



Centre for Environmental Rights

Advancing Environmental Rights in South Africa



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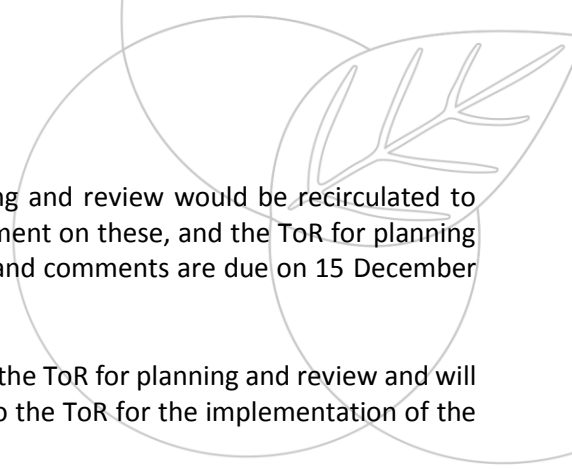
Thivhionali Khomola
Department of Environmental Affairs
By Email: TKhomola@environment.gov.za

Our Ref: CER/SK
11 December 2015

Dear Ms Marowe and Mr Makhale

CER COMMENTS ON THE UPDATED MULTI-STAKEHOLDER REFERENCE GROUP TERMS OF REFERENCE FOR THE IMPLEMENTATION OF THE HIGHVELD PRIORITY AREA AIR QUALITY MANAGEMENT PLAN

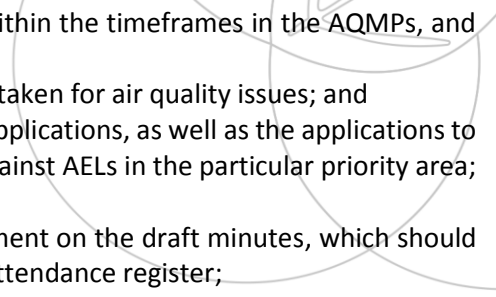
1. The Centre for Environmental Rights (“the Centre”) is a non-profit organisation established in October 2008 by eight civil society organisations in South Africa’s environmental and environmental justice sector to provide legal and related support to civil society organisations and communities in South Africa. The Centre’s mission is to advance environmental rights in South Africa, and one of our focus areas is pollution and climate change, where we seek to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and wellbeing of all South Africans.
2. We address you on behalf of groundwork (gW), the Highveld Environmental Justice Network and several community organisations concerned about the poor air quality in the Highveld Priority Area. These organisations include, as affiliates, the Movement for Environmental Defence; Earthnogenesis; Greater Middleburg Residents Association; Guqa Environmental Community Service; Mpumalanga Youth Against Climate Change; Outrageous Courage Youth; Ekurhuleni Environmental Organisation; SANCO Tokologo; SANCO Emalaheni; Khutala Environmental Care; Schoongesicht Residents Committee; Caroline Environmental Crisis Committee; Guide the People and Wonderfontein Resettlement Forum.
3. Our clients have an interest in the review of the Multi-stakeholder Reference Group (MSRG) Terms of Reference (ToR) for the implementation of the Highveld Priority Area (HPA) Air Quality Management Plan (AQMP) and represent communities resident in the highly-polluted priority area.
4. The review of the Terms of Reference (ToR) emanates from a discussion had at the MSRG meeting on 29 June 2015, where it was identified that the existing ToR were not appropriate and fit for purpose. The DEA proposed having two sets of ToR for the MSRG meetings, one for the planning and review of the AQMP, and the other for the implementation of the AQMP.
5. The updated ToR for the planning and review of the AQMP process were sent out for comment on 21 October 2015 and we submitted comments on 23 November 2015. We stand by these comments. At the recent MSRG



meeting on 30 November 2015, it was agreed that the ToR for planning and review would be recirculated to interested and affected parties that had not had an opportunity to comment on these, and the ToR for planning would be sent out for comment. These were sent on 7 December 2015 and comments are due on 15 December 2015.

