



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

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Our ref: CER 010/RH/MMK  
DEA ref: 14/11/15/LR92/3  
DWS Ref: 16/7/C222/B11

26 September 2018

**URGENT**

Dear Ms Ngcaba

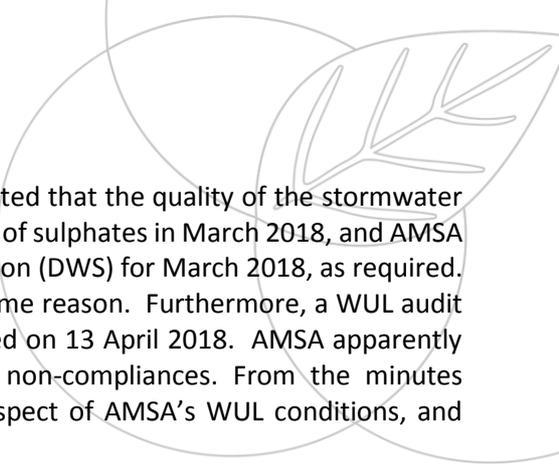
**NOTICE IN TERMS OF SECTION 28(12) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, IN RELATION TO ARCELORMITTAL SOUTH AFRICA' S OPERATIONS AT VANDERBIJLPARK**

1. We address you on behalf of Vaal Environmental Justice Alliance (VEJA),<sup>1</sup> groundWork,<sup>2</sup> and numerous affected and concerned community members residing within the municipal area of the Sedibeng District Municipality (“the Municipality”).
2. We refer to our correspondence dated 18 June 2018 (a copy of which is attached as “1” and which was sent again on 30 August 2018), in which the Director-General was given 30 days’ notice in terms of section 28(12) of the National Environmental Management Act, 1998 (NEMA) to direct ArcelorMittal South Africa (AMSA) to take specific steps to prevent and remedy the pollution, and inform us that such direction in terms of section 28(4) has been given.
3. Our letter indicated that, should the Director-General fail to give such direction to AMSA (and provide us with notification thereof) by 18 July 2018, our instructions were to consider an application to a competent court to compel this action. We refer also to our follow-up calls to the Director-General’s office on 27 and 30 August 2018.
4. We confirm that the notice period expired on 18 July 2018; however, to date, we have not received any confirmation that such direction has been given to AMSA, nor have we received a reference number allocated for this matter.
5. In the interim, AMSA’s Vanderbijlpark operations still appear to be causing significant pollution, in relation to which AMSA is not taking reasonable measures:
  - 5.1. On 31 July 2018, for instance, brown smoke and odour emanating from the AMSA operations on 30 July 2018 was reported by community members. In response, AMSA reported to the Emfuleni Local Municipality (ELM), on 6 August 2018, that no evidence was found regarding the emissions on 30 July 2018, and that dark smoke could have been a veld fire and/or domestic waste burning further outside their boundary. However, shortly thereafter, on 13 August 2018, AMSA then released a memo (a copy of which is attached as “2”), and whilst the contents do not provide much information, it appears that there was an “upset condition” at its operations, which resulted in “pooling of liquid iron”. It is not clear whether this was the cause of the brown smoke, how long the air emission (as opposed to the liquid pooling) lasted, which part of its operations were the source of the air emission, the toxicity of the emission, the possible health impacts, and whether or not this “upset condition” was reported as an emergency incident in terms of section 30 of NEMA.

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<sup>1</sup> VEJA is a democratic alliance of empowered civil society organisations in the Vaal Triangle, who have the knowledge, expertise and mandate to represent the determination of the communities in the area to control and eliminate emissions to air and water that are harmful to these communities and to the environment.

<sup>2</sup> groundWork is a non-profit environmental justice campaigning organisation working primarily in South Africa, in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste.

