



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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29 June 2018

Dear Elizabeth and Avhantodi

PROVISIONAL SUBMISSIONS REGARDING THE REVIEW OF THE 2012 NATIONAL FRAMEWORK FOR AIR QUALITY MANAGEMENT IN THE REPUBLIC OF SOUTH AFRICA

1. We address you on behalf of our clients, groundWork (gW)¹ Earthlife Africa (ELA),² the South Durban Community Environmental Alliance (SDCEA),³ the Highveld Environmental Justice Network (HEJN),⁴ and the Vaal Environmental Justice Alliance (VEJA).⁵ As we explain below, our clients have not had an adequate opportunity to peruse these submissions. For this reason, we are submitting these as provisional comments, and reserving all of our clients' rights.
2. We write to you with reference to the Department of Environmental Affairs' ("the DEA" or "the Department") call for comments and submissions in relation to the proposed amendments to the 2012 National Framework for Air Quality Management in the Republic of South Africa ("the draft Framework" or "the 2018 draft Framework"), as announced in Government Notice 518, Gazette Number 41650 on 25 May 2018. Two other draft notices were published for comment on the same day with the same deadline: the revised Dust Control Regulations and

¹ gW is a non-profit environmental justice service and developmental organisation working primarily in Southern Africa in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste. See more information at www.groundwork.org.za.

² ELA is a non-profit organisation that seeks to encourage and support individuals, businesses and industries to reduce pollution, minimise waste and protect natural resources. See more information at: www.earthlife.org.za.

³ SDCEA is a non-profit organisation which aims to service the common interests of participating civil society organisations, provide a common structure through which different sectors of civil society can explore, strengthen and promote matters of common interest justice or relating to environmental justice and sustainable development and create a culture of environmental justice and sustainability.

⁴ HEJN is a community organisation aimed at raising awareness on key health and environmental issues within the Highveld region and improving the quality of life of vulnerable people living in the Highveld

⁵ VEJA is a non-profit organisation that advocates for environmental justice, through the promotion of environmental awareness; education; active engagement with role-players; assistance to vulnerable and previously disadvantaged communities; and through advocating for a healthy environment and sustainable development within the Vaal Triangle.

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amendments to the List of Activities under the AQA. With full reservation of rights, we submitted representations on both documents on 25 June 2018.⁶ Both sets of submissions are relevant to the comments on the draft Framework and we request that they be read in conjunction with these submissions.

3. We also refer to our previous submissions in the last review of the proposed amendments to the draft Framework dated 22 August 2012, 16 April 2013, and 29 September 2017 – some of which are applicable to the submissions herein. Copies of our previous submissions are attached, which we refer to respectively as the “2012 submissions”, “2013 submissions”, “2017 submissions” and collectively as “our previous submissions”.

Unreasonable and inadequate opportunity for comment

4. We wish to record upfront that our clients have not received an adequate, reasonable, and fair opportunity to make meaningful submissions in relation to the draft Framework, and we specifically point out that our ability to do so has been significantly hampered by the unreasonably short period for comment and the Department’s failure - despite request - to hold meetings in areas where communities who are worst impacted by poor air quality – including the priority areas - reside. We reiterate that, as you are aware, there are many facets of the Framework affecting various components of air quality management, requiring detailed technical input - such as: the adequacy and efficacy of monitoring stations, air quality monitoring online platforms, compliance and enforcement, minimum emission standard (MES) postponement applications, air quality indicators, and international obligations - among many others. All these aspects require in-depth consideration and have far-reaching consequences. There are certain aspects of the draft Framework that we have been unable to consider, due to these time constraints. We also record that, in the circumstances, our clients have not had a proper opportunity to peruse these submissions, and, for that reason, we are submitting these as provisional comments. Our clients’ rights are fully reserved in this regard; including the right to make additional submissions at a later stage.
5. In this regard, we refer to our correspondence of 13 June 2018, in which we requested an extension until 25 July 2018 (30 days) to submit comments on the draft Framework published in terms of the National Environmental Management: Air Quality Act, 2004 (“AQA”), given that three such important documents were published with the same comment deadline, and the limited availability of technical expertise to non-profit organisations acting in the public interest. After various follow-up correspondence, we were finally informed in writing on 20 June 2018 that this request was not granted, and that the Department had attempted to send an email to stakeholders regarding a workshop to be held on two of these three documents. We thereafter made a second request for an extension to Dr Thuli Khumalo (the National Air Quality Officer (NAQO)) on 20 June 2018. On 21 June 2018, Dr Khumalo agreed only to grant an extension of four days - until 29 June 2018. This despite the fact that we only requested the extension in relation to the draft Framework. We are instructed to point out the following:
 - 5.1. as indicated above, on the same day that the amendments to the draft Framework were announced i.e. 25 May 2018, the DEA published two other important air quality-related draft notices for public comment simultaneously, with the same deadline of 30 days for comment: the revised Dust Control Regulations, and amendments to the List of Activities under the AQA;
 - 5.2. all three notices are inter-related and of critical importance, therefore requiring detailed and comprehensive comments, informed by technical expertise, as well as inputs from affected communities. As the Department is aware, we and our clients have particular expertise and experience on these issues and work with and represent communities who live in the areas worst impacted by air pollution;
 - 5.3. we were advised – although not by the Department – on 12 June 2018 – that a workshop on the draft Framework and the draft amendments to the List of Activities had been scheduled. Upon enquiry, the Department advised us on 12 June 2018 that the workshop was advertised in the Sunday Independent and

