



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Copied to:

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Dear Ms Ngcaba

## URGENT STEPS NEEDED TO ADDRESS AIR POLLUTION IN THE HIGHVELD PRIORITY AREA

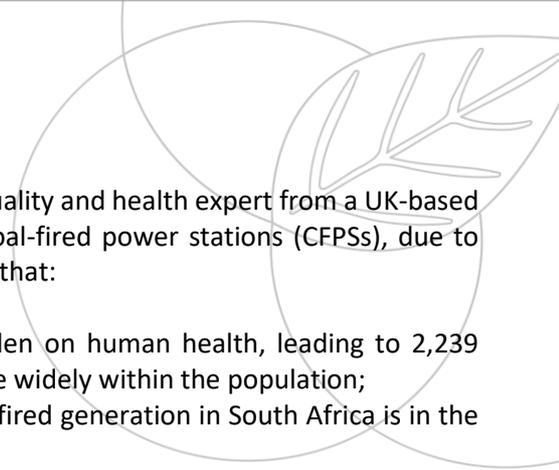
### Introduction

1. We address you on behalf of our clients, groundWork (gW), Earthlife Africa Johannesburg (ELA), the Highveld Environmental Justice Alliance Network (HEJN), and the Vaal Environmental Justice Alliance (VEJA).
2. This letter addresses the following issues:
  - 2.1 the oral submissions by the Director-General (DG) of DEA at the Parliamentary Committee on Environmental Affairs (PCEA) meeting on 6 February 2018;
  - 2.2 the DEA's failure to respond to the *Broken Promises* Report;
  - 2.3 the issue of "rolling postponements" of compliance with minimum emission standards (MES);
  - 2.4 the DEA's progress in ensuring compliance with Goal 2 of the Air Quality Management Plan (AQMP) for the Highveld Priority Area (HPA); and
  - 2.5 a call for the publication of the revised or final version of the Mid-Term Review of the AQMP.

### Oral submissions by the DG of the DEA at the PCEA Meeting

3. The meeting of the PCEA on Tuesday 6 February 2018 addressed compliance with the MES, with a particular focus on Eskom and Sasol's progress in ensuring compliance with sulphur dioxide (SO<sub>2</sub>) MES.
4. In the Centre for Environmental Rights (CER) presentation, we referred to expert studies on the health impacts of air pollution from industrial facilities.

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5. We made specific reference to the report of Dr Mike Holland - an air quality and health expert from a UK-based consulting firm - on the health impacts of emissions from Eskom's coal-fired power stations (CFPSs), due to exposure to fine particulate matter (PM<sub>2.5</sub>).<sup>1</sup> Dr Holland's report found that:
- 5.1 the health impacts of Eskom CFPSs create a substantial burden on human health, leading to 2,239 equivalent attributable deaths, as well as increased illness quite widely within the population;
  - 5.2 the total quantifiable economic cost of air pollution from coal-fired generation in South Africa is in the region of R33 billion per year; and
  - 5.3 these health impacts are likely most severe on the more disadvantaged members of society, particularly those with worse underlying health conditions.
6. This evidence follows the 2014 research by Lauri Myllyvirta, a coal and air pollution specialist, which concluded that atmospheric emissions from Eskom's CFPSs were then causing an estimated 2,200 premature deaths per year, due to PM<sub>2.5</sub> exposure.<sup>2</sup> This included approximately 200 deaths of young children. The economic cost to society was estimated at R30 billion per year.
7. In addition to the two specialist studies referred to above, we reiterate that Eskom is well aware of the health impacts of its stations and draw your attention to the health impact assessments Eskom itself commissioned as far back as 2006.<sup>3</sup> The study focused on the emissions from Eskom's then-existing fleet of 10 CFPSs, and concluded that Eskom CFPSs were cumulatively calculated to be responsible for 17 non-accidental mortalities and 661 respiratory hospital admissions per year. What is even more striking, however, is the study's finding that future Eskom's emissions, including increased releases from existing stations and the commissioning of 3 new and 3 return-to-service (RTS) stations, were cumulatively calculated to be responsible for 617 non-accidental mortalities and 24 842 respiratory hospital admissions annually.<sup>4</sup> It is therefore clear that, at least from 2006, Eskom was already well aware that commissioning new CFPSs and bringing the RTS stations back online, without installation of SO<sub>2</sub> abatement equipment at all of the CFPSs, would result in a large and disproportionate increase in mortalities and respiratory illnesses.
8. In response to the "issue of health impact studies", the DG made the following remarks at the PCEA meeting:<sup>5</sup>
- "Again this issue of health impact studies, colleagues, I think it's irresponsible of us to come here and present to the public, that, if you've done an impact study that extrapolates statistics which is not the actual exact statistics, it is going to be an issue - because at some point you are going to have to test with that.*
- So if you say those 2000 deaths (in that earlier presentation) per annum in SA, are linked to these operations, take SASOL and ESKOM to court today, and use that study and see whether you are going to be able to win in court - I doubt it, ok.*

