

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case No:**

In the matter between:

**THE TRUSTEES FOR THE TIME BEING OF  
GROUNDWORK TRUST** First Applicant

**VUKANI ENVIRONMENTAL JUSTICE ALLIANCE  
MOVEMENT IN ACTION** Second Applicant

and

**THE MINISTER OF ENVIRONMENTAL AFFAIRS** First Respondent

**NATIONAL AIR QUALITY OFFICER** Second Respondent

**THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA** Third Respondent

**MEMBER OF THE EXECUTIVE COUNCIL  
FOR AGRICULTURE AND RURAL DEVELOPMENT,  
GAUTENG PROVINCE** Fourth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL  
FOR AGRICULTURE, RURAL DEVELOPMENT, LAND  
AND ENVIRONMENTAL AFFAIRS,  
MPUMALANGA PROVINCE** Fifth Respondent

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**NOTICE OF MOTION**

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**KINDLY TAKE NOTICE** the applicants intend to apply on a date to be determined by the Registrar in terms of Rule 53 of the Uniform Rules of Court for an order in the following terms:

- 1 It is declared that the poor air quality in the Highveld Priority Area is in breach of residents' section 24(a) right to an environment that is not harmful to their health and well-being.
- 2 It is declared that the Minister of Environmental Affairs ("Minister") has a legal duty to prescribe regulations under section 20 of the National Environmental Management: Air Quality Act 39 of 2004 to implement and enforce the Highveld Priority Area Air Quality Management Plan ("Highveld Plan").
- 3 It is declared that Minister's refusal to prescribe regulations to give effect to the Highveld Plan is unconstitutional, unlawful and invalid.
- 4 The Minister's refusal to prescribe regulations is reviewed and set aside.
- 5 The Minister is directed, within 6 months of this order, to prepare and initiate regulations in terms of section 20 of the Air Quality Act to implement and enforce the Highveld Plan.
- 6 In preparing regulations, the Minister is directed to pay due regard to the following considerations:
  - 6.1 the need to give legal effect to the Highveld Plan goals, coupled with appropriate penalties for non-compliance;
  - 6.2 the need for enhanced monitoring of atmospheric emissions in the priority area; including through the urgent improvement, management, and maintenance of the air quality monitoring station network to ensure that

verified, reliable data are produced, and that real-time emissions data are publicly available online and on request;

- 6.3 the need for enhanced reporting of emissions by industry in the area, including the requirement that: atmospheric emission licences, monthly, and annual emission reports, real-time emission data, and real-time ambient monitoring data from all licence-holders should be publicly available online and on request;
- 6.4 the need for a comprehensive air quality compliance monitoring and enforcement strategy; including a programme and regular progress reports on the steps taken against non-compliant facilities in the Highveld Priority Area;
- 6.5 the need to appoint and train an adequate number of appropriately-qualified officials, with the right tools and equipment in order to implement and enforce the Highveld Plan and the Air Quality Act;
- 6.6 the need for all relevant national departments, municipalities, provincial departments and MECs to participate in the Highveld Priority Area process and co-operate in the implementation and enforcement of the Highveld Plan; demonstrated by published, written commitments signed by the relevant Ministers;
- 6.7 the need for regular review of the Highveld plan; including reporting on implementation and enforcement progress to all stakeholders as required by the Highveld Plan;

- 6.8 the need to address the postponement and/or suspension of compliance with MES in the priority area; including to ensure that the atmospheric emission licences of all facilities that have not obtained once-off suspension of compliance and that cannot meet new plant MES by April 2025 are withdrawn, and decommissioning and rehabilitation of those facilities is enforced;
  - 6.9 the need for further or more stringent dust-control measures in the area; including to ensure adequate monitoring, measurement, and reduction of dust emissions, and penalties for non-compliance;
  - 6.10 the need for a coordinated response to address air pollution in low-income, densely populated areas; and
  - 6.11 the need for adequate financial support and resources, and adequate human resource capacity to ensure that all of these issues can be addressed.
- 7 Any of the parties may re-enrol this matter for hearing at any stage, if necessary on duly supplemented papers, to address the need for further orders arising from the orders set out above.
  - 8 The costs of this application are to be paid, jointly and severally, by any respondents opposing it.
  - 9 Further and / or alternative relief.

**TAKE NOTICE FURTHER** that the founding affidavit of **SVEN EATON PATRICK PEEK**, together with annexures and supporting affidavits, will be used in support of this application.

**TAKE NOTE FURTHER** that the applicants appoint the address of their attorneys, as set out below, as the address at which they will accept service of all process in these proceedings.

**TAKE NOTICE FURTHER** that:

- (a) In terms of Rule 53(1)(a) of the Uniform Rules of Court, the Minister is called upon to show cause why the refusal to make regulations (“the decision”) should not be reviewed and set aside;
- (b) In terms of Rule 53(1)(b), the Minister is called upon, within fifteen days of receipt of this notice of motion, to despatch to the Registrar the record of all documents and all electronic records that relate to the making of the decision, together with such reasons as the Minister is by law required or may require to give or make, and to notify the applicant’s attorneys that this has been done.
- (c) In terms of Rule 53(4), the applicants may within 10 days of receipt of the record from the Registrar, amend, add to, or vary the terms of its notice of motion and supplement the founding affidavit, by delivery of a notice and accompanying affidavit.

**TAKE NOTICE FURTHER** that any respondents who wish to oppose the relief sought are required:

- (a) within 15 days of receipt of this notice of motion or any amendment thereto as contemplated in Rule 53(4), to deliver a notice to the applicant's attorneys that such respondents intend to oppose this application;
- (b) to appoint an address within 15 kilometres of the office of the Registrar at which the respondents will accept notice and service of all process in such proceedings; and
- (c) within 30 days of the expiry of the time period referred to in Uniform Rule of Court 53(4), deliver such affidavits as they may desire in answer to the allegations made by the applicant.

Kindly place the matter on the roll accordingly.

DATED at PRETORIA on this the \_\_\_\_\_ day of JUNE 2019.

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**CENTRE FOR ENVIRONMENTAL RIGHTS**

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Ref: Rentia Kruyshaar/CER

**TO: THE REGISTRAR OF THE ABOVE COURT  
PRETORIA**

**AND TO: THE MINISTER OF ENVIRONMENTAL AFFAIRS**  
First Respondent  
473 Steve Biko  
Arcadia  
PRETORIA

**AND TO: THE NATIONAL AIR QUALITY OFFICER**  
Second Respondent  
473 Steve Biko  
Arcadia  
PRETORIA

**AND TO: THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**  
Third Respondent  
The Presidency Office  
Union Building  
Government Ave  
Arcadia  
PRETORIA

**AND TO: MEMBER OF THE EXECUTIVE COUNCIL  
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Fourth Respondent

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**AND TO: MEMBER OF THE EXECUTIVE COUNCIL  
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MPUMALANGA PROVINCE**

Fifth Respondent  
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NELSPRUIT

**AND TO: THE STATE ATTORNEY**  
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