



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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URGENT

Dear Sirs and Madam

DEPARTMENT OF ENVIRONMENTAL AFFAIRS BRIEFING TO PORTFOLIO COMMITTEE ON ENVIRONMENTAL AFFAIRS: ENFORCEMENT OF MINIMUM EMISSION STANDARDS IN THE PRIORITY AREAS; THE HIGHVELD REPORT AND IMPLEMENTATION OF ITS RECOMMENDATIONS; AND AIR QUALITY IN PRIORITY AREAS AND THE STATUS OF AIR QUALITY MONITORING STATIONS

1. We understand that on Wednesday, 14 June 2017, the Department of Environmental Affairs (DEA) will be briefing the Portfolio Committee on Environmental Affairs on *“progress on the attainment of NDCs in South Africa; Briefing by the DEA in relation to enforcement of minimum emission standards in the high priority areas; and the Briefing by DEA in the Highveld Report and implementation of its recommendations; Briefing by the DEA on the air quality in priority areas and the status of air quality monitoring stations; and Consideration and adoption of the Committee Oversight Report to Gauteng on Air pollution, 2017”*.
2. The Centre for Environmental Rights, together with groundWork and the Highveld Environmental Justice Network (HEJN), have been active participants in the meetings and other processes related to the Highveld Priority Area (HPA).
3. As a result of our experience and expertise in the HPA, we would like to draw the following information to your attention, with the hope that you would consider posing some of the suggested questions to the DEA.

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Background information

Highveld Priority Area and Minimum Emission Standards

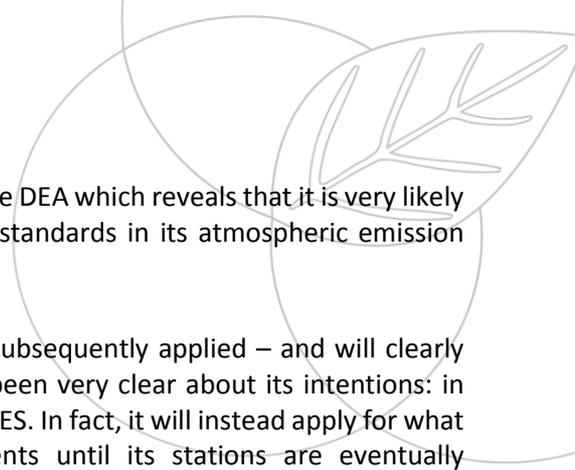
- The HPA was declared in November 2007 by the then Minister of Environmental Affairs and Tourism, and an air quality management plan (AQMP) published in March 2012. The main aim of the AQMP is for ambient air quality in the HPA to comply with all national ambient air quality standards (NAAQS), with seven goals formulated to address different aspects of meeting this overall objective.
- At every multi-stakeholder reference group (MSRG) meeting of the HPA, the DEA presents its State of the Air Report, which includes data from its five monitoring stations in the HPA. For the most recent report, attached marked "A" (which was presented by the DEA at the 25 May 2017 MSRG), it is very clear that the NAAQS continue to be exceeded – on multiple occasions - on an ongoing basis. The attached report contains the following table of exceedances for the 5 DEA monitoring stations in the HPA (the permissible number of exceedances is indicated next to each pollutant, and the actual exceedances next to each station's name):¹

	PM ₁₀ (4)	PM _{2.5} (4)	SO ₂ (4)	O ₃ (11)
Ermelo	41	13	2	241
Hendrina	1	1	0	329
Middelburg	2	0	0	33
Secunda	105	98	0	1130
<u>eMalahleni</u>	81	52	6	562

- This report points out that PM_{2.5}, PM₁₀ and ozone (O₃) were "exceeded in all stations. According to the NAAQS, the HPA is in non-compliance".²
- It is clear that the 2014 decision of the National Air Quality Officer to grant postponements of compliance with minimum emission standards (MES) to the country's two biggest polluters – Eskom and Sasol – has had a significant negative impact on the prospects of the HPA ever meeting its main goal of reducing air pollution to meet the NAAQS.

¹ Slide 17.

² Slide 23.

