



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

**The Honourable Minister Barbara Creecy**

Minister of Environment, Forestry and Fisheries

By email: [mndamase@environment.gov.za](mailto:mndamase@environment.gov.za)

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**For attention:**

**Mokete Rakgogo**

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**Copied to:**

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Our ref: CER12.4/RH/NL  
DEA Ref: AEL/LP/TPC/09/10/2018  
30 October 2019

Dear Minister

**APPEAL IN TERMS OF S43 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, OF THE PROVISIONAL AEL ISSUED TO THABAMETSI POWER COMPANY (PTY) LTD - AEL/LP/TPC/09/10/2018**

Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa

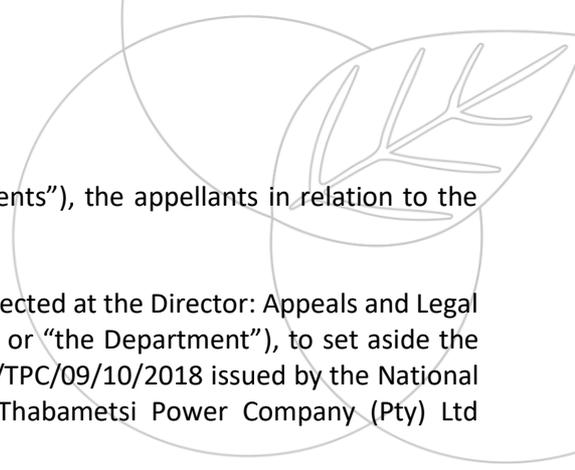
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Centre for Environmental Rights NPC is a non-profit company with registration number 2009/020736/08, NPO Ref 075-863, PBO No. 930032226 and a Law Clinic registered with the Legal Practice Council. Directors: Bonita Meyersfeld, Prof Eugene Kenneth Cairncross, Gregory Daniels, Mohamed Saliem Fakir, Melissa Fourie (Executive), Prof Tracy-Lynn Humby (Chair), Stephen Mark Law, Karabo Matlawa Maelane. Attorneys: Melissa Fourie, Leanne Govindsamy, Thobeka Amanda Gumede, Daiyaan Halim, Catherine Horsfield, Robyn Elizabeth Hugo, Matome Lethabo Kapa, Misaki Koyama, Timothy Hendrie Lloyd, Nicole Limberis-Ritchie, Nicole Löser, Danjelle Midgley, Ruchir Naidoo, Zahra Omar, Wandisa Phama, Suzanne Karen Powell. Candidate Attorneys: Tatenda Wayne Muponde, Vuyisile Hope Ncube

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1. We address you on behalf of Earthlife Africa and groundWork (“our clients”), the appellants in relation to the above matter.
  2. This is an appeal to the Honourable Minister of Environmental Affairs, directed at the Director: Appeals and Legal Review of the Department of Environment Forestry and Fisheries (DEFF or “the Department”), to set aside the provisional atmospheric emission licence with reference number AEL/LP/TPC/09/10/2018 issued by the National Air Quality Officer (“NAQO”) on 14 February 2019 (“the PAEL”) to Thabametsi Power Company (Pty) Ltd (“Thabametsi”).
  3. In terms of regulation 4(2)(a) of the National Environmental Management National Appeal Regulations, 2014 (“the Appeal Regulations”), an appeal submission must be submitted in writing in the form obtainable from the appeal administrator, and must be accompanied by: a statement setting out the grounds of appeal; supporting documentation which is referred to in the appeal submission; and a statement by the appellant to confirm compliance with regulation 4(1) of the Appeal Regulations.
  4. We enclose, and hereby submit, the following:
    - 4.1. our clients’ detailed and full appeal submissions containing the **Grounds of Appeal, marked Annexure A;**
    - 4.2. the supporting documentation in respect of our clients’ Grounds of Appeal, marked **Annexures A1 to A6.** Please note that:
      - 4.2.1. Annexure A6, the report of Dr Ranajit Sahu, is accompanied by 3 annexures – marked Attachments **A6A, A6B and A6C;** and
      - 4.2.2. in order to limit the volume of the appeal, we have not attached all of the supporting documents to which we refer in the appeal. In some cases – where we understand such information to be in the Minister’s possession already – we have inserted links to the documents as footnotes. Should any of these documents be required, kindly let us know;
    - 4.3. the signed and completed **Department of Environmental Affairs Appeal Questionnaire**, with the signed letters confirming our mandate to represent the Appellants; and
    - 4.4. the prescribed **Department of Environmental Affairs Appeal Response Form** containing the Grounds of Appeal.
  5. In compliance with regulation 4(2)(iii) of the Appeal Regulations read with regulation 4(1), we hereby confirm that:
    - 5.1. this letter, with the attached Grounds of Appeal and supporting documentation, is copied – and will be sent simultaneously – to the National Air Quality Officer (the First Respondent in this Appeal) and to Thabametsi Power Company (Pty) Ltd (the Applicant and Second Respondent in this Appeal);
    - 5.2. we are not in possession of a database of interested and affected parties in relation to the AEL application process, nor of the list of relevant organs of state with an interest in the matter, which have been consulted in relation to the AEL application process. We have sought, to the best of our ability, to comply with this legal requirement by:
      - 5.2.1. copying the provincial and municipal authorities herein as relevant organs of state with an interest in this matter; and
      - 5.2.2. copying the Environmental Assessment Practitioner for the application process herein. We request that this appeal be furnished to any registered interested and affected parties. Alternatively, you

are invited to provide us with the database and contact details, including email addresses, of the registered interested and affected parties, so that we may endeavour to circulate the appeal; and

5.2.3. we have endeavoured to comply with the 20-day timeframe for the filing of this appeal, although our clients were not duly notified of the issuance of the PAEL in accordance with the legal requirements or timeframes of section 40(4)(b) of the Air Quality Act, 2004 or regulation 4(1)(b) of the Appeal Regulations. This is addressed in the Grounds of Appeal. On 28 October, we notified you, by email, that we intended to file an appeal of the PAEL on 30 October 2019 (submitting that this would be in the interests of justice, given: the public interest in this matter and its technical complexity as well as the anticipated environmental, climate and health impacts of the Thabametsi project). We received no objections. We submit that there is no prejudice to Thabametsi or the DEFF in relation to our filing of the appeal 22 days after we received a copy of the PAEL and the reasons for its issuance. We have requested condonation, in the Grounds of Appeal, insofar as it may be necessary, and we submit that it would be in the interests of justice to grant our clients such condonation.

6. Kindly confirm receipt of this letter and our clients' appeal (comprised of the enclosed annexures).
7. Should you have any queries in relation to this appeal, or require any additional information, please let us know.
8. Kindly also keep us updated on the progress of the appeal.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

**Nicole Loser**

By email: [nloser@cer.org.za](mailto:nloser@cer.org.za)