



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002 Tel: +27 12 399 9000, Fax: +27 86 625 1042

Ref: DGE169423

Enquiries: Tlou Ramaru

Tel: 012 399 9252 Email: [tlamaru@environment.gov.za](mailto:tlamaru@environment.gov.za)

Robyn Hugo

Attorney & Programme Head: Pollution & Climate Change

Centre for Environmental Rights

2nd Floor, Springtime Studios,

1 Scott Road, Observatory, 7925

Cape Town, South Africa

Tel 021 447 1647, Fax 086 730 9098

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

Dear Robyn Hugo,

### CONCERNS REGARDING THE INTERPRETATION AND IMPLEMENTATION OF THE NATIONAL GREENHOUSE GAS REPORTING REGULATIONS AND THE NATIONAL POLLUTION PREVENTION PLAN REGULATIONS

Your letter of concerns on the National Greenhouse Emissions Reporting Regulations and the National Pollution Prevention Plan Regulations dated 19 January 2018, has reference.

#### National Greenhouse Gas Reporting Regulations

In as far as the National Greenhouse Gas Reporting Regulations are concerned, our Department would like to provide a few clarifications on specific questions raised by yourselves as follows:

#### Response to Section(s) 5.1, 5.2, 5.3, 6, and 7.1, 13:

In the year 2011, the Department of Environmental Affairs published National Climate Change Response White Paper (NCCRP), which provided a set of guiding principles and mechanisms that should be put in place in order to implement and coordinate South Africa's approach to climate change response.

With reference to the NCCRP as the guiding policy framework, it is the view of the Department that the mandatory GHG reporting regime through the GHG reporting regulations, is consistent with these policy principles and mechanisms that were proposed.

The NCCRP makes reference to reporting of emissions data to be made mandatory for entities (companies and installations) that emit more than 0.1 Mt of GHGs annually, or that consume electricity which results in more than 0.1 Mt of emissions from the electricity sector. The NCCRP also makes reference to making use of a range of economic instruments such as carbon budgets, carbon tax, mitigation plans to support the system of desired emissions reduction outcomes, all of which were proposed to be introduced at a company-, economic sector- or sub-sector-level.

In the current GHG reporting regulations, company-level registration is required with disaggregation at facility-level. Reporting is required at a aggregated company-level and the reporting thresholds that have been set, have been set at an individual installation level based on design capacity as installed (i.e. at an individual installation level).

### **Response to section(s) 8**

Regulations 5 (3) (b) and 7 (4) (b) "cases where the NAEIS is unable to meet the reporting requirements" where introduced in order to cater for:

- (a) The NAEIS system upgrade in order to enable the NAEIS to aggregation at company-level in line with the GHG reporting regulations, this process is still underway;
- (b) The NAEIS system is not functional and unable to meet registration and reporting requirements (be it due to ~~IT~~ infrastructure failure and/or system maintenance).

As a result of the aforementioned possible scenarios, these clauses were introduced in order to cater for these periods and to have a back-up system of reporting through use of offline reporting mechanisms such as annexures 2 and 3.

Clauses 5 (3) (b) and 7 (4) have assisted the Department with launching the GHG reporting programme, as during this time, the NAEIS is unable to cater for the reporting requirements in line with the promulgated GHG Reporting Regulations.

According to Annexure 3, indeed reporting is required per activity, and bearing in mind the primary objective of the GHG reporting Regulations – which is to update and maintain a national inventory – this level of reporting is consistent with the manner in which reporting is required under the UNFCCC and will enable South Africa to meet its reporting obligations.

### **Response to section 9, 10 and 11:**

*"cases where the NAEIS is unable to meet the reporting requirements", nor who is to decide that "the NAEIS is unable to meet the reporting requirements":*

Through the Regulations, the Minister or her delegated departmental official(s) is empowered to communicate in the Gazette on issues relating to implementation of the Regulations, such as the status of the functionality of the NAEIS and thus, such ambiguity can be managed/avoided.

The level of reporting required in Annexure 3 is sufficient to meet both domestic and international reporting requirements and administer the current climate change response policy programmes such as PPPs, Carbon Budgets and the Carbon Tax.

**Response to section 12: Interpretation of Verification, Validation and Transparency in the context of the GHG reporting regulations:**

*"We submit that data reported in terms of Annexure 3 would essentially be un-audit able and would lack transparency as they would not include details as to the source(s) of emissions. This means it would not be clear which facilities and emission units are included in "activity data".*

It is also worth noting that the three principles referred to above, are defined in the context of GHG inventories and the IPCC guidelines for national GHG inventories and refers to a set of actions that the competent authority will undertake to establish the reliability of the reported emissions data.

These set of actions will primarily be aimed at re-constructing the reported emissions data using the reported activity data and parameters used to establish whether the reported data is consistent with the methods and the guidance provided in the Technical Guidelines for MRV of emissions by Industry.

With regards to transparency as defined in the regulations, this refers to clear documentation of assumptions and methodologies used as a basis for reporting activity data and greenhouse gas emissions to facilitate replication and assessment of the submitted information by users of the reported information.

**Response to section 13, 14 and 15:**

The department is of the view that the level of reporting as currently designed, Company-level is sufficient to meet the objective of the GHG reporting programme and is consistent with the NCCRP policy requirements.

**Sec 15 refers** to the current level of reporting hindering local authorities from producing their own GHG inventories. Whilst this is important and relevant, it is not the primary objective of the reporting programme, it is more of a value add to the existing objectives.