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8. An expert assessment of data has been made available by CER to the DEA which reveals that it is very likely that Eskom is not complying even with the postponed emission standards in its atmospheric emission licences (AELs).³
 9. This is exacerbated by the fact that both Sasol and Eskom have subsequently applied – and will clearly continue to apply - for MES postponements. In fact, Eskom has been very clear about its intentions: in relation to certain standards, it never intends to comply with the MES. In fact, it will instead apply for what it calls “rolling postponements” – reapplying for postponements until its stations are eventually decommissioned. We and our clients have consistently pointed out that such “rolling postponements” are illegal, as exemptions from minimum standards are not legally permissible. We also wish to point out that the so-called “air quality offsets”, as conditions of the postponements, are a non-solution. Quite apart from being legally and morally unsound, we are not aware of any evidence that these offsets have had a positive impact on air quality.⁴
 10. The HPA AQMP must be reviewed after five years. The AQMP’s “mid-term review” (MTR) by the DEA confirms that, despite some ten years since the HPA’s declaration, air quality remains poor, with numerous exceedances of the health-based NAAQS. A copy of the draft MTR is available at: http://cer.org.za/wp-content/uploads/2016/07/HPA-AQMP-Midterm-review-Draft-Report_February-2016.pdf.⁵
 11. As appears from the MTR, the DEA found that, despite the passage of almost ten years since the area was declared:

*“(T)here are several improvements required in terms of improving the AQMP and the tools therein to achieve the ultimate objective of air quality that is not harmful to health in the HPA. These broadly include, but are not limited to:... improved reporting of industrial and mining emissions to the National Atmospheric Emissions Inventory System (NAEIS); improved quantification of emissions through the development and use of standardised emissions inventory approach; robust engagements with the relevant National departments to influence their policy; increase in capacity to ensure implementation of the AQMP can be achieved; and improved management of the implementation and review of the AQMP progress with better accountability and feedback”;*⁶

*“measured ambient data does not indicate any significant improvement in air quality since the gazetting of the AQMP. These data also indicate significant exceedances of the National Ambient Air Quality standards (NAAQS).... It is clear that from these and measured results for other pollutants, that ambient air quality is still a concern in the HPA”;*⁷

*“the industrial sources in total are by far the largest contributor of SO₂ and NO_x in the HPA,... while mining is the largest contributor of PM₁₀ emissions”;*⁸ and

*“there is limited progress in many of the activities assigned”;*⁹ and such industrial interventions as may have been made are not adequate to enable the achievement of AQMP goals.¹⁰

³ http://cer.org.za/wp-content/uploads/2016/07/CER-letter-to-DEA-re-Eskom-non-compliance_31-May-2017.pdf;

http://cer.org.za/wp-content/uploads/2016/07/AEL-Compliance-Assessment-of-Eskom-CFPSs-final-19-May-2017_final.pdf

⁴ http://cer.org.za/wp-content/uploads/2016/08/CER-submissions-on-Draft-AQ-Offset-Policy_21-Feb-2014_final.pdf;

http://cer.org.za/wp-content/uploads/2016/08/Offsets-AQ-GdIne-CER-27-July-2015_final.pdf

⁵ To illustrate some of the difficulties with SAAQIS (described below), here is the SAAQIS link to the same document (which is inaccessible): <http://www.saaqis.org.za/Downloads.aspx?type=AQ>

⁶ p 1 of the draft review – this should be p viii.

⁷ p v of the draft review.

⁸ p ii of the draft review.

⁹ p 1 of the draft review – this should be p viii.

¹⁰ p 1 of the draft review – this should be p viii.

12. Our comments on the MTR are available at: http://cer.org.za/wp-content/uploads/2016/07/CER-preliminary-comments-on-mid-term-review_23-March-2017_final-1.pdf.¹¹ Among other things, we point out that it is simply unacceptable – as the MTR recommends - to revise the AQMP to change the objectives that have not been met and to include “more realistic” targets.¹² This is quite clearly an inappropriate response to the failure to meet objectives.
13. Our comments state that immediate and urgent action is essential to reduce emissions so as to avoid additional negative health impacts and social costs (like deepening poverty, absenteeism, shortened livelihoods) on the people of the HPA and on constitutional rights, and that more resources must be devoted towards compliance monitoring and enforcement, in order to ensure improvement in air quality in the HPA. Compliance with the NAAQS is a social imperative and a constitutional mandate. The comments propose measures such as: limiting new polluting industrial developments; refusing further MES postponements or other AEL variations that permit exceedances of AEL emission standards; including stricter emission limits in AELs; and taking strict compliance and enforcement action against non-compliant facilities.
14. As a result of the severe frustrations of the CER, HEJN, and groundWork regarding the lack of meaningful progress in achieving the aim of the HPA, and the devastating health impacts related to this failure, we have conducted our own analysis to determine whether the declaration of the HPA and the promulgation the AQMP have improved air quality within the HPA; and if not, why not?
15. Our report concludes that the HPA has, to date, dismally failed in its purpose: to improve air quality so that it at least meets the NAAQS, with the result that people of the HPA are having their constitutional rights to an environment not harmful to health and wellbeing violated. This is simply unacceptable, and people living in the HPA are frustrated by government’s failure to make priority areas a priority. It also means that community people and NGOs who have been active and vocal participants in the HPA structures are seriously reconsidering their participation in this process which is yielding few, if any, positive results. Instead, they will investigate other means to protect their constitutional rights. Neglecting to ensure that the HPA AQMP goals are achieved, means not only failing the people of the HPA, but opens government up to the risk of litigation.
16. This report will be updated and launched later this year, possibly in early September 2017. We are likely to ask the Committee to schedule public hearings related to the launch of this report.

