

Court delivers green justice

Judge orders Amsa to hand over pollution details to environmental organisation

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IN A VICTORY for the little guy, the Johannesburg High Court has ordered mining giant ArcelorMittal South Africa (Amsa) to hand over environmental records they've been denying a community organisation for nearly two years.

The Vaal Environmental Justice Alliance (Veja) first filed for access to the records in December 2011. But when Amsa refused them, they took their fight to the courts.

Yesterday, acting Judge Paul Carstensen called that refusal "invalid".

The records in question are:

- Amsa's environmental master plan – a strategy document developed between 2000 and 2002, which detailed pollution levels at Amsa plants and laid out the plans for rehabilitating the environmental damage caused.

- Details about the Vaal disposal site in Vereeniging – a site where Amsa illegally dumped hazardous waste in 2007, prompting the environmental affairs to take enforcement action against the company.

Veja's lawyers argued in court in June that the documents would provide them with baseline test results, which they could compare with current results to see if Amsa was living up to its environmental commitments.

They said the master plan informed people about Amsa's activities, and emphasised a citizen's role in holding corporates to account.

But the Amsa team argued that the plan was irrelevant, outdated and scientifically unfounded, and that it was never used to obtain current operating licences. In fact, they argued that Amsa never adopted the plan at all, and argued against Veja's right to monitor their activities. Advocate Chris Loxton SC labelled the requests a "fishing expedition" to seek out potential environmental breaches.

But Judge Carstensen tossed this argument aside. "A community-based, civil soci-

ety organisation... is entitled to monitor, protect and exercise the rights of the public at least by seeking information to enable it to assess the impact of various activities on the environment," he said in his ruling.

Judge Carstensen also disputed Amsa's arguments about the master plan. It being potentially scientifically and technically flawed, as Amsa claimed, only emphasised its importance.

"The plan was published to Amsa's shareholders," he said. "It was mentioned in Amsa's annual reports and relied upon as a primary management strategy tool. It was also submitted to state authorities."

He gave Amsa two weeks to hand over the documents. "Like-minded individuals must be encouraged to exercise a watchdog role in the preservation and rehabilitation of our natural resources," he said.

Amsa said it was studying the judgment

and would be consulting its legal team on the appropriate course of action.

But the Centre of Environmental Rights (CER), which represented Veja in its fight for the documents, called the judgment a "win for environmental justice and governance" in South Africa.

"Nema (the National Environmental Management Act), other environmental legislation and international law provide that civil society has a critical role to play in environmental governance, including by monitoring pollution and compliance with environmental laws," said CER attorney Robyn Hugo.

"With this judgment, the court has confirmed that organisations like Veja are entitled to protect and exercise the right to a healthy environment by seeking information to enable them to assess environmental impacts, and to exercise a watchdog role."

VEJA'S FIGHT FOR THE ENVIRONMENTAL RECORDS



2000 – 2002

- The Master Plan strategy document is developed by Amsa, then called Iscor. It tests the pollution levels at Amsa's different sites and sets out a 20-year "rehabilitation plan".

enforcement notices, to rehabilitation plans and progress reports

MARCH 13, 2012
● Amsa's lawyers ask for another 30-day extension, this time for the Vaal request.

2007

- Amsa illegally dumps waste at its Vaal Disposal Site. The department of environmental affairs steps in.

APRIL 13, 2012
● The due date for the second PAIA request passes: without a response from Amsa.

DECEMBER 15, 2011

- Veja files its first Promotion of Access to Information Act (PAIA) request for the Master Plan, any amended or updated versions of the plan, and any progress reports about its implementation.

APRIL 18, 2012
● Amsa refuses Veja's PAIA requests. It says the group has failed to prove it needs the records to protect a right.

JANUARY 13, 2012

- Amsa's lawyers ask for a 30-day extension to respond to the request.

OCTOBER 19, 2012
● After months of to and fro-ing between lawyers, Veja takes its case to the courts.

FEBRUARY 13, 2012

- The due date passes without Amsa handing over the records. Instead Veja receives a letter in which Amsa refuses to admit the requested documents exist. The group files its second PAIA request for all records about the Vaal Disposal Site, from test results and

JUNE 3, 2013
● The case is presented in front of acting judge Paul Carstensen.

SEPTEMBER 10, 2013
● Carstensen rules in favour of Veja -- and gives Amsa two weeks to hand over all the requested documents.
Source: National Environmental Compliance & Enforcement Report