



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Honourable Minister Mokonyane

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13 December 2018

Dear Minister Mokonyane

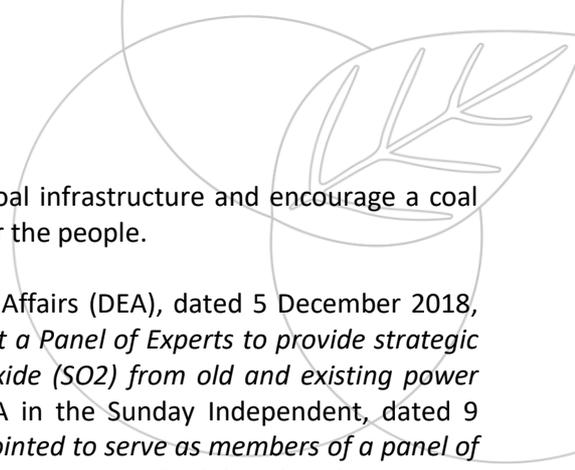
OPPOSITION TO THE ESTABLISHMENT OF A PANEL OF EXPERTS TO PROVIDE STRATEGIC AND TECHNICAL GUIDANCE TOWARDS MANAGEMENT OF SULPHUR DIOXIDE EMISSIONS FROM EXISTING PLANTS

Introduction

1. We address you on behalf of our clients, groundWork (gW), and Earthlife Africa Johannesburg (ELA). Together with the Centre for Environmental Rights (CER), we three organisations make up the [Life After Coal/Impilo Ngaphandle Kwamalahle Campaign](#)¹ - a joint campaign which seeks to: discourage the development of new coal

¹ <https://lifeaftercoal.org.za/>

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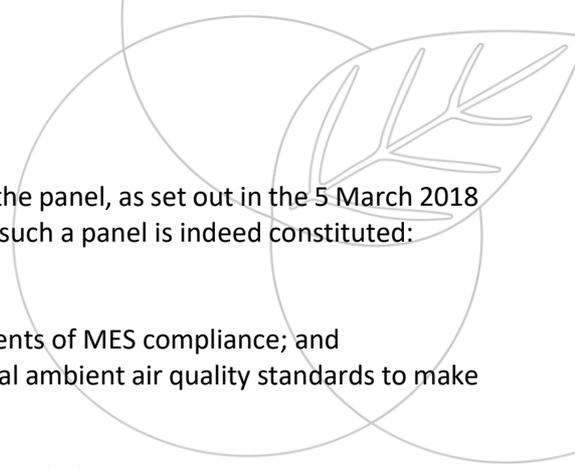


coal-fired power stations and mines; reduce emissions from existing coal infrastructure and encourage a coal phase-out; and enable a just transition to sustainable energy systems for the people.

2. We refer to the press release from the Department of Environmental Affairs (DEA), dated 5 December 2018, announcing the Minister of Environmental Affairs' intention *"to appoint a Panel of Experts to provide strategic and technical guidance towards effective management of sulphur dioxide (SO₂) from old and existing power generation plants."* We also refer to the public notice issued by DEA in the Sunday Independent, dated 9 December 2018, *"requesting nominations of suitable persons to be appointed to serve as members of a panel of experts to provide strategic and technical guidance towards effective management of sulphur dioxide emissions from old plants"*.
3. In terms of this public notice, nominations must be submitted within 30 days after publication of the notice i.e. by 8 January 2019. Copies of the press release and newspaper advertisement have been attached to this letter, marked as Annexures **"1"** and **"2"**, respectively.
4. Based on the reasons set out in the letter dated 5 March 2018, and reiterated below, this letter serves to confirm that the Life After Coal Campaign (LAC) continues to oppose the establishment of an expert panel of this nature. In addition to the fact that we have no information about the terms of reference for the panel, or similar crucial information, we have therefore resolved not to nominate any persons to be appointed to serve as members of the expert panel.

Reasons for opposition to the establishment of an expert panel

5. The reasons for our opposition to the establishment of an expert panel to provide technical and strategic guidance toward the management of SO₂ emissions are detailed in the letter referred to above. A copy of the letter, which followed a Parliamentary Committee on Environmental Affairs (PCEA) meeting held on 6 February 2018, is attached hereto, marked Annexure **"3"**. The LAC stands by these reasons, as we are still unable to understand why an additional expert panel assessment is required or appropriate at this stage. We question and are very concerned about the legal status of the panel, the independence of the panelists to be appointed, its process, and the status and effect of its outcomes or recommendations.
6. More specifically, we reiterate that there is no need for the expert panel, for the following reasons:
 - 6.1 **establishing a panel of experts will only further delay the implementation of the necessary action to achieve compliance with the MES.** In the circumstances, Eskom and Sasol (as operators of old ("existing plant") combustion plants) must be required to either retrofit their plants with SO₂ abatement technology, or commence with expedited plans to decommission their plants that are unable to meet the Minimum Emission Standards (MES). They are also able to apply for once-off suspensions of compliance in certain circumstances, provided that they will be decommissioned by 31 March 2030;
 - 6.2 **establishing a further panel of experts would duplicate the extensive work that was done in setting the MES.** As the DEA is well aware, the development of the MES constituted an extensive multi-stakeholder consultation and participation process over a five year period. Although Eskom and Sasol participated throughout the stakeholder process, at no stage did they indicate that they would not be able to meet the new plant SO₂ MES. It is not clear what steps, if any, they have taken since 2010 to ensure that they could comply; and
 - 6.3 **there is no legislative provision which entitles the DEA to weaken the MES.** In addition, there is no provision in our law that permits industry from being exempt from compliance with minimum legal requirements, on the basis that compliance costs too much. DEA has previously rejected this position and the proposed expert panel is a retreat from this firm stance.

