



The Director-General: Environmental Affairs
Mr Olebogeng Matshediso
Private Bag X447
Pretoria
0001
Email: OMatshediso@environment.gov.za

5 February 2013

Dear Olebogeng

**SUBMISSIONS ON THE DRAFT NATIONAL DUST CONTROL REGULATIONS PUBLISHED IN TERMS OF THE
NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004 (AQA)**

1. In this document, we submit comments on behalf of our clients, groundWork, the South Durban Community Environmental Alliance (SDCEA) and the Vaal Environmental Justice Alliance (VEJA), on the draft National Dust Control Regulations published for comment on 7 December 2012 ("the Regulations").
2. groundWork is a non-profit environmental justice service and developmental organisation aimed at improving the quality of life of vulnerable people in South Africa (and increasingly in Southern Africa), through assisting civil society to have a greater impact on environmental governance. SDCEA is an environmental justice organisation based in south Durban. It is made up of 16 affiliate organisations, and it has been active since its formation in 1996. It is considered successful for many reasons, one of which is that it is a vocal and vigilant grouping in terms of lobbying, reporting and researching industrial incidents and accidents in this area. It contributes to the struggle against environmental racism for environmental justice and environmental health. VEJA is a democratic alliance of empowered civil society organisations in the Vaal Triangle, who have the knowledge, expertise and mandate to represent the determination of the communities in the area to control and eliminate emissions to air and water that are harmful to these communities and to the environment.
3. Before commenting on specific regulations, we make certain general comments in relation to the Regulations.
4. General comments on the Regulations
 - 4.1. The Regulations should make provision for air quality officers to call for qualitative and quantitative analyses to evaluate whether there are hazardous substances in the dust that could pose health and/or environmental risks. For instance, coal ash or fines might contain toxic constituents.

223 Lower Main Road, Observatory, Cape Town 7925
Tel 021 447 1647 Fax 086 730 9098
Email info@cer.org.za Web www.cer.org.za

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 Law Society of the Cape of Good Hope

Directors: Carolyn Elizabeth Ah Shene, Joanna Amy Eastwood, Saliem Mohamed Fakir, Melissa Fourie (Executive), Stephen Mark Law, Thomas Tseko Ratsheko, Louis Johannes Smith, Terry Jane Winstanley (Chair)

Attorneys: Melissa Fourie, Catherine Horsfield, Robyn Elizabeth Hugo, Marthán Theart, Dina Lupin Townsend

- 4.2. The Regulations should also make provision for the control of incidental releases that pose an impact risk to health and quality of life.
- 4.3. For the Regulations to be effective, they must be backed up by a community awareness campaign with clear procedures for communities to follow, should there be a dust-related incident.
- 4.4. Because of local government's role in air quality management, the Regulations should call upon all metropolitan, district and local municipalities to amend their by-laws so as to give effect to these Regulations.

5. Below, we comment on the content of the Regulations.

6. Definitions

The definition of "residential area" as "*any area classified for residential use in terms of the local town planning scheme*" may have the effect of excluding some informal and traditional areas. The definition should be amended to ensure that such areas – which are very vulnerable to poor air quality – are not excluded.

7. Dust fallout standard (Regulation 3)

The proposed regulation does not take into account acute dust exposure over a short duration. The 30 day average for residential areas would reduce the quantification of dust emissions, should they occur at high concentrations during discrete intervals. The Regulations should be amended also to set standards for exposure over a short duration, such as 24 hours.

8. Baseline establishment (Regulation 4(2))

The dust monitoring report should also report on the social environment of the area; including the number of households, children, the elderly and other vulnerable persons exposed to dust fallout.

9. Dust fallout monitoring (Regulation 6)

To ensure consistency and clarity, it is submitted that the format and minimum content of the "compliance or non-compliance report" dealt with in Regulation 6(2)(b) be prescribed.

10. Ambient air quality monitoring for PM₁₀ (Regulation 7)

10.1. The Regulations should provide not only for continuous ambient air quality *monitoring* for PM₁₀ in accordance with the ambient air quality standards, but that such person be required to *comply* with such standards.

10.2. The Regulations should provide that, should the PM₁₀ levels be close to or exceed the national ambient air quality standards for PM₁₀, monitoring for PM_{2.5} should also be required, and the person should also be required to comply with the national ambient air quality standard for PM_{2.5}.

11. Offences (Regulation 8)

Because the AQA binds all organs of state, government offenders must also be held to account when they breach the Regulations.

12. Penalties (Regulation 9)

We note section 55(2) of the AQA. It is submitted that the penalty provision in the Regulations be in line with section 52 of the AQA (the penalty provision).

13. We trust that our comments will be favourably considered. Please contact us, should you have any queries.

Yours sincerely

Centre for Environmental Rights

Per:



Robyn Hugo
Attorney