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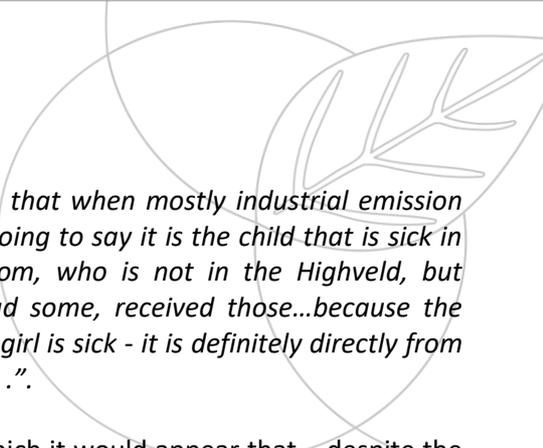
<sup>1</sup> <https://cer.org.za/wp-content/uploads/2017/04/Annexure-Health-impacts-of-coal-fired-generation-in-South-Africa-310317.pdf>.

<sup>2</sup> [http://cer.org.za/wp-content/uploads/2014/02/Annexure-5\\_Health-impacts-of-Eskom-applications-2014- final.pdf](http://cer.org.za/wp-content/uploads/2014/02/Annexure-5_Health-impacts-of-Eskom-applications-2014- final.pdf). This report was made available as part of our opposition to Eskom's first round of MES postponement applications. See also <http://www.groundwork.org.za/specialreports/groundWork%20The%20Health%20Impact%20of%20Coal%20final%202020%20May%202014.pdf>.

<sup>3</sup> See "Eskom health studies" at <https://cer.org.za/programmes/pollution-climate-change/key-information>; <https://mg.co.za/article/2014-06-19-power-stations-are-deadly-internal-report-reveals>

<sup>4</sup> See the Executive Summary of the 'Air Pollution Compliance Assessment and Health Risk Analysis of Cumulative Operations of Current, RTS and Proposed Eskom Power Station Located within the Mpumalanga and Gauteng Provinces' available at the link in footnote 3 above.

<sup>5</sup> <https://pmg.org.za/committee-meeting/25766/>.



*Because again, you also qualified in the presentation earlier on, that when mostly industrial emission travel a long way – if the stacks goes up, high up, how are you going to say it is the child that is sick in some other distance? It may be that somebody that's sick from, who is not in the Highveld, but somewhere in Durban, or I don't know where ....may have had some, received those...because the particles could travel a long distance. But you can't say - when a girl is sick - it is definitely directly from pollution that comes out of ESKOM or even SASOL – it's not easy. . .”.*

9. We and our clients are extremely concerned by these remarks, from which it would appear that – despite the evidence in DEA's own documents as to the contributions from industrial sources - the DEA may not accept that air pollutants, specifically particulate matter (PM<sub>10</sub>), sulphur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>), emitted by facilities such as those of Eskom and Sasol cause death and disease.
10. Accordingly, we request the DEA to clarify its views and the DG's remarks on the health impacts of air pollutants, particularly from Eskom and Sasol facilities.

#### DEA's failure to respond to the *Broken Promises* Report

11. On 2 October 2017, the CER, in collaboration with gW and HEJN, launched our report entitled “*Broken Promises: the Failure of the Highveld Priority Area*”.<sup>6</sup> A copy of the Executive Summary of this report was also made available to the DEA on this date. *Broken Promises* sets out the urgent steps that should be taken by various authorities to improve the severe air pollution in several parts of South Africa, particularly in those areas which have been declared to be the priority areas aimed at reducing air pollution.
12. On 19 January 2018, CER, on behalf of our clients, submitted a letter to the DEA recording the “*outcomes of the meeting with NGOs on the implementation of the Highveld Priority Area held on 12 December 2017*”. It was at this meeting that Mr Vumile Senene confirmed that a comprehensive written response to the “substantive” demands listed in the *Broken Promises* Report would be provided by 30 January 2018.
13. We did not receive a response to this letter by the 30 January 2018 deadline. Instead, we received an email from Mr Senene, dated 5 February 2018, which states the following:

*“ . . . I have been asked to request an extension as our principals need to sight of (sic) the response. It should be within the next three weeks if everything goes according to plan. I hope you will find this request acceptable.”*

14. We note the contents of this email; however, our clients continue to reserve their rights in full. On the DEA's latest timeline, such response should have been submitted by 26 February 2018. However, to date, the DEA has still not provided its response.
15. We await a detailed response to the *Broken Promises* Report as a matter of urgency.

#### Postponement of compliance with MES

16. The *Broken Promises* Report highlights the problem of “rolling postponements” of compliance with the MES.
17. In this respect, we highlight two submissions captured in the PCEA minutes.<sup>7</sup>
  - 17.1 The first submission was made by Dr Thulie Khumalo, the National Air Quality Officer, in her report-back report on the meeting with DEA, Sasol and Eskom held on 17 January 2018 – “*The DEA was planning to*

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<sup>6</sup> <https://cer.org.za/news/broken-promises-the-failure-of-south-africas-priority-areas-for-air-pollution-time-for-action>.

<sup>7</sup> See the link in footnote 5 above.

