



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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And to:

Mr Vusi Mahlangu  
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Nkangala District Municipality  
By email: [mahlangumv@nkangaladm.gov.za](mailto:mahlangumv@nkangaladm.gov.za)

Our ref: CER: RH/SK  
15 June 2016

Dear Ms Skosana, Ms Malatjie and Mr Mahlangu

## **HPA REVIEW QUESTIONNAIRE TO DETERMINE WHETHER AIR QUALITY IN THE NKANGALA DISTRICT MUNICIPALITY HAS IMPROVED SINCE 2007**

1. The Centre for Environmental Rights (CER) is a non-profit organisation that works to advance environmental rights as guaranteed in section 24 of the Constitution. We help communities defend their right to a healthy environment and we represent various non-governmental organisations (NGOs) and community-based organisations (CBOs) - mostly environmental organisations affected by pollution in their respective residential areas. One of our focus areas is to promote environmental justice and strengthen civil society participation in decisions on industrial pollution, waste and land use.
2. We and our clients are stakeholders in the Highveld Priority Area (HPA) processes and we support finding the most suitable solutions to reduce emissions and improve ambient air quality in the HPA, particularly surrounding eMalahleni and Middelburg. Some of the organisations that we represent include the Highveld Environmental Justice Network (HEJN), a network of 14 community-based organisations.<sup>1</sup>

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<sup>1</sup> Includes as affiliates the Movement Environmental Defence; Earthnogenesis; Greater Middleburg Residents Association; Guqa Environmental Community Service; Mpumalanga Youth Against Climate Change; Outrageous Courage Youth; Ekurhuleni

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## Purpose

3. In doing so, we have developed this questionnaire with various questions directed at the municipality, aimed at determining whether it has adequate capacity, financial resources and other necessary support to effectively fulfil the air quality obligations and goals in terms of the Highveld Priority Area (HPA) Air Quality Management Plan (AQMP). The questions aim to ascertain the status of air quality in the Middelburg and eMalahleni area that falls under the Nkangala District Municipality (NDM), and to determine whether there has been any improvement in air quality since the declaration of the Priority Area.
4. The purpose of the review indicators identified in this document is to assist the Nkangala District Municipality (NDM) in assessing whether they have sufficient capacity and resources to implement the HPA AQMP. This information will consequently be used to determine progress in achieving the ultimate goal of reducing emissions and improving ambient air quality since the declaration of the HPA. We hope that these results can be used to facilitate further support and resources (financial and/or human) for the municipalities to be able to achieve their air quality management mandate.

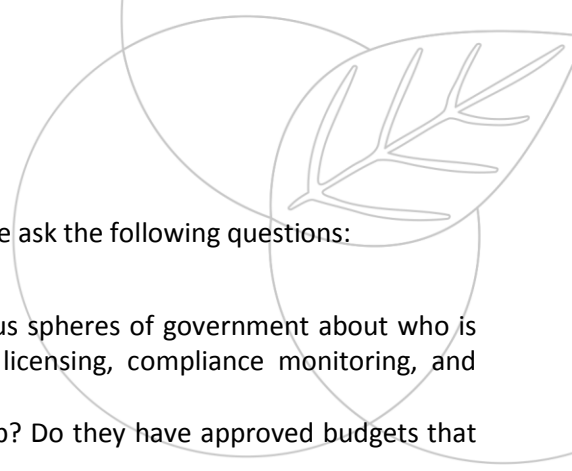
## Background

5. In 2007, the Minister of Environmental Affairs declared the Mpumalanga Highveld a priority area for air pollution in terms of the Air Quality Act. (AQA)<sup>2</sup> Numerous statutory and institutional mechanisms were put in place with the aim of improving air quality to ensure that it meets acceptable standards. Yet in 2016, air quality remains poor on the Highveld. The Department of Environmental Affairs (DEA) is currently conducting a mid-term review of the 2012 HPA AQMP, ahead of the five year review due in 2017. The DEA mid-term review seeks to determine the extent to which progress has been made in implementing the AQMP.
6. The mid-term review has been underway since about July 2015, when a questionnaire was sent out to Interested and Affected Parties (I&APs) to determine the scope of review. The Centre for Environmental Rights (CER) submitted comments on the questionnaire on 24 July 2015 on behalf of our partner groundWork and HEJN. The DEA had advised that it would have a public consultation on - 30 November 2015 - by the end of March 2016, but there is still no indication as to when this will be held or when we can expect a draft report. The DEA has indicated that it is currently analysing data from the district municipalities - on 12 February 2016 - on the HPA and that there are still a lot of gaps in the data provided. At the HPA Multi-Stakeholder Reference Group meeting on 26 May 2016, the DEA advised that the mid-term review is still in the process of being conducted and they are hoping to have a stakeholders workshop scheduled before the end of August 2016
7. In light of the above, in order to evaluate whether the HPA AQMP goals are being met, CER intends to conduct a “mini shadow review”, alongside the mid-term review of the 2012 AQMP currently being conducted by the DEA. The mini shadow review simply seeks to assess whether the AQMP’s implementation has improved HPA air quality; and if not, why not. It will also serve to identify the resources gaps in the municipalities and ideally assist in getting more support for the municipalities’ air quality management departments.
8. We focus on NDM because the area within its jurisdiction includes several large polluting industries, and most of our work and support to the community is focused on the Middelburg and eMalahleni area.

