Best Honours/ Higher Diploma thesis/dissertation – R15 000

The three winners, together with the lecturer in charge of the tax course in each case, will be invited to a function attended by the country's top firms and companies, where the winners and their universities will be announced. The function will be held in Johannesburg.

The university department that submitted the winning thesis will each receive an illuminated acknowledgment of their achievement together with a monetary reward of R15 000.

For further enquiries please contact Professor Peter Surtees at 021 405 - 1208 or via email at peter.surtees@nortonrosefulbright.com

The ELA is registered as a Public Benefit Organisation

www.elasa.co.za

Facebook

<https://www.facebook.com/pages/Environmental-Law-Association-of-South-Africa/406255049402727?fref=ts>

Remember that members of the Environmental Law Association may subscribe to Legalbrief Environmental – discount available.