



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Ms Nosipho Ngcaba
Director-General
Department of Environmental Affairs
By email: dg@environment.gov.za

Cc: Ms Judy Beaumont
Deputy Director-General: Air Quality & Climate Change
By email: jbeaumont@environment.gov.za

Cc: Dr Thuli Mdluli
National Air Quality Officer
By email: tnmdluli@environment.gov.za

Our Ref: CER/RH/NL
7 April 2015

Dear D-G

DRAFT STRATEGY TO ADDRESS AIR POLLUTION IN DENSE LOW-INCOME SETTLEMENTS

1. We write to you today to call for the urgent publication for comment of the draft Strategy to Address Air Pollution in Dense Low-Income Settlements (“the Draft Strategy”).
2. As you know, the Centre for Environmental Rights (CER) is a non-profit organisation and law clinic that works to advance environmental rights as guaranteed in section 24 of the Constitution. The CER represents various non-government and community organisations located in areas known to be affected by industrial air pollution and concerned with the regulation and improvement of air quality in South Africa, in particular, within the three priority areas declared in terms of section 18 of the National Environmental Management: Air Quality Act, 39 of 2004 (NEMAQA), namely the Vaal Triangle Airshed Priority Area (VTAPA); the Highveld Priority Area (HPA); and the Waterberg Bojanala Priority Area (WBPA).
3. The Draft Strategy was listed as a deliverable for Year 1 in the Outcome 10 Delivery Agreement in 2010.¹ It was also listed as a quarterly target for cleaner and healthy air in the 2011/2012 Performance Plan of the Department of Environmental Affairs’ Strategic Plan for 1 April 2011 to 31 March 2016.² The Draft Strategy was eventually made available by the Department in 2013, but has not yet formally been published for public comment.
4. The Draft Strategy aims to “provide a coordinated approach in implementation of efforts aimed at ensuring that ambient air quality in dense low-income settlements is in compliance with National Ambient Air Quality

¹ Page 70 Outcome 10 Delivery Agreement 23 September 2010.

² Page 24 DEA Strategic Plan 1 April 2011 to 31 March 2016.

2nd Floor, Springtime Studios,
1 Scott Road, Observatory, 7925
Cape Town, South Africa
Tel 021 447 1647, Fax 086 730 9098
Email info@cer.org.za, www.cer.org.za

Standards, thereby ensuring the right to air that is not harmful to people's health and well-being as required by section 24 of the Constitution of South Africa".³

5. You will be well aware – and this is also acknowledged in the Draft Strategy - that South Africans residing within low-income settlements bear the brunt of exposure to poor air quality, as many such settlements are located within close proximity to industrial emission sources and other significant sources of air pollution, such as mines. Furthermore, a substantial portion of the air pollution within dense low-income settlements, results from the burning of coal, gasoline and other fuels by residents for domestic purposes, as a result of, inter alia, poor insulation in houses and lack of access to – or inability to afford - services such as electricity and heating.
6. We point out that the poor air quality within low-income settlements is known to have devastating health impacts, largely linked to respiratory and cardio-vascular illnesses.⁴ Children and the elderly are particularly susceptible to these impacts.⁵ In addition to the severe health impacts, the effects of air pollution also include substantial cost implications for the state in having to cover the resultant health-care expenses of those exposed to poor air quality.
7. While we do not at this stage make any specific comment on the content of the Draft Strategy and the measures it proposes, we do regard the Draft Strategy, with its proposals for subsidised clean energy and energy efficient houses within low-income settlements, as a fundamental first step towards addressing the issue of air pollution within dense low-income settlements.
8. As you know, it is the duty of the state in terms of section 7 of the Constitution of the Republic of South Africa to “*respect, protect, promote and fulfill the rights in the Bill of Rights*”. In particular, in this instance, we refer to section 24 of the Constitution which affirms “*the right to an environment not harmful to ... health or well-being...*”. In addition to section 24, we refer to the state’s obligations to promote the best interests of children as being of paramount importance, in terms of section 28 of the Constitution, and to take reasonable legislative and other measures to achieve the progressive realisation of the right of access to adequate housing in terms of section 25. We point out that both of these rights are relevant in this instance, given the impact of air pollution within low-income settlements on children in particular, and the need for adequate housing, for example housing with improved insulation and/or access to electricity, as a means to curb air pollution within low-income settlements.
9. We refer further to section 3 of NEMAQA, which places a general duty on the state, when fulfilling the rights in section 24 of the Constitution to:
 - (a) *through organs of state applying [NEMAQA] ... seek to protect and enhance the quality of air in the republic; and*
 - (b) *apply ... [NEMAQA] in a manner that will achieve the progressive realization of those rights.”*
10. In addition, we refer to the National Framework for Air Quality Management, 2012 (“the framework”). We note that the framework is binding on organs of state and that it requires governance interventions in circumstances

³ Executive Summary of Draft Strategy, page 5.

⁴ See “The Health Impact of Coal” 2014 report by groundWork

<http://www.groundwork.org.za/specialreports/groundWork%20The%20Health%20Impact%20of%20Coal%20final%2020%20May%202014.pdf>.

⁵ Section 3.4.4, page 75 of The Air Quality Management Plan for the Highveld Priority Area indicates that indoor pollution from household fuel use was responsible for 2 489 deaths in the year 2000 and the total acute lower respiratory infections burden on children under 5 years old was 24% attributable to indoor air pollution from household fuel use. A recent study, as indicated in the Draft Discussion Document on Environmental Offsets, at page 30, estimated that indoor air pollution is responsible for up to 1400 child deaths per year in South Africa due to Acute Lower Respiratory Infections.

where ambient air quality standards are exceeded.⁶ We note further that these standards are in fact exceeded in many low-income settlements within South Africa, particularly those located within the priority areas.

11. The draft Air Quality Management Plan for the Nkangala District Municipality (Draft V1 dated 20 March 2015) (“the draft NDM AQMP”) and the HPA Air Quality Management Plan set emission reductions goals for domestic fuel burning, the primary objective being to bring air quality in low-income settlements into full compliance with ambient air quality standards by 2020. It should be noted that the Draft NDM AQMP sets as one of its objectives in meeting the aforementioned goal the *“implementation of the strategy for dense low income settlements”* and has as one of its indicators in meeting this objective that *“planning of dense low income settlements considers the objectives of the strategy”*. This demonstrates a clear intention on the part of local government, in particular the Nkangala District Municipality, to give effect to the Draft Strategy. Comments on the draft NDM AQMP is due before the end of April 2015.
12. It is the responsibility of the Minister of Environmental Affairs and the National Air Quality Officer to take steps to promote the above Constitutional rights and to comply with their legal obligations under NEMAQA, to seek to enhance the quality of air in South Africa, in particular where ambient air quality standards are not being met. Conversely, not taking steps urgently to address the risks to health, including the health of children, posed by domestic fuel burning, constitutes a violation of the state’s obligations under the Constitution and NEMAQA.
13. We therefore call upon the Minister and the Department to publish the Draft Strategy to Address Air Pollution in Dense Low-Income Settlements for public comment by no later than 30 April 2015.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS



Per:

Melissa Fourie

Executive Director

Direct email: mfourie@cer.org.za

⁶ Section 7(3) NEMAQA and page 65 of the National Framework for Air Quality Management GN 37078, which provides that that *“ambient air quality standards are the limit value of ambient air quality where immediate governance interventions are triggered with the aim of, at least, bringing the area into compliance with the standard. This standard is the boundary between air that is considered potentially harmful and air that is not considered harmful to health and well-being.”*