6. As indicated above, we, on behalf of our clients submitted comments on the ToR for planning and review and will not be commenting on these again. These comments therefore relate to the ToR for the implementation of the HPA AQMP.
7. Firstly, our clients are of the opinion that the roles and responsibilities identified under paragraph 7 of the updated ToR should be expanded to include the roles and responsibilities of other stakeholders pertinent to achieving the HPA AQMP goals. The HPA AQMP identifies stakeholders, not directly related to air quality, but having co-benefits for improved air quality, in the HPA for possible collaboration.¹ Of these stakeholders identified, our clients' instructions are that it is crucial for the following government stakeholders to be part of the MSRSG process to ensure achievement of the overall goal of improving the ambient air quality of the HPA: the Department of Mineral Resources (DMR); the Department of Water Services and Sanitation (DWS); the Department of Energy (DOE), the Department of Health; and Department of Transport.
8. Each one of these Departments needs to be more involved in the HPA AQMP processes in order to further facilitate the reduction of emissions and improvement of ambient air quality in their specific mandates. Specific roles and responsibilities should be spelt out for these government departments in the ToR, and they should be obliged to attend and report on what they are doing in their specific departments, in line with their mandates, to achieve the HPA AQMP goals.
9. Another issue that is of concern to our clients is that the Chairpersons of the Implementation Task Team meetings are not consistent in their attendance of MSRSG meetings. Their presence is crucial to reporting on the status of air quality in their respective municipal areas and they should be prioritising attendance at the MSRSG meetings. It is submitted that their attendance at these meetings should be made compulsory. In instances where they absolutely cannot attend, they should delegate attendance to appropriate officials in their municipalities. This should be provided for in the ToR.
10. In addition, our clients are very concerned about the poor industry participation and attendance at MSRSG meetings. Their active participation in the process is key to improvement of ambient air quality. Industry should be obliged to attend MSRSG meetings and held to account for failing to do so and in circumstances where they fail to take required steps to ensure emission reductions. This should also be included in the updated ToR.
11. Our clients acknowledge and commend the inclusion of paragraph 8.1 regarding the circulation of documents for the meetings. However, they reiterate the following points made in a letter to the DEA in August 2014 (attached as Annexure A) on the management of the MSRSG meetings, and ask that the ToR be amended to make provision for these:
 - 11.1. that community-based organisations (CBOs) and non-governmental organisations be provided with an adequate opportunity to give input into the draft agenda in order to ensure that appropriate issues will be discussed at the meetings;
 - 11.2. that meeting agendas should have the following as standing items:

¹ 2012 HPA AQMP p129

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- 11.2.1. progress reports against specific objectives and activities within the timeframes in the AQMPs, and progress towards achieving the AQMP goals;
 - 11.2.2. reports on compliance monitoring and enforcement action taken for air quality issues; and
 - 11.2.3. the number of new Atmospheric Emission Licences (AELs) applications, as well as the applications to amend or renew AELs, variations of AELs, and all appeals against AELs in the particular priority area;
- 11.3. that participants should be given an adequate opportunity to comment on the draft minutes, which should be circulated within 2 weeks after the meeting, together with the attendance register;
- 11.4. that all documents, agendas, minutes, presentations, attendance registers and any other relevant documents from the MSRSG meetings must be stored centrally, online and made easily accessible. Our clients request that the Department urgently creates a special location on its own website for the HPA and each Priority Area where documents like the AQMP, reports against the AQMP, and all the documents from the MSRSG meetings can be uploaded and easily accessed; and
- 11.5. AELs (and ideally also AEL compliance reports) should be made easily accessible in an online platform, similar to the one mentioned in paragraph 10.3 above, as they are crucial for proper stakeholder participation in the priority areas. Our clients have frequently raised with the Department the ongoing struggles of communities and NGOs to access AELs. In this regard, we are aware that the South African Air Quality Information System (SAAQIS) makes some air quality information available and that the South African Atmospheric Emission Licensing and Inventory Portal (SAAELIP) has been launched. However, neither of these makes provision for public access to AELs or reports of AEL compliance.
12. In summary, our clients are of the opinion that, with a few improvements, the MSRSG meetings can become the fully collaborative, structured and effective meetings that they are intended to be. We request that the ToR be amended accordingly.
13. Let us know should you require any additional information or require clarification in relation to any of these comments

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



Sylvia Kamanja

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