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Environmental Organisation; SANCO Tokologo; SANCO Emalahleni; Khutala Environmental Care; Schoongesicht Residents Committee; Caroline Environmental Crisis Committee; Guide the People and Wonderfontein Resettlement Forum.

<sup>2</sup> Act 39 of 2004

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9. In seeking to determine whether air quality has improved in this area, we ask the following questions:
    - 9.1. Is there clarity and agreement amongst all authorities in the various spheres of government about who is responsible for regulating air quality on the Highveld, including licensing, compliance monitoring, and enforcement?
    - 9.2. Do the designated institutions have enough resources to do the job? Do they have approved budgets that allocate sufficient funds?
    - 9.3. Does NDM have enough of the right people to do the job?
    - 9.4. Have any measures been put in place since 2007 to reduce dust?
    - 9.5. Have any measures been put in place since 2007 to improve air quality in dense low income settlements?
    - 9.6. Have key industrial facilities in NDM reduced their emissions of key pollutants and greenhouse gases (GHGs) since 2007?
    - 9.7. Has air quality improved in the HPA since 2007?
  10. We have identified below the indicators that would most appropriately answer each of the questions outlined above.
  11. We kindly request that you send us responses by 15 July 2016.

#### **Question 9.1**

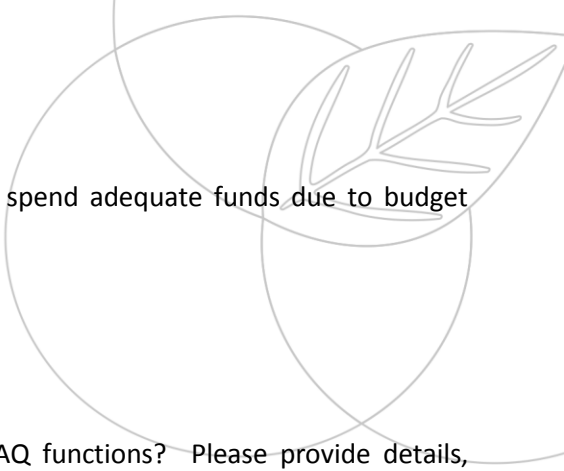
12. **Is there clarity and agreement amongst all authorities in the various spheres of government about who is responsible for regulating air quality on the Highveld, including licensing, compliance monitoring, and enforcement?**
  - 12.1. Did the s78<sup>3</sup> analysis conducted by NDM in 2012 to determine the capacity of NDM to undertake the air quality function identify that NDM is the best placed department to regulate air quality in the area? Please provide details.
  - 12.2. Is there a clear understanding in place between DEA, the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs (DARDLEA) and NDM as to: who is responsible for licensing, who is responsible for compliance monitoring, and who is responsible for enforcement? Please provide details.

#### **Questions 9.2**

13. **Do the designated institutions have enough resources to do the job? Do they have approved budgets that allocate sufficient funds?**
  - 13.1. How much funding has been allocated to NDM for air quality functions in each financial year since 2007/8? Please provide details.
  - 13.2. How have these funds been spent in NDM since 2007/8? Please provide budget lines and amounts.

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<sup>3</sup> The Draft Nkangala District AQMP dated 30 April 2015 states that, in 2012, NDM undertook an assessment to determine the resources required in respect of establishing an atmospheric emission licencing function, as per S78 of the Local Government: Municipal Systems Act, No. 32 of 2000. The Local Government Municipal Systems Act 32 of 2000 provides for the criteria and process for deciding on mechanisms to provide municipal services.

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- 13.3. On which air quality (AQ) function has NDM not been able to spend adequate funds due to budget constraints?

### **Questions 9.3**

#### **14. Does NDM have enough of the right people to do the job?**

- 14.1. Does NDM have a designated air quality officer with dedicated AQ functions? Please provide details, including the job description of the air quality officer.
- 14.2. Which other staff (in addition to the designated AQO) does NDM employ who exercise AQ functions? Please provide names, job titles, and job descriptions.
- 14.3. How many designated Environmental Management Inspectors are employed by NDM? Please provide names of the EMIs.
- 14.4. What other staff does NDM employ who fulfil compliance monitoring and enforcement functions for AQ? Please provide names, job titles, and job descriptions.
- 14.5. What qualifications do each of the staff members mentioned above have? Please provide a detailed summary of each person's qualifications and stipulate whether they have any qualifications or experience in the technical aspects of air quality monitoring, including modelling.
- 14.6. How much training has each of these staff members received in atmospheric emission licensing, compliance monitoring and enforcement (EMI training), and dust control regulation?
- 14.7. For how many years has each staff member been doing any kind of AQ regulatory work, including licensing, compliance monitoring and enforcement?