**Response to section 16:**

This section refers to a company-level reporting programme not being able to support policy development and will not allow for meeting reporting requirements under the UNFCCC. It is worth noting that in the past, Aggregate Energy Balance data, Industry Association-level data, and data accessed through annual publications has been used to compile the past 5 inventories, with some company-level data for certain categories provided on a voluntary basis. Use of such data presented challenges for:

- (a) full implementation of sound quality control and quality assurance procedures;
- (b) did not provide disaggregated fuel consumption per economic sector i.e. Energy Balances;

- (c) data gaps and inconsistencies regarding how the data was accessed , which often necessitated use of data filling methods and other assumptions, resulting in completeness challenges in the inventory.

With the above challenges, it is the view of the Department that the current reporting regime has a strong element of improvement which will enhance Transparency, Accuracy, Completeness and Consistency of future GHG inventories, which will enable South Africa to sustainably compile GHG inventories that meet UNFCCC reporting requirements (through Biennial Update Reports and National Communications) and informing policy design choices. Thus the current level of reporting provides a significant improvement in the current system used for GHG inventory compilation.

**Response to section 17:**

The current reporting regime requires that a Category A data provider registers and declares all its facilities for which it has operational control.

**Response to section 18:**

It is the view of the Department that reporting should allow for aggregation at company-level as opposed to each facility reporting directly to the Department, as this will enhance disaggregation. However, the view of the Department is that company-level reporting should be maintained, with enhanced disaggregation at facility-level as this reporting must support implementation of climate mitigation instruments such as the carbon tax, carbon budgets and tracking of Pollution Prevention Plans (PPPs).

**Response to section 19:**

The NAEIS in its current form caters for reporting of GHGs as part of AEL license conditions, however does not have the functionality required for implementation of the GHG reporting regulations in line with other mitigation instruments it must support. Thus it is being enhanced to cater for these registration and reporting requirements in line with the GHG reporting regulations.

**Response to section 20:**

As per the Regulations stipulate, disclosure of information will be done in line with the provisions of existing laws in the country

**Response to Section 21:**

Thus far a 140 data providers have submitted their registrations in line with Annexure 2 of the regulations with a total of 595 facilities.

Disclosure of this information shall be made in accordance with the provisions of existing laws (ditto above response on 4.9.1)

Enforcement will be dealt with in line with the regulations and following consultations with DEA legal and law enforcement.

#### **National Pollution Prevention Plan Regulations:**

In as far as the National Pollution Prevention Regulations are concerned, our Department would like to confirm that your understanding is correct that the first round of pollution prevention plans will cover the period of 21 July 2017 – 31 December 2020, and the submission deadline for these plans was 21 December 2017.

The part of the regulation 4(1) that relates to subsequent pollution prevention plans allows for the alignment of the plans with the South Africa's mitigation system which is being implemented in phases. The duration of phase 1 extends from 1 January 2016 to 31 December 2020, and subsequent phases will commence on 1 January 2021. The publication of the Regulations was only done by 21 July 2017 and as a result, the phase up to 2020 (first pollution prevention plans) will be implemented over a period of less than five years. The annual reports to register progress of the preceding calendar year on implementation of the approved plans are to be submitted by the 31 March of each year. The plans get reconciled at the end of each phase (i.e. 31 December 2020; 31 December 2025; etc.). To develop and finalize the new plans for the subsequent phase(s), companies are given five months from the time the lifespan of the existing ones cease.

Regarding the above, you also indicated that you are uncertain as to the meaning of "reconciled" and its relationship to the Minister's approval after the 30-day consideration period provided for in regulation 4(3)-(5). The word "reconciled" refers to the lifespan of the plan ending – which in the case of the first pollution prevention plan is the 31 December 2020. Thus, the submission of subsequent plans which will cover a five year period from 1 January 2021 to 31 December 2025, will be due on 31 May 2021. Considering that the annual progress reports for the preceding years is due on 31 March every year, the final annual report and first phase report will only be ready by 31 March 2021. The subsequent plan will therefore accurately be prepared and finalized two months after the reporting (31 May 2021).

The Department is finalising the Guideline document which will aid the companies as they prepare and implement these plans. The concerns you raised on the obligations in relation to the submission of the plans and the validity and review periods of the plans are expanded and narrated in detail in this Guideline. It is not possible that the regulations explain the processes in such details you require. The meaning of the word "reconcile" will also be explained in the Guideline. The Department will therefore not be in a position to revise the Regulations.

Furthermore, you requested that the Department discloses which persons have submitted pollution prevention plans, and share copies of these plans – particularly those of Eskom, Sasol and ArcelorMittal South Africa. The Department has thus far received pollution prevention plans from 35 companies - these include Eskom, Sasol and ArcelorMittal South Africa. The plans contain confidential information related to production processes which can compromise the competitiveness of these companies. Regulation 7 of the National Pollution Prevention Plan Regulations commits the

Department to keep the information obtained confidential. The Department is therefore not in a position to share the copies of these plans with you.

I trust that we have addressed your concerns to your satisfaction. Should you wish to correspond further on this matter kindly quote Reference: **DGE169423**.

Yours sincerely

  
Ms Nosipho Ngcaba  
Director-General  
Department of Environmental Affairs  
Letter signed by:   
Designation: Director-General (Acting)  
Date: 24/02/2018