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- 5.2. According to the Rietspruit Forum Minute of May 2018,<sup>3</sup> it was reported that the quality of the stormwater discharge was not within the water use licence (WUL) limits in respect of sulphates in March 2018, and AMSA failed to provide any reports to the Department of Water and Sanitation (DWS) for March 2018, as required. There were an additional two months of non-reporting due to the same reason. Furthermore, a WUL audit was conducted on 14 March 2018, and an audit report was submitted on 13 April 2018. AMSA apparently subsequently provided DWS with an action plan to address the non-compliances. From the minutes therefore, it appears that there may still be non-compliances in respect of AMSA's WUL conditions, and discharges to Rietspruit polluted water may still be taking place.
- 5.3. It also appears that AMSA's Vanderbijlpark's operation still does not have an operational Coke Oven and Clean Gas and Water Plant (COCGW) (which means, amongst others, that no sulphur removal is taking place). This has been identified by AMSA as a priority project for almost 2 decades. Despite this, it is still not in operation, has not been repaired since 2011 – over 7 years - and no explanation has been provided for why this is the case. It is therefore not surprising that AMSA's July 2018 external audit and compliance report<sup>4</sup> in relation to its Kiln 5 and 6, indicate that AMSA is not compliant in reducing its cumulative annual sulphur dioxide (SO<sub>2</sub>) emissions, as *"emissions inventory currently....shows that the SO2 reduction is no longer achieved"*.<sup>5</sup> The report also indicates that AMSA is not taking appropriate measures to reduce fugitive emissions *"at waste dust discharge and transportation"* (sic).<sup>6</sup>
6. In respect of AMSA's land and water contamination, as you are aware, AMSA sent the Department of Environmental Affairs (DEA) its Land Contamination Site Assessment Report ("the November 2017 Report") on 22 November 2017. The Report indicated that there is a coal tar pool several metres thick in one borehole, and that groundwater pollution is spreading offsite through the groundwater, with 2 people identified to be living within 1 km who might be affected. CER subsequently sent follow-up correspondence regarding the site assessment on 1 March 2018 (a copy of this letter attached as "3") to various departments of DEA - including Land Remediation, Chemicals and Waste, Compliance and Enforcement - alerting them to the assessment, and requesting that action be taken. The DWS was also alerted to the Report on 15 December 2017.
7. Whilst over 7 months has passed since the November 2017 Report was made available to DEA, as far as we are aware, no Remediation order has yet been issued, nor any action taken in respect of the identified pollution. When CER requested **"all information, documentation and correspondence related to DEA's opinions and findings resulting from AMSA Vanderbijlpark's Land Contamination Site Assessment Report dated November 2017"** (emphasis added), including any order issued by DEA and any response by AMSA in relation thereto, the DEA's Mr Gordon indicated, in response, under oath, on 18 June 2018, that *"there are reasonable grounds to believe that records relating to DEA's opinions and findings and resulting from AMSA Vanderbijlpark's Land Contamination Site Assessment Report dated November 2017....do not exist"* (a copy of this affidavit is attached as "4"). This was deemed to be a complete and sufficient response by DEA in respect of a request in terms of Promotion of Access to Information Act, 2000 (PAIA), which, according to its objectives is designed to give effect to *"constitutional right to access to information held by the State"*, and to *"give effect to the constitutional obligations of the State of promoting a human rights culture and social justice...to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible....and generally, to promote transparency, accountability and effective governance of all public and private bodies"*.<sup>7</sup>
8. However, despite the affidavit under oath by Mr Gordon, DEA's subsequent letter dated 7 September 2018 (a copy of this letter is attached as "5") indicates that there was in fact, correspondence and information available related

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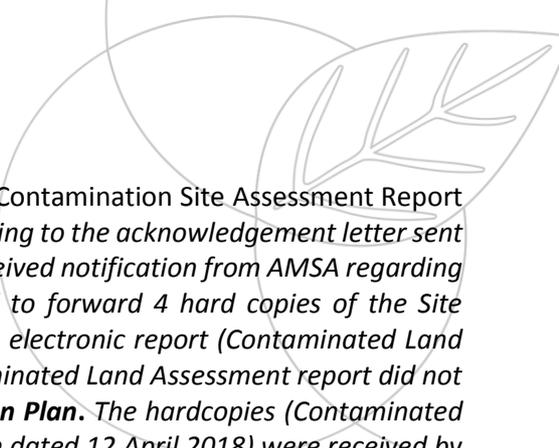
<sup>3</sup> [http://www.reservoir.co.za/forums/vaalbarrage/rietspruit\\_forum/rietspruit\\_minutes/current/RF\\_Minutes\\_15May2018.pdf](http://www.reservoir.co.za/forums/vaalbarrage/rietspruit_forum/rietspruit_minutes/current/RF_Minutes_15May2018.pdf)

<sup>4</sup> <https://arcelormittalsa.com/Portals/0/Kiln5and6ExternalAuditReportforAMSAVanderbijlparkJuly2018.pdf>

<sup>5</sup> Pg 3 & 38.

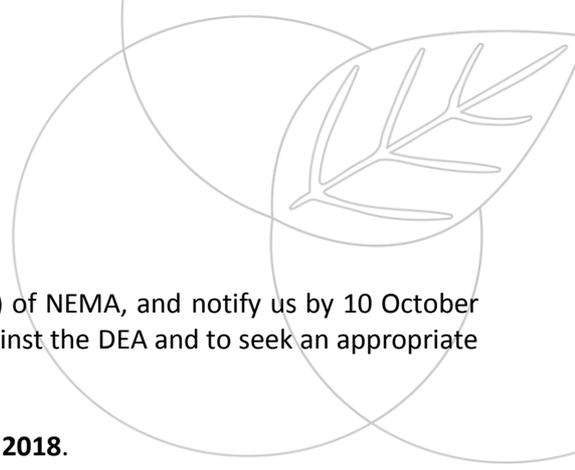
<sup>6</sup> Pg 36.

