

Nicole Loser

From: Nicole Loser
Sent: 07 April 2015 01:53 PM
To: 'abdul@escience.co.za'; 'jhall@envirocounsel.co.za'
Cc: 'nembilwim@nkangaladm.gov.za'; 'mahlangumv@nkangaladm.gov.za'; Sylvia Kamanja; Robyn Hugo; Melissa Fourie
Subject: Nkangala Draft AQMP and Bylaws - Questions
Attachments: CER Questions - NDM Draft AQMP and Bylaws.docx

Dear Abdul and Jenny

I refer to the meeting at the offices of Nkangala District Municipality on 26 March 2015 - at which myself and Sylvia, from the CER, were present - and to the draft air quality management plan (AQMP) and air quality by-laws which were discussed during the meeting.

We have a few questions on both draft documents. While some of them were raised during the meeting, you'll recall that the process was quite rushed, and so many of our questions were not responded to adequately, or addressed at all in some instances.

Below, and attached in Word format, is a table of our questions for your record and consideration. These may perhaps be of some assistance as you continue to work on the draft AQMP and by-laws, as they highlight some of the main areas of concern that have, thus far, come to our attention.

	REFERENCE IN DRAFT AQMP	QUESTION
1.		We have been waiting for the draft air quality management plan (AQMP) and bylaws for a while – it is important for meeting the objectives of the Highveld Priority Area air quality management plan (HPA AQMP) and constitutional rights. We trust that there will be fair and reasonable opportunities for full comment on both documents. What is the process that will be followed in finalising and adopting the AQMP and what are the timelines? How many commenting opportunities will there be and when will the AQMP be published for comment?
2.		Is Nkangala District Municipality (NDM) able to comment on whether any steps have been/are being/will be taken to have regulations passed for the implementation of the HPA AQMP and/or the NDM AQMP?
3.		How does NDM plan to enforce the AQMP? How will noncompliance be addressed? Will provision be made for environmental management inspectors (EMIs) in the AQMP, is there a plan to train or designate EMIs to assist with air quality compliance and enforcement?
4.		It appears that the AQMP implementation plan is taken almost directly from the HPA AQMP and that the activities and indicators for the AQMP objectives are vague – will the implementation plan be amended to include a more tangible enforcement and monitoring strategy, specific to the NDM and specifying, for example, enforcement targets; how regularly monitoring will be done and by whom; where monitoring results will be made available; and what will be done in events of noncompliance?
5.		What is the integrity of data being relied upon? How do NDM propose to deal with gaps in information, for instance, in circumstances where no data is available or the data is unreliable? Have any health impact studies been conducted?

6.		Does NDM plan on giving public access to AELs, compliance/emission reports, external audits, minutes of meetings, presentations and any other records relevant to assessing air quality in the NDM and if so, how will these be made available?
7.	S7, page 79	The objectives in the AQMP Overall Objectives and Goals differ from those of the HPA AQMP – mainly in that goals set for 2017 in the NDM AQMP are in fact goals for 2015 in terms of the HPA AQMP – the goals of the NDM AQMP therefore contradict the goals of the HPA AQMP. How does NDM plan to address this inconsistency?
8.	S3.6, page 28	The AQMP states that “ <i>Baseline output to be used to update section on Air pollution and health in the NDM</i> ” at what stage is the baseline assessment at and when will the AQMP be updated to reflect the findings?
9.	S3.3, page 20	It is noted that no ambient monitoring is undertaken in the Dr JS Moroka, Thembisile, eMakhazeni and Victor Khanye Local Municipalities – why is this? Are any steps being taken to address this and by when? How will/does this affect the baseline assessment and the update thereof
10.	S3.7, page 33	It is not clear from the AQMP whether the appointment of an air quality officer (AQO) has already been done for NDM. Is Vusi Mahlangu the AQO? Are there AQOs already appointed in the other local municipalities within NDM? If not, what is the strategy and envisaged timeframe for the appointment of APOs in these local municipalities?
11.	S3.8, page 35	How does NDM propose to deal with the extensive vacancies at office? Is it able to adequately fulfil its functions and will it be able to fulfil the functions of the AQMP with this limited capacity?
12.	Page 37	Does the NDM plan to incorporate the recommendations and interventions proposed by the ‘Status Quo Report for Assessment of the Requirements for Municipalities and Provinces to Fully Undertake Air Quality Functions in 2014’ which is referred to on page 37 of the AQMP, namely to make air quality part of the municipal manager or mayor’s scorecard; to make air quality an auditable function; to recruit experienced scientists and engineers for AEL processing? We have not had sight of this report and also ask that a copy be made available.
13.	Table 4-1, S4.1, Page 38	With regard to the reference to “ <i>Industrial</i> ” under the ‘Source Category’ heading, why are the industries grouped in this way and not named individually? Surely NDM is aware of all the industries within its jurisdiction and their emission contributions? Why are the individual industry percentage contributions not reflected in the AQMP? This would give a better sense of which are the worst emitters in NDM and is important for the objectives of the AQMP, rather than simply grouping all industrial emission sources into one broad category.
14.	Table 4-1, S4.1, Page 38	Why is there no data for mine haul roads, open cast mining, agricultural dust, windblown dust and traffic? Dust is a big problem (all dust mine haul roads and dust from moving vehicles unrelated to mining – around power stations for instance). The dust regulations don’t seem to deal appropriately with the dust issues. How does the AQMP plan to address the problem of dust in NDM?
15.	S8.2, point 12, page 99	Reference is made to “ <i>Quarterly meetings with communities</i> ” - who will run and oversee this process? Provision should be made in the AQMP for sufficient advance notice to be given to stakeholders of these meetings, to allow for adequate preparation. The notice should include an agenda for comment; and copies of all documents to be discussed/presented at the meeting. The AQMP should also provide for draft minutes to be timeously circulated for comment after the meeting.
16.	S8.2, point 5, page 86	Reference is made to a “ <i>training guideline document</i> ” to identify skills training needs for the AQMP, which apparently has been developed and a skills gap analysis has been conducted – please provide more details on this document