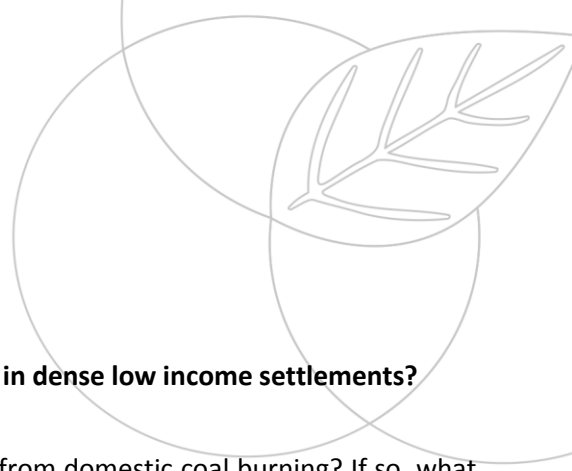
### **Question 9.4**

#### **15. Have any measures been put in place since 2007 to reduce dust?**

- 15.1. Has NDM since 2007 monitored compliance or taken enforcement action for excessive dust, including:
- 15.1.1. under the NDM bylaws, including for nuisance?
  - 15.1.2. under the Dust Control Regulations
  - 15.1.3. under AQA?
  - 15.1.4. any other laws?

Please provide details.

- 15.2. How many dust complaints has NDM received in the last 24 months? How have they dealt with these? Please provide details.
- 15.3. How many fugitive emissions management plans have been received from facilities since 2007, and in terms of which legislation? Has NDM called for any fugitive emissions management plans to be submitted? Please provide details.
- 15.4. Has NDM ever engaged with the DMR about the reduction of dust from mine haul roads? Please provide details.



### **Question 9.5**

#### **16. Have any measures been put in place since 2007 to improve air quality in dense low income settlements?**

- 16.1. Have any measures been put in place in NDM to reduce emissions from domestic coal burning? If so, what are these measures and how are they enforced?
- 16.2. Have there been any measurable improvements in air quality in the places that mainly use coal for household use in NDM since 2007? Please provide details.
- 16.3. What future plans does NDM have for the reduction of emissions from domestic coal burning?

### **Question 9.6**

#### **17. Have key industrial facilities in NDM reduced their emissions of key pollutants and greenhouse gases (GHGs) since 2007?**

- 17.1. In licences issued by the NDM since 2007, has NDM required any industrial facility to reduce its emissions of key pollutants and greenhouse gases (GHGs)?
- 17.2. Has NDM monitored any compliance with emissions reduction plans submitted/approved for the AQMP? Please provide details.
- 17.3. Has NDM conducted an analysis of whether there has been a reduction of emissions from key pollutants, including by reference to annual emission reports submitted by industries in terms of the National Environmental Management: Air Quality Act (AQA) List of Activities which Result In Atmospheric Emissions which Have or May Have a Significant Detrimental Effect on the Environment, Including Health, Social Conditions, Economic Conditions, Ecological Conditions Or Cultural Heritage? Please provide details.
- 17.4. Has an analysis been conducted to determine whether there has been a decrease in GHGs from industries in NDM since 2007? Please provide details

### **Question 9.7**

#### **18. Has air quality improved in the HPA since 2007?**

The DEA/South African Weather Service station data indicates that, between 2009 and 2015, the number of exceedances of ambient air quality standards have increased slightly. There is also an indication that instruments have been malfunctioning over extended periods. This presents a gap in assessing if there has been improvement or not.

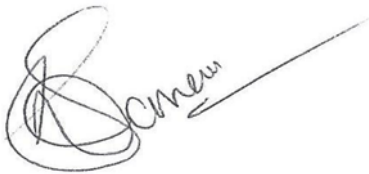
- 18.1. What monitoring equipment does NDM operate itself? Has that equipment functioned accurately and continuously since 2007? Please provide details.
- 18.2. Which other data does NDM access outside of its own monitoring network, e.g. monitoring stations operated by the province, DEA, or other local authorities? Has that equipment functioned accurately and continuously since 2007? Please provide details.

- 18.3. Does NDM have a staff member who is required to receive data and respond to exceedences measured by the monitoring equipment? What does that response entail? Please provide details.
- 18.4. Has NDM conducted its own assessment of whether air quality has improved since the promulgation of the HPA AQMP in 2007? What data was used for that assessment, and what was the outcome? Please provide us with a copy of that assessment.
- 18.5. As far as NDM is concerned, has air quality in NDM improved since 2007? Please explain your response.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:

A handwritten signature in black ink, appearing to read 'S Kamanja', with a long horizontal line extending to the right.

**Sylvia Kamanja**

**Attorney (Pollution and Climate Change Programme)**

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