



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

**Honourable Minister Hanekom**  
Acting Minister  
Department of Environmental Affairs  
c/o Ms Melanie Titus  
By email: [mtitus@tourism.gov.za](mailto:mtitus@tourism.gov.za)  
[nmoola@tourism.gov.za](mailto:nmoola@tourism.gov.za)

Copied to:

**Ms Nosipho Ngcaba**  
Director-General  
Department of Environmental Affairs  
By email: [nngcaba@environment.gov.za](mailto:nngcaba@environment.gov.za)  
[dg@environment.gov.za](mailto:dg@environment.gov.za)  
[knxesi@environment.gov.za](mailto:knxesi@environment.gov.za)  
[svnkosi@environment.gov.za](mailto:svnkosi@environment.gov.za)

**Dr Thulie Khumalo**  
National Air Quality Officer  
Department of Environmental Affairs  
By email: [tkhumalo@environment.gov.za](mailto:tkhumalo@environment.gov.za)

**Ms Linda Garlipp**  
Chief Director: Law Reform & Appeals  
Department of Environmental Affairs  
By email: [lgarlipp@environment.gov.za](mailto:lgarlipp@environment.gov.za)

8 November 2018

**URGENT**

Dear Honourable Minister

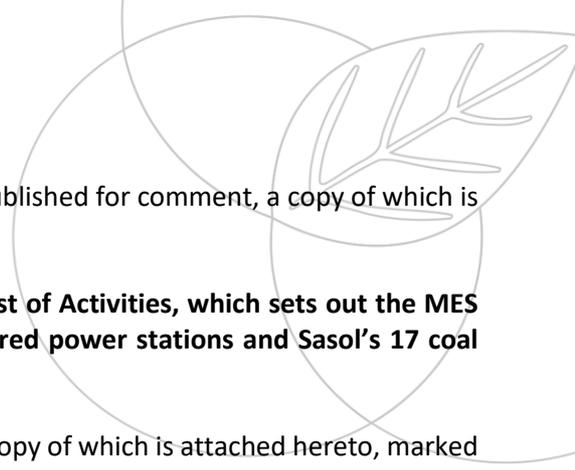
## **REQUEST FOR URGENT WITHDRAWAL OF THE PROVISION IN THE LIST OF ACTIVITIES REGARDING THE WEAKENING OF THE SULPHUR DIOXIDE NEW PLANT MINIMUM EMISSION STANDARDS FOR EXISTING PLANTS**

1. We address you on behalf of the **Life After Coal/Impilo Ngaphandle Kwamalahle** Campaign (made up of the Centre for Environmental Rights (CER), groundWork (gW) and Earthlife Africa (ELA)),<sup>1</sup> the **Khuthala Environmental Care Group**, the **Vukani Environmental Movement**, and the **Vaal Environmental Justice Alliance**. The Campaign has particular interest and expertise in issues of air pollution and minimum emission standards (MES).
2. We write to seek your urgent withdrawal of a provision in the amended List of Activities<sup>2</sup> published on 31 October 2018 (a copy of which is attached hereto, marked Annexure "1"), which weakens the new plant MES for sulphur dioxide (SO<sub>2</sub>).

<sup>1</sup> Website available at <https://lifeaftercoal.org.za/>.

<sup>2</sup> The 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, published under Government Notice No. 893, Gazette No. 37054 on 22 November 2013.

Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa  
Johannesburg: 9th Floor, Southpoint CNR, 87 De Korte Street, Braamfontein, 2001, South Africa  
Tel 021 447 1647 (Cape Town) | Tel 010 442 6830 (Johannesburg)  
Fax 086 730 9098  
[www.cer.org.za](http://www.cer.org.za)

- 
3. On 25 May 2018, proposed amendments to the List of Activities were published for comment, a copy of which is attached hereto marked Annexure “2”.
  4. Notably, **no amendments were proposed to sub-category 1.1 of the List of Activities, which sets out the MES for solid fuel combustion installations, including all of Eskom’s coal-fired power stations and Sasol’s 17 coal boilers.**
  5. We submitted comments on the draft amendments on 25 June 2018, a copy of which is attached hereto, marked Annexure “3”.
  6. On 2 November 2018, it came to our attention that the amended List of Activities (Annexure “1”) had been published on 31 October 2018. We wish to draw your attention to section 6 of Annexure “1”, which provides as follows:

### Amendment of Category 1 of the List

6. Subcategory 1.1 of Category 1 of the List is hereby amended by the addition of the following special arrangement under subparagraph (a):

“(iii) Existing plants shall comply with a new plant emission standard of 1000 mg/Nm<sup>3</sup> for sulphur dioxide (SO<sub>2</sub>).”

7. The effect of this amendment is to double the permissible emissions of SO<sub>2</sub> - from 500mg/Nm<sup>3</sup> to 1000mg/Nm<sup>3</sup> - in respect of existing plants that are solid-fuel combustion installations (which include all of Eskom’s coal-fired stations, as well as Sasol’s coal-fired boilers). In other words, the existing SO<sub>2</sub> standard has been made twice as weak. This in circumstances where **the public was afforded no opportunity to comment on this amendment.**
8. In this regard, we point out that, even if it were legally permissible to weaken the MES (which we dispute), the Minister was required to follow a consultative process in accordance with sections 56 and 57 of the National Environmental Management: Air Quality Act, 2004. Section 57(2)(b) requires that any amendment made available for comment must **“contain sufficient information to enable members of the public to submit meaningful representations or objections”**.
9. We further draw your attention to the binding principles under section 2 of the National Environmental Management Act, which require transparency and effective public participation in respect of all decisions affecting the environment. Section 2(4) provides, in relevant part, as follows:
  - “(f) *The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.*
  - “(g) *Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.*
  - “...  
“(k) *Decisions must be taken in an open and transparent manner...*”
10. These binding legal requirements were breached in this case, as members of the public were not even informed of the proposal to weaken subcategory 1.1 of the MES. They were not in a position to “submit meaningful representations or objections” in relation to this proposal.

11. In the circumstances, we call upon you to withdraw section 6 of the amendment of the List of Activities, insofar as it relates to weakening of the SO<sub>2</sub> MES, by no later than **10 December 2018**; failing which we will have no option but to launch High Court litigation seeking to review and set aside this amendment.

12. We await your urgent response.

Yours sincerely

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

**Robyn Hugo**

**Attorney and Programme Head: Pollution & Climate Change**

Direct email: [rhugo@cer.org.za](mailto:rhugo@cer.org.za)