
High Court reaffirms the polluter pays principle

Environmental law – polluter pays principle – mining rehabilitation

The polluter pays principle is a foundational concept of modern environmental law. At its core, it provides that those responsible for environmental harm must bear the costs of preventing, managing, and remedying that harm. The principle ensures that the financial burden of environmental degradation is not shifted to the public or the State but remains with the party whose activities caused the damage. In South Africa, this principle is given effect by section 2(4)(p) of the National Environmental Management Act 107 of 1998 (“NEMA”), which provides that the costs of remedying, and preventing future pollution, environmental degradation and adverse health effects must be paid by those responsible for the harm. The principle seeks to ensure that the financial burden of environmental damage is not shifted onto the public or the State.

In the mining sector, this principle is given practical effect through statutory obligations requiring mining right holders to rehabilitate land affected by mining activities. These obligations form a central component of South Africa’s regulatory framework under the Mineral and Petroleum Resources Development Act 28 of 2002 (“MPRDA”), which requires mining operations to address environmental impacts both during the life of a mine and after closure.¹ Challenges arise, however, where mining companies cease operations or enter liquidation, leaving behind unrehabilitated sites and significant environmental risks.

A recent High Court decision in *Minister of Mineral Resources and Energy v Industrial Zone (Pty) Ltd*² reaffirmed the importance of the statutory obligations that give effect to the polluter pays principle. The matter arose from environmental degradation associated with mining activities in multiple parcels of land in the West Rand and Johannesburg, which were allegedly left in a hazardous and environmentally degraded condition following the liquidation of the mining right holder. The surrounding community, including residents of Riverlea, raised concerns about unrehabilitated mine pits, contamination, dust, and other environmental hazards affecting public health and safety. The deterioration of these sites posed risks not only to surrounding landowners and residents, but also to nearby community infrastructure, including a local primary school. The case dealt with the environmental rehabilitation obligations and broader public safety concerns.

In September 2021, the Court granted an unopposed order directing the Minister, cited in his official capacity, to invoke the statutory enforcement mechanisms contained in sections 45 and 46 of the MPRDA. When no substantive regulatory action followed, Industrial Zone (Pty) Ltd instituted contempt proceedings seeking a declaration of contempt and the Minister’s committal to imprisonment, suspended on conditions linked to the implementation of rehabilitation measures. A contempt order was granted in February 2024.

Following the contempt of court order, the Minister applied for rescission in terms of Rule 42(1)(a), contending that the contempt order had been erroneously sought and granted in his absence.

¹ s41 of the MPRDA

² (52347/2020) [2026] ZAGPPHC 11 (5 January 2026)

Although the Minister had been cited in his official capacity in the principal proceedings, he had not been cited in his personal capacity in the contempt application, nor personally served, despite the fact that incarceration was sought.

Neukircher J reaffirmed the Constitutional Court's decision in *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*, which establishes that strict procedural safeguards apply where personal liberty is at stake. The Court held that a public official cannot be committed for contempt of court unless they are properly cited in their personal capacity and personally served with the relevant application. Service on the State Attorney alone is insufficient to meet this constitutional requirement. As the Minister had not been cited in his personal capacity or personally served, the Court found that the contempt order had been granted irregularly and accordingly rescinded it. Despite this procedural defect, the Court was critical of the Department's conduct and ordered the Minister to pay costs on a punitive scale.

The judgment reaffirmed the statutory obligations to give effect to the polluter pays principle through several aspects of the Court's reasoning and orders. First, the Court reaffirmed that the earlier order granted in September, which directed the Minister to invoke the enforcement mechanisms contained in sections 45 and 46 of the MPRDA remained valid and binding. These provisions empower the Minister to intervene where a mining right holder has failed to comply with its environmental rehabilitation obligations, including circumstances where the holder has entered liquidation. By confirming that the Minister remained obliged to exercise these statutory powers to address the environmental degradation left by the defunct mining operations, the Court underscored that environmental harm resulting from mining activities cannot simply be left unresolved.

Secondly, although the contempt order was rescinded on procedural grounds, the Court was critical of the Department's failure to act on the earlier court order, describing the conduct as "alarmingly lackadaisical" and awarding punitive costs against the Minister. This criticism emphasised that the regulatory framework governing mine rehabilitation must be actively enforced.³

Finally, the Court recognised the direct interest of affected communities by granting the Riverlea Mining Forum leave to intervene in the proceedings, acknowledging the real environmental and safety risks posed by the unrehabilitated mining sites. Together, these aspects of the judgment reinforce the central premise underlying the polluter pays principle that the environmental damage caused by mining activities must be addressed through the statutory framework governing rehabilitation, and responsibility for remedying that harm cannot be shifted onto the State or the surrounding community.

In conclusion, the judgment is an important reminder of the importance of the statutory obligations contained in South Africa's environmental and mining law framework that serve to give effect to the polluter pays principle.

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³ (52347/2020) [2026] ZAGPPHC 11 at para 104