Air quality monitoring stations

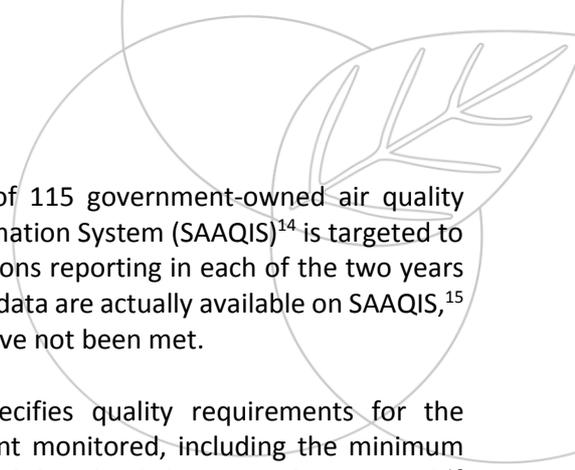
17. The DEA’s latest annual performance plan¹³ contains the following table:

PERFORMANCE INDICATORS	AUDITED/ ACTUAL PERFORMANCE			ESTIMATED PERFORMANCE 2016/17	MEDIUM-TERM TARGETS		
	2013/14	2014/15	2015/16		2017/18	2018/19	2019/20
Number of air quality monitoring stations reporting to SAAGIS	85 (72 Government owned)	124 stations (100 Government-Owned + 24 Industry)	145 stations (116 Government and 29 Industry owned stations) reporting to SAAGIS	115 government owned air quality monitoring stations reporting to SAAGIS	75 government owned air quality monitoring stations reporting to SAAGIS	80 government owned air quality monitoring stations reporting to SAAGIS	85 government owned air quality monitoring stations reporting to SAAGIS

¹¹ The annexure is at <http://cer.org.za/wp-content/uploads/2016/07/Annexure-1-to-CER-preliminary-comments-on-mid-term-review.pdf>.

¹² p 86 of the draft review.

¹³ https://www.environment.gov.za/sites/default/files/reports/environmentalaffairs_app2017_2018.pdf

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18. Strangely, the so-called “estimated performance” for 2016/17 of 115 government-owned air quality monitoring stations reporting to the South Africa Air Quality Information System (SAAQIS)¹⁴ is targeted to reduce to 75 reporting stations in 2017/18 (with 5 additional stations reporting in each of the two years thereafter). No explanation is given for this. In any event, very few data are actually available on SAAQIS,¹⁵ and various timelines set for SAAQIS upgrades and functionality have not been met.
19. The South African National Accreditation System (SANAS) specifies quality requirements for the accreditation of air quality monitoring stations, for each pollutant monitored, including the minimum availability of valid quality-assured data for each monitoring period: hourly, daily, quarterly or annual.¹⁶ Very few of the currently-functioning air quality monitoring stations meet accreditation criteria. In fact, experts advise that less than half of the 145 stations listed as being in the national network actually produce any data, and only about 20 monitoring stations (in the whole country) produce data of an adequate quality. In other words, even if additional stations report to SAAQIS, this will not address the facts that the data are inadequate and largely inaccessible to the public.