		and analysis and kindly make a copy available.
17.	S8.2, point 6, page 87	With regard to the plans to develop an AQM implementation plan and budget to give effect to the adopted NDM AQMP and include in IDP/ EIP – this is referenced as a short term goal. Is a date envisaged by when this will be done? What is the expected budget?
18.	S8.2, point 9, page 90	With regard to the goal to “ <i>Develop monitoring station purchase and operation guideline, including capacity development activities</i> ” – have any steps been taken yet to achieve this? More details would be appreciated.
19.	S8.2, point 10, page 91	Reference is made to plans to establish a Standing Committee with governance stakeholders to assess and report on progress with the NDM AQMP implementation. According to the AQMP ‘indicator’ column, this committee has already been established. Please provide more details on how it is constituted, the work done by it and the meetings held; who is on the committee; and is there a community/civil society representative or is it only government officials? Is this effectively an implementation task team? How is this aligned to the broader HPA AQMP implementation plan?
20.	S8.2, point 1, page 100	The implementation of the strategy for dense low income settlements is set as an objective and “ <i>requires that planning of dense low income settlements considers the objectives of the strategy</i> ” – note that this is still a draft strategy and has not yet been published. Have any steps been taken by NDM to push for adoption of the strategy?
21.	S8.2, point 2, page 104	With regard to the goal to communicate air quality information with all stakeholders, a quoted activity is “ <i>establishing a community forum/fora (NGOs, CBOs and FBOs) to address stakeholder education, awareness and capacity building</i> ” – the AQMP states that these stakeholder forums have been established. Please furnish more details on this – how will this process be conducted; are there any quorum requirements; how many NGO/CBO representatives will be required to be present at the forum; will provision be made for the calling of meetings, notification of participants?
22.	S9.1, page 112	The AQMP states that monitoring will be done by NDM and working groups within a timeframe of 6 months. Will this be every 6 months? Who will make up the working groups?
23.	S9.2 pg 112	Evaluation is divided into two sections, which comprise an internal evaluation of the final AQMP, and an on-going evaluation, which addresses implementation outcomes. Who will be responsible for the internal evaluation and the ongoing evaluation? How regularly will this be done? Against what standards? Is there a review and how will this be done? Please provide more details.

	REFERENCE IN DRAFT BYLAWS	QUESTION
1.		Provision must be made for an adequate opportunity for public comment. Will there be another draft of these Bylaws published? When is it envisaged that these will be published?
2.		Why has no provision been made for public participation in respect of authorisations applied for and granted, or standards published, in terms of these bylaws in accordance with chapter 4 of the Municipal Systems Act?
3.	S23 – Authorisation Procedures	Can we assume that all references to “ <i>authorisations required by the Municipality</i> ” are authorisations in addition to AELs which municipalities are responsible to administer? There needs to be more clarity on this. We suggest amending section 23 to clarify the position with regard to AELs and the responsibility of NDM as the licensing authority.
4.	S19 - Noise	Why has noise pollution management been omitted?
5.	S9 – Small	Why do the bylaws only deal with small boilers and not fuel burning

	Boilers	equipment in general? Is it not possible that the scope could be narrowed down too far by only dealing with boilers?
6.	S9 and s11	Why has no provision been made for monitoring and sampling by owners of property and/or persons in control of premises in respect of controlled emitters such as small boilers and/or dust emitting activities?
7.	S5 – Emission Standards	With regard to the standards to be set in schedule 1, is it envisaged that these will be based on national standards? Is it likely that stricter standards will be set given that NDM falls within HPA? What standards are envisaged?
8.	S11 – Dust Control	We submit that the measures imposed by the dust control regulations are inadequate for the effective regulation of dust particularly within the NDM. We suggest that the bylaws include more strict and detailed regulation or at least a requirement that control measures must seek to bring dust in line with ambient air quality standards.
9.	S24 - Appeals	What is the effect of a decision pending appeal? NEMA suspends the decision – is it the same in this instance? Does this apply to decisions on AELs? It should be made clear that AEL decisions are excluded from this appeal process if this is the case.
10.		Could provision be made for administrative fines?

In the meantime, we are working on our comments on both draft documents and will be sure to send these to you when we submit them to the Nkangala District Municipality.

Feel free to contact me if you have any queries.

Thanks and kind regards.

Nicole Löser

Attorney

Centre for Environmental Rights NPC

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