⁶ <https://cer.org.za/wp-content/uploads/2018/06/CER-submission-on-proposed-amendments-to-MES-postponement-provisions-25-June-2018-1.pdf> and <https://cer.org.za/wp-content/uploads/2018/06/CER-Written-Submissions-Dust-Control-Regulations-25-June-2018-1.pdf>

would be held in Benoni on 14 June 2018. We and our clients were simply not able to attend at such short notice. We were also advised that the Department had attempted to email us about the workshop on 31 May 2018. We, however, did not receive such an invitation. It is unacceptable that we and our clients did not receive notification of this workshop. To date, despite several requests, we have not been provided with the minutes or a summary of this workshop, nor copies of the presentations made. Not only have we previously asked to be on all the Department's mailing lists, but the Department is well aware that we and our clients are important and long-standing stakeholders, with particular air quality experience and expertise. We once again reiterate the request to be timeously informed of all air quality-related meetings and documents. The Department should urgently resolve any technical issues that may prevent interested and affected parties from being advised of such events and information;

- 5.4. we submit that these are appropriate circumstances for the Minister to use her power in terms of section 57(3) of the AQA, to allow interested persons and communities to present oral representations or objections. In addition, as indicated above, the Department should have held public meetings to present and discuss these draft notices with people living in affected areas. This was not done – despite our previous requests and despite the importance of receiving input from such people who suffer the brunt of air pollution;
- 5.5. the minor extension for the Framework comments of four days - i.e. to 29 June 2018 – provides an unreasonably narrow timeframe to submit meaningful comments on all three documents and unfairly defeats the purpose of public consultation; and
- 5.6. in our previous submissions and in earlier correspondence and meetings, we requested that a copy of the marked-up draft Framework be provided, so that the proposed changes could be easily ascertained. However, to date, this has not been provided to us. On 19 June 2018, this request was reiterated to Advocate. A. Munyai; however, to date, we have received no response or any explanation as to why were not provided with this marked-up copy of the Framework. Having to trawl through such a large document with no such indication of what has been changed is unreasonable and unfair, and significantly increases the time required to comment on the draft Framework.
6. We record our clients' strenuous objection to this process of public consultation, with only 30 days being provided for comment on three such important air quality-related documents (with only four extra days for the draft Framework comments), and submit that this is inconsistent with section 57 of AQA, with the National Environmental Management Act, 1998 (NEMA), and with section 24 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). We reiterate that our rights and our clients' rights are reserved.
7. Before setting out our provisional submissions on the draft Framework, we also wish to place on record that the Department has, to date, and despite follow-up correspondence from us and several subsequent indications from the Department that a response is forthcoming, failed to respond to the demands made to it on 2 October 2017 through the delivery of the *Broken Promises* report.⁷ This report is highly relevant to these submissions on the draft Framework (and for the submissions on the draft revisions to the Dust Control Regulations and the proposed amendments to the List of Activities), and we and our clients stand by the contents of the *Broken Promises* report and the demands made therein. We request that the Department regard the contents of the *Broken Promises* report and the demands made therein as incorporated into these submissions.
8. Our submissions are set out below and address the following issues in turn:
 - A. General Concerns
 - B. Public Participation
 - C. Absence of comprehensive progress review against the objectives of the 2007 and 2012 Framework
 - D. International Obligations, Climate Change, and Greenhouse Gas (GHG) Reporting System
 - E. Annual Air Quality Management Governance Lekgotla

⁷ <https://cer.org.za/news/broken-promises-the-failure-of-south-africas-priority-areas-for-air-pollution-time-for-action>



