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RECENT CASE LAW ON SECTION 24G OF NEMA: DISMAL JURISPRUDENCE?

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27 JULY 2013

Introduction

▣ Section 24G(1)

“On application by a person who has committed an offence in terms of section 24F(2)(a) the Minister, Minister of Minerals and Energy or MEC concerned, as the case may be, ...”



Introduction

□ Section 24G(2A)

“A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R1 million and which must be determined by the competent authority, before the Minister or MEC concerned may act in terms of subsection (2)(a) or (b).”



Recent Jurisprudence

- *Supersize Investments 11 CC v MEC of Economic Development, Environment and Tourism, Limpopo Provincial Government and Others* [2013] ZAGPPHC 98
- *Interwaste (Pty) Ltd and Others v Ian Coetzee and Others* [2013] ZAGPJHC 89



Recent Jurisprudence

□ *Supersize Investments* Judgment

- Brief facts: Fraudulent environmental authorisation issued by a third party to the applicant who then relied on it and commenced a listed activity – the Department refused to issue an environmental authorisation to the applicant and suggested the section 24G route.
- Issue before the Court: Whether or not the Department's decision not to consider the application for an environmental authorisation on the merits was a decision materially influenced by an error of law?



Recent Jurisprudence

- Court decision: *"... it is clear that both section 24F and 24G in the present context refer to criminal proceedings against a person. The present applicant was not subjected to any criminal proceedings, and obviously not convicted in any criminal court of any offence relevant to s24F and s24G. Accordingly those provisions cannot be applied to it."*



Recent Jurisprudence

- Dismal jurisprudence?
 - No –
 - Unfairness to an innocent party
 - Sound interpretation of section 24G



Recent Jurisprudence

□ *Interwaste* Judgment

- Brief facts: Historic non-compliance; two pending section 24G applications; and interdict by competitors.
- Two-pronged issue:
 - Whether the operation of the Genesis Landfill Site is lawful?
 - Whether the applicants have made out a case for the final interdict?



Recent Jurisprudence

□ Regarding lawfulness/unlawfulness, the Court held:

“In my view the effect of the rectification applications by Waste Giant Projects in terms of section 24G of NEMA, is to suspend the penal provisions contained in section 24F and by implication any unlawfulness of the landfill operations which the applicants may want to read into these provisions. Section 24G I believe, provides an applicant, who applies for rectification in terms of that section, a moratorium against any further action being taken against the applicant pending the finalisation of the rectification application.”



Recent Jurisprudence

- In response to the applicants' submission that steps taken in terms of section 24G of NEMA have nothing to do with the Waste Act, the Court held that:

"There can be no doubt that both Acts apply and are interlinked and an attempt to separate the effect and operation of these two Acts ... will be artificial and simply incorrect. Therefore, the rectification applications in terms of section 24G of NEMA, find equal application in terms of the Waste Act and in both respects are binding on the relevant authorities."



Recent Jurisprudence

- One of the requirements that the applicant must meet in order to succeed is the establishment of a clear right. The Court held that it was not sufficient to demonstrate that the respondent had failed to obtain a licence, permit or environmental authorisation.



Recent Jurisprudence

□ In that regard, the Court held:

“The clear right does not become established simply because the respondents are contravening a statutory provision. The contravention of a legislative requirement does not per se infringe on the rights of the applicants. The mere fact that there has been a failure to obtain a licence in terms of the legislation does not, for the purpose of obtaining a final interdict, establish a clear right vis-à-vis the applicants.”



Recent Jurisprudence

□ The Court also noted that:

“A person should not take it upon himself to play policeman and seek to enforce laws which fall squarely within the domain of the environmental authorities who are after all directly responsible for the enforcement of the environmental legislation.”



Recent Jurisprudence

- Dismal jurisprudence?
 - Yes

