



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Reference: PAIA 180509 Enquiries: Canecia Seepane
Telephone: (012) 399 9473 Email: GHGPPP@environment.gov.za

Nicole Loser
Centre for Environmental Rights
1 Scott Road
OBSERVATORY
7925

Email: nloser@cer.org.za and maidoo@cer.org.za.

Dear Ms Loser

REQUEST FOR ACCESS TO INFORMATION RELATING TO REGULATIONS 5(1) OF THE NATIONAL POLLUTION PREVENTION PLAN REGULATIONS, IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000) ("PAIA")

1. I refer to your request for access to records in terms of the Promotion of Access to Information Act, 2000 (Act No.2 of 2000) ("PAIA") dated 11 February 2019, for which payment was made on 11 February 2019.

2. In your request the following records were requested:

"(2.1) The database or list of data providers registered in terms of Regulation 5 of the National Greenhouse Gas Emission Reporting Regulations;

(2.2) The latest reports submitted in terms of Regulation 7(1) of the greenhouse gas reporting regulations by the following entities:

- *Eskom Holdings SOC Ltd*
- *Sasol Ltd*
- *ArcelorMittal South Africa Ltd*
- *Exxaro Resources Ltd*
- *Glencore*
- *African rainbow minerals ltd*
- *Anglo American Plc*
- *Anglo Operations Ltd*
- *South 32 Ltd*
- *Seriti Resources Holdings Pty Ltd*
- *Petmin Ltd*
- *Mbuyelo Coal Pty Ltd*
- *Kuyasa Mining Pty Ltd*
- *Sappi Ltd*
- *PPC Ltd*
- *Gold Fields Ltd.*

(2.3) *The database of or list of persons that have submitted pollution prevention plans under regulation 4(1) of the national pollution prevention plan regulations, GN 712 of 2017 ("PPP Regulations);*

(2.4) *The pollution prevention plans submitted for the period up to 31 December 2020 in terms of regulations 3(2) of the PPP Regulations, the following companies:*

- *Eskom Holdings SOC Ltd*
- *Sasol Ltd*
- *ArcelorMittal South Africa Ltd*
- *Exxaro Resources Ltd*
- *Glencore*
- *African rainbow minerals ltd*
- *Anglo American Plc*
- *Anglo Operations Ltd*
- *South 32 Ltd*
- *Seriti Resources Holdings Pty Ltd*
- *Petmin Ltd*
- *Mbuyelo Coal Pty Ltd*
- *Kuyasa Mining Pty Ltd*
- *Sappi Ltd*
- *PPC Ltd*
- *Gold Fields Ltd;*

(2.5) *The latest annual progress reports submitted by the entities listed in paragraph 3 in terms of regulation 5(1) of the PPP Regulations."*

3. The outcome of your PAIA application in relation to paragraph 2.1, 2.2, 2.3 and 2.4 *supra* was communicated to you on 5 April 2019 and relevant records were provided to the CER on 17 May 2019.

4. The Department initially indicated that the request in relation to annual progress reports submitted to the Department in terms of the National Pollution Prevention Plan Regulations (see paragraph 2.5 *supra*) would be deferred for a period of 90 (ninety) days in terms of section 24 of PAIA, as the Department only received certain of the records at the end of March 2019. This too was communicated to you on 05 April 2019.

5. Subsequent to receiving the annual progress reports submitted in terms of the National Pollution Prevention Plan Regulations and after having had the opportunity to scrutinise the annual progress reports, it became apparent that the annual progress reports might be considered as records contemplated within the ambit of section 47(1) of PAIA. The Department therefore could not release such reports in terms of section 24(1) (b) of PAIA, as indicated on 5 April 2019.

6. Section 36 of PAIA states:

- "(1) *Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains -*
- (a) *trade secrets of a third party;*

- (b) *financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or*
- (c) *information supplied in confidence by a third party the disclosure of which could reasonably be expected -*
 - (i) *to put that third party at a disadvantage in contractual or other negotiations; or*
 - (ii) *to prejudice that third party in commercial competition.”*

7. Section 28 of PAIA deals with severability and it states that:

- “(1) If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which-*
- (a) does not contain; and*
 - (b) can reasonably be severed from any part that contains, any such information must, despite any other provision of this Act, be disclosed.*
- (2) If a request for access to-*
- (a) a part of a record is granted; and*
 - (b) the other part of the record is refused, as contemplated in subsection (1), the provisions of section 25 (2), apply to paragraph (a) of this subsection and the provisions of section 25 (3) apply to paragraph (b) of this subsection.”*

8. A notice as contemplated in section 47 of PAIA was sent to Third Parties on 02 August 2019 and Third Parties were afforded a period of 21 (twenty one) days to make representations in terms of section 48 of PAIA to the Department.

9. After careful consideration of the representations received from Anglo Operations Ltd, African Rainbow Minerals Ltd, South 32 Ltd, Sappi Ltd, and PPC Ltd, I have exercised my own discretion and decided to release the latest annual progress reports submitted in terms of regulation 5(1) of the National Pollution Prevention Plan Regulations, 2017 by Anglo Operations Ltd, African Rainbow Minerals Ltd, South 32 Ltd, Sappi Ltd, and PPC Ltd.

10. Furthermore, I have considered the representations received from Eskom, Sasol and ArcelorMittal and have exercised my discretion and have decided to release the latest annual progress reports submitted in terms of regulation 5(1) of the National Pollution Prevention Plan Regulations 2017, in redacted format in accordance with the provisions of section 28 and section 36 of PAIA. The reason for redacting the specific portions is due to the fact that these portions would likely cause harm to the financial or commercial interest of the Third Parties, if disclosed. The Department is of the view that disclosure of such records, *sans* the redactions, may compromise any competitive advantage that have been achieved, or might be achieved by the above stated Third Parties in the future.

11. The Department did not receive annual progress reports in terms of regulation 5(1) of the National Pollution Prevention Plan Regulations, 2017 as requested from the following companies / entities:

- Anglo American Plc;
- Petmin Ltd;
- Mbuyelo Coal Pty Ltd;
- Kuyasa Mining Pty Ltd;
- Gold Fields Ltd;
- Seriti Resources Holdings Pty Ltd;

- Glencore;
- Exxaro Resources Ltd.

12. Section 23(1) of PAIA states that:

"(1) If-
(a) all reasonable steps have been taken to find a record requested; and
(b) there are reasonable grounds for believing that the record-
(i) is in the public body's possession but cannot be found; or
(ii) does not exist, the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record."

13. I cannot provide you with the reports in terms of regulation 5(1) of the National Pollution Prevention Plan Regulations for the entities listed *ad* paragraph 11 *supra*, as these documents do not exist. An affidavit in terms of section 23(1) (b) of PAIA is attached for your information.

14. You will be provided the documentation as set out *ad* paragraph 9 and 10 *supra*, in accordance with the provisions of section 49(3) (c) of PAIA.

15. The access fee for the records requested is hereby waived. The documents will be sent to you in electronic format, as per your request.

16. Should you wish to appeal this decision you are referred to section 74 and 75 of PAIA which allows you to lodge an internal appeal in the prescribed form to the information officer of the Department within sixty (60) days. The subject and reasons for the internal appeal must be clearly indicated.

Yours sincerely



**DEPUTY DIRECTOR-GENERAL: CLIMATE CHANGE, AIR QUALITY & SUSTAINABLE
DEVELOPMENT
PRIVATE BAG X 447
PRETORIA**

0001

DATE: 09/09/2019