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7. Notwithstanding the reasons for our opposition to the establishment of the panel, as set out in the 5 March 2018 letter, the DEA is again asked to confirm the following, in the event that such a panel is indeed constituted:
 - 7.1 that there will be no attempt to weaken any of the MES;
 - 7.2 that Sasol and Eskom will not be granted any rolling postponements of MES compliance; and
 - 7.3 that this process will not delay the review of the MES and national ambient air quality standards to make these both stricter.
 8. To date, the DEA has not responded to the 5 March 2018 letter, nor provided any confirmation in response to these specific items. To the contrary, despite our contention that there is no legislative provision which entitles the DEA to weaken the MES, the amended List of Activities² published on 31 October 2018 weakens the new plant MES for SO₂ for existing plants in sub-category 1.1. Furthermore, in weakening of the SO₂ limit, the Minister did not follow the consultative process in accordance with section 57(2) of the National Environmental Management: Air Quality Act 39 of 2004. The LAC has addressed the Minister on this issue in a letter dated 8 November 2018, calling for the urgent withdrawal of section 6 of the amended List of Activities published on 31 October 2018, insofar as it weakens the new plant SO₂ MES for existing plants. We await the Minister's response to this letter by 18 December 2018, as agreed.
 9. For these same reasons, the LAC maintains that the expert panel should not be established, but operators of existing plants should, instead be required to either retrofit their plants with the necessary SO₂ abatement technology, or commence with expedited plans to decommission their plants that are unable to meet the new plant SO₂ limit of 500mg/Nm³. As indicated above, the amended List of Activities also makes provision for once-off suspensions of compliance for plants to be decommissioned by 31 March 2030.

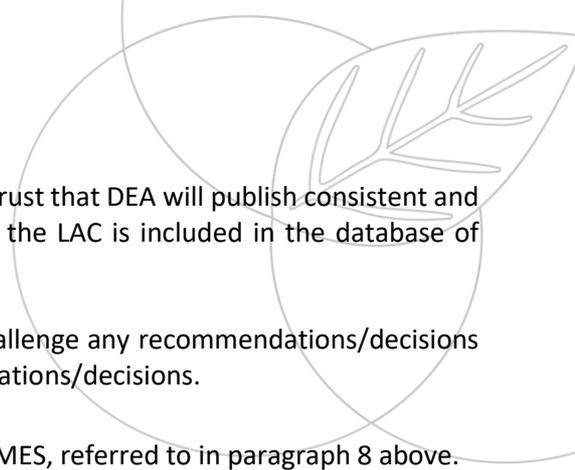
Terms of reference for the expert panel

10. As referred to above, the publication of the press release announcing the Minister's intention to appoint a panel of experts occurred on 5 December 2018. On the same day, the writer, on behalf of LAC, sent an email to the DEA officials, copied above, requesting the advertisement for the call for nominations and the terms of reference, if available. We received no response. Following receipt of the public notice in the Sunday Independent, dated 9 December 2018, a further email was sent on 10 December 2018, requesting only the terms of reference for the panel. In the afternoon of 10 December 2018, for the purpose of putting forward potential members, the writer sent a third email addressed to the same DEA officials; asking that they advise: who would convene the panel and who would provide the secretariat (schedule meetings, make transport arrangements, and pay costs etc). To date, no response has been received to these essential queries (apart from an acknowledgement of receipt by Mr Makhubele when the emails were forwarded to him today).
11. Aside from what we believe are compelling and adequate reasons not to establish the expert panel, the LAC is unable to properly consider any suitable persons for nomination, without the terms of reference and further details mentioned above.

Conclusion

12. On this basis, the LAC will not engage with the process of establishing the panel. We do, however, remain extremely concerned about the fact that the Minister is proceeding with the panel, and about the potential implications of its work. In the event that the Minister continues to pursue this process, despite the compelling reasons not to do so, we will monitor the nomination process, the appointed panelists, the progress of the panel and its outcomes.

² 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.

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13. As interested and affected stakeholders, and for the public at large, we trust that DEA will publish consistent and detailed updates as this process develops, and we kindly request that the LAC is included in the database of recipients of this information.
 14. Our rights remain fully reserved in this regard; including the right to challenge any recommendations/decisions of the panel, and/or any decisions taken in reliance on such recommendations/decisions.
 15. We look forward to receiving the Minister's response regarding the SO₂ MES, referred to in paragraph 8 above.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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