<sup>7</sup> Section 9(a)(i), 9(c), 9(d) and 9(e) of PAIA



to DEA's opinion and findings resulting from AMSA Vanderbijlpark's Land Contamination Site Assessment Report dated November 2017. The aforementioned letter indicates that "(a)ccording to the acknowledgement letter sent by the Department to AMSA dated 14 April 2015, after the Department received notification from AMSA regarding possible contamination, the facility was advised that they are supposed to forward 4 hard copies of the Site Assessment report and 1 electronic copy. However, AMSA submitted one electronic report (Contaminated Land Assessment) dated 10 November 2017 on 21 November 2017. The Contaminated Land Assessment report did not include a Remediation Plan **and the Department requested a Remediation Plan**. The hardcopies (Contaminated Land Assessment and Site Assessment Report and Remediation Action Plan dated 12 April 2018) were received by the Department on the 8 June 2018) (our emphasis)." This would indicate that there was a deliberation around the November 2017 Report submitted, its adequacy, and correspondence sent between DEA and AMSA related thereto.

9. In light of the above, the DEA is also requested to indicate why it declared under oath (and deemed it a sufficient response to a PAIA request) that no records exist in relation to the Land Contamination Site Assessment, when in fact, it considered AMSA's November 2017 submission, and deemed it insufficient, and directed AMSA to submit a remediation plan. Kindly provide us with a copy of the correspondence sent to AMSA in respect thereof, as well as the correspondence surrounding the Contamination Land Assessment and Site Assessment Report and Remediation Action Plan dated 12 April 2018.
10. More importantly, as you are aware, AMSA notified the DEA as far back as April 2015 that its land had been identified as an investigation area which could possibly be contaminated. Since then, it has taken DEA 2 years and 7 months to obtain the first contamination assessment report in November 2017, and a further 5 months to receive the second report with Remediation Plan. In other words, it has taken 3 years just to obtain the Land Contamination Site Assessment report and the Remediation Plan. Given the seriousness of the pollution highlighted in all our previous correspondence to the various branches of DEA, as well as in the November 2017 report, kindly indicate why there was such an extended period of delay (3 years) to obtain the report. Further, kindly advise why no remediation order or findings related to the Land Contamination Site Assessment have been issued, almost 10 months since the receipt of the first report, and almost 3 months since the second report, and when the findings and order will be made.
11. In light of the above, it appears that, despite the Land Contamination Site Assessment having been submitted in November 2017, and further assessment and the Remediation Plan dated 12 April having been submitted in June; to date, according to DEA, no remediation or pollution plans/order/information/correspondence appear to exist in respect of the Report. Furthermore, pollution still appears to be emanating from the premises, and it appears that there have been inadequate reporting related to such air and water pollution from AMSA's premises.
12. Given that: 3 months have passed since our notification in terms of section 28(12) of NEMA; almost 10 months has passed since DEA became aware of AMSA's report in respect of its pollution; pollution is ongoing at AMSA's premises; affected communities are not advised of "upset conditions" at the facility, **we are instructed to again request, on an urgent basis, notification of directives that DEA has given to AMSA to prevent and remedy the pollution in terms of Section 24(4) of NEMA**. In particular, we again request that AMSA be directed to:
  - 12.1. cease its activities and operations which pollute the air, water, and soil;
  - 12.2. evaluate past remediation measures and whether pollution has been eliminated through any measures taken; and if unsuccessful, require additional and/or new remediation measures within specific timeframes;
  - 12.3. commence with specific measures (such as AMSA's committed mitigation measures; including the long-outstanding COCWG project, recommissioning of the Claus reactor, and the tar abatement equipment) within a specified and reasonable timeframe; alternatively to shut down its operations if it cannot meet the committed timeframes;
  - 12.4. implement remediation measures (in addition to any monitoring which may be required) with specific milestones and deadlines which are enforceable at intervals;



- 12.5. diligently continue with any measures specified; and
- 12.6. complete measures before a specified reasonable date.

13. Should you fail to direct AMSA to take the steps set out in section 28(4) of NEMA, and notify us by 10 October 2018, we will have no choice but to proceed with further legal action against the DEA and to seek an appropriate cost order. We trust that this will not be necessary.

14. We look forward to receiving your response **by no later than 10 October 2018.**

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:

**Michelle Koyama**

**Attorney**

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