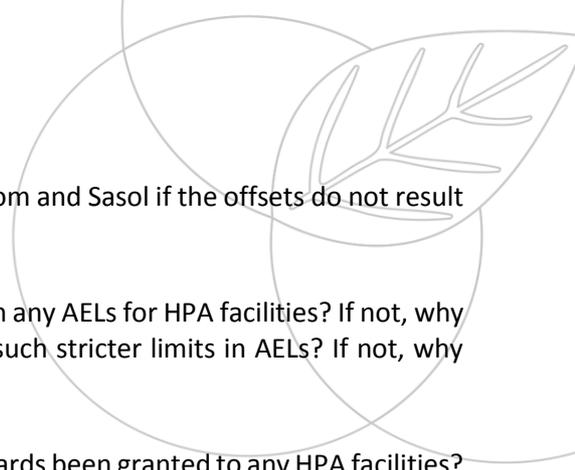
Questions for the DEA

20. In light of the background information above, we request that the Portfolio Committee on Environmental Affairs ask the DEA to respond to some or all of the following questions about this matter:
- 20.1. The DEA’s own State of the Air reports and MTR reveal that there is consistent, ongoing non-compliance with the NAAQS. In light of the fact that, in November 2017, it will be ten years since the HPA was declared, what are the prospects of the HPA ever meeting its goal to reduce pollution to meet the NAAQS? If so, does the DEA believe it is on track to this goal? If so, why does the DEA take this view, and by when does the DEA envisage that air quality in the HPA will meet the NAAQS?
- 20.2. The HPA AQMP’s first goal was that, “*by 2015, organisational capacity is optimised to efficiently and effectively maintain, monitor and enforce compliance with [NAAQS]*”. It is clear that, two years later, this goal is a long way from being met. In general, local government is poorly capacitated to carry out the required air quality functions. What urgent steps has DEA taken – and will it continue to take - to ensure that, amongst other things: every municipality has an air quality officer and an air quality management plan, that the plan is incorporated in the integrated development plan; and that air quality posts in local government are held by appropriately-skilled and resourced officials? By when will this be done?
- 20.3. Of the 30 largest facilities in the HPA, which of these have complied and which have not complied with the MES? What steps have been taken by the DEA to ensure that action is taken against those facilities in the HPA that do not comply with emission standards? Please provide full details and examples.
- 20.4. Will the DEA refuse further MES postponement applications in the HPA; particularly those made by Eskom and Sasol, as the two biggest polluters? If not, why not?
- 20.5. What evidence does the DEA have that the air quality offsets undertaken by Sasol and Eskom have yielded any positive impact on air quality? How is that impact measured, and by when are Eskom and Sasol required to demonstrate such improvements?

¹⁴ <http://www.saaqis.org.za/>

¹⁵ See footnote 5 above.

¹⁶ SANAS TR 07-03 Supplementary requirements for the accreditation of continuous ambient air quality monitoring stations, available at: http://www.sanas.co.za/manuals/pdfs/tr_0703.pdf

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- 20.6. Will the DEA withdraw the postponements granted to Eskom and Sasol if the offsets do not result in the required reduction in air pollution? If not, why not?
- 20.7. Have emission limits stricter than the MES been included in any AELs for HPA facilities? If not, why not? Will the DEA advise licensing authorities to include such stricter limits in AELs? If not, why not?
- 20.8. Have AEL variation requests to weaken AEL emission standards been granted to any HPA facilities? If so, why? Will the DEA advise licensing authorities to refuse AEL variations that weaken AEL emission standards, particularly any such applications by Eskom and Sasol? If not, why not?
- 20.9. Will the DEA advise licensing authorities to continue to grant AELs in the HPA, despite the fact that there is already non-compliance with the NAAQS? If so, why?
- 20.10. Why does the DEA's latest annual performance plan contain a target for the reduction in the number of government-owned monitoring stations reporting to SAAQIS from 115 in 2016/17 to 75 the year after?
- 20.11. Given that only about half of the 145 monitoring stations produce any data, and about 20 stations produce data of an acceptable quality, what steps is the DEA taking to ensure that the poorly-functioning air quality monitoring network will improve, and by when?
- 20.12. Are those functioning stations monitoring at least all of the main regulated pollutants - PM₁₀, PM_{2.5}, SO₂, NO₂, O₃, and carbon monoxide in all urban areas? If not, by when will this situation be rectified?
- 20.13. Are the data generated by the functioning monitoring stations of an acceptable standard (i.e are the stations SANAS-accredited)? If not, by when will this situation be rectified?
- 20.14. When will the long-overdue SAAQIS upgrades be completed?

21. We thank you for your time and invite you to contact us should you have any queries.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

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