*put in place regulatory tools to make postponements a once-off application and thus eliminate rolling postponements”.*

17.2 The second submission is by the DG in reply to the PCEA Chairperson questioning the rationale behind these postponements:

*“Ms Ngcaba replied that the law talked about postponements and therefore industries had to apply for postponements, which ought to be considered by the DEA. The DEA would prepare a report, specifically, on what was the problem. The intention of law was not having rolling postponements but to allow industry to pick up and comply with the standards. The intent of the law was to create a transitional period towards full compliance.”*

18. We support the DEA position that MES compliance postponements are intended to be a once-off application, and that so-called “rolling postponements” need to be eliminated as this is not the intention of the AQA and MES Listing Notice.
19. We therefore urge the elimination of rolling postponements of MES compliance with immediate effect. Eskom and Sasol have both received widespread postponements of MES compliance and have not only made additional postponement applications, but intend to make additional applications. Further postponements of compliance, and the issuing of additional atmospheric emission licences (AELs) in the HPA will only sustain the state of non-compliance with the national ambient air quality standards (NAAQS), in continued breach of section 24 of the Constitution of the Republic of South Africa, 1996.
20. As a consequence, we kindly request an indication as to which changes in the regulatory framework are under consideration to ensure the elimination of rolling postponements. We further request an indication of when we and our clients will be invited to engage with these proposals.

#### Compliance with Goal 2 of the HPA AQMP

21. The issue of rolling postponements directly affects Goal 2 in the HPA AQMP which stipulates that, “by 2020, industrial emissions are equitably reduced to achieve compliance with ambient air quality standards and dust fallout limit values”.
  - 21.1 In accordance with the AQMP Implementation Plan, two of the indicators over a short-term timeframe (1-2 years) to achieve the objective of reducing gaseous and particulate emissions are “AELs issued with emission reductions” and “emission reduction measures implemented by industries”.
  - 21.2 Notwithstanding the fact that the DEA has already far exceeded this 1-2 year timeframe for this particular objective, we cannot see how the goal 2 deadline of 2020 will be achieved, given that various AELs (including those of the two largest polluters, Eskom and Sasol) contain relaxed emission limits and both Eskom and Sasol have sought – and continue to seek – further MES postponements.
22. We kindly request an indication of whether the DEA takes the view that the HPA is on track to ensure compliance with the 2020 deadline; and if so, why it takes this view.
23. In this regard, we also point out that there has yet to be compliance with Goal 1 – “By 2015, organisational capacity in government is optimised to efficiently and effectively maintain, monitor and enforce compliance with ambient air quality standards”. Kindly confirm when this goal will be met.

Publication of the revised or final version of the Mid-Term Review of the AQMP for the HPA

24. The *Broken Promises* Report describes the DEA process of conducting a mid-term review (MTR) of the 2012 HPA AQMP, ahead of the 5 year review which was due by March 2017.<sup>8</sup> Despite the MTR being dated December 2015, it was only made available for comment in late February 2017.<sup>9</sup>
25. On behalf of our clients, CER submitted comments on the draft MTR on 23 March 2017.<sup>10</sup> At the May 2017 Multi-Stakeholder Reference Group (MSRG) meeting, participants were told to expect the updated review by about 25 June 2017. To date, we have not received the updated MTR, nor have interested and affected parties been advised of the status of the full review.
26. We kindly request clarity on when the revised or final version of the MTR will be made available.

**Conclusion**

27. Our clients await your response in relation to each of the items above, specifically:
  - 27.1 the DEA's clarification of its views regarding the health impacts of industrial emissions;
  - 27.2 a detailed response to the *Broken Promises* Report as a matter of urgency;
  - 27.3 an indication as to what changes in the regulatory framework are being considered to eliminate "rolling postponements" of MES compliance and when interested and affected parties will be consulted in relation to these proposals;
  - 27.4 when the 2015 AQMP goal will be met; whether the DEA takes the view that the HPA is on track to ensure compliance with the HPA AQMP 2020 goals; and why it takes this view; and
  - 27.5 publication of the updated or final version of the MTR as soon as possible which addresses the fundamental concerns raised by our clients.
28. We look forward to your response.

Yours sincerely

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

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<sup>8</sup> See page 11 of the Report at [https://cer.org.za/wp-content/uploads/2017/09/Broken-Promises-full-report\\_final.pdf](https://cer.org.za/wp-content/uploads/2017/09/Broken-Promises-full-report_final.pdf).

<sup>9</sup> It is also necessary to highlight that in the MTR comments, we placed on record that the period of 24 working days to comment, without access to the critical records set out above, on this extremely-important, substantially-delayed document is unreasonable, unfair, unlawful, and is insufficient to comply with our clients' rights to just administrative action in terms of the Promotion of Administrative Justice Act, 2000.

<sup>10</sup> [https://cer.org.za/wp-content/uploads/2016/07/CER-preliminary-comments-on-mid-term-review\\_23-March-2017\\_final-1.pdf](https://cer.org.za/wp-content/uploads/2016/07/CER-preliminary-comments-on-mid-term-review_23-March-2017_final-1.pdf).