- F. Compliance Monitoring and Enforcement
- G. Ambient Air Quality Monitoring and Monitoring
- H. Public Access to Quality Data and information
- I. Capacity Building

9. We reiterate that we reserve our rights to supplement these objections.

A. General Concerns

- 10. We reiterate that section 24 of the Constitution guarantees everyone the right to an environment that is not harmful to their health or well-being. The AQA is one of the various “reasonable legislative measures” envisaged by the Constitution to give effect to this environmental right.
- 11. The AQA recognises; amongst other things, that:
 - 11.1. *“the quality of ambient air in many areas of [South Africa] is not conducive to a healthy environment for the people living in those areas let alone promoting their social and economic advancement”;*
 - 11.2. *“the burden of health impacts associated with polluted ambient air falls most heavily on the poor”;*
 - 11.3. *“air pollution carries a high social, economic and environmental cost that is seldom borne by the polluter”;* and
 - 11.4. it must provide reasonable measures to: protect and enhance air quality; prevent air pollution and environmental degradation; and secure *“ecologically sustainable development while promoting justifiable economic and social development”*.
- 12. The AQA also makes provision for a national framework to be established to achieve the objects of AQA. However, almost 13 years since AQA was promulgated, and nearly 11 years since the 2007 Framework was established, many of AQA’s aims continue to be largely unrealised. Air pollution, with its devastating impacts on human health and well-being, remains significant, particularly in the priority areas. We once again refer to the *Broken Promises* report.
 - 12.1. Despite the fact that the Vaal Triangle Airshed and Highveld Priority Areas were declared 12, and more than ten years ago, respectively – with the specific aim of reducing pollution so that it no longer exceeds the national ambient air quality standards (NAAQS) - regular, significant exceedances of the NAAQS are common in these areas. The third priority area, Waterberg-Bojanala, declared six years ago, is also out of compliance with the NAAQS. This is despite the fact that South African NAAQS are weaker than the outdated 2005 World Health Organisation (WHO)’s guidelines; and
 - 12.2. A report by Dr. Mike Holland⁸ attributed approximately 2200 annual deaths and thousands of cases of bronchitis and asthma in adults and children annually, to the emissions of PM_{2.5} from Eskom’s coal-fired power stations alone. This at a cost of more than USD2.37billion annually.⁹ Furthermore, whilst the report only concentrates on PM_{2.5}, it also highlights the importance of evaluating toxic metals released into the atmosphere by coal-fired power stations, such as mercury and lead, since these toxic metals are well established as having impacts on neuro-development, negatively impacting IQ in the population, and that this persists from youth to old age.¹⁰

⁸ Dr Mike Holland, Health impacts of coal fired power plants in South Africa, pg 15, available at <https://cer.org.za/wp-content/uploads/2017/04/Annexure-Health-impacts-of-coal-fired-generation-in-South-Africa-310317.pdf>

⁹ <https://cer.org.za/news/air-pollution-from-coal-power-stations-causes-disease-and-kills-thousands-of-south-africans-every-year-says-uk-expert>.

¹⁰ Dr Mike Holland, Health impacts of coal fired power plants in South Africa, pg 5, available at <https://cer.org.za/wp-content/uploads/2017/04/Annexure-Health-impacts-of-coal-fired-generation-in-South-Africa-310317.pdf>

12.3. In addition to our weak NAAQS, South African MES are also very weak. Our existing plant MES particularly so. For comparative purposes:¹¹

'Existing Plant' ratios: SA/ country		'New Plant' ratios: SA/ country			
	SO2	PM			
SA/ China	17.5	3.3	SA/ China	14.3	5.0
SA/ Germany	17.5	5.0	SA/ Germany	3.3	5.0
SA/ India	5.8	1.0	SA/ India	5.0	1.7
SA/ Indonesia	4.7	0.7	SA/ Indonesia	0.7	0.5
SA/ Thailand	1.7	0.6	SA/ Thailand	1.0	0.6
SA/ EU IED	17.5	5.0	SA/ EU IED	3.3	5.0

12.4. It is clear that South Africa's NAAQS and its MES require review and updating for purposes of making these stricter to provide better protection for human health and well-being. In this regard, both AQA¹² and the Framework¹³ require the review of both sets of standards at least every five years. These reviews are overdue and should be commenced soon. We address this in section G below.

12.5. Despite our weak MES, Eskom and Sasol, the country's two biggest polluters, sought and obtained widespread postponements of compliance with the MES – and have sought (and in Sasol's case, obtained) subsequent postponements (a decision on Eskom's subsequent re-application for postponement remains pending). Eskom and Sasol have both indicated that they will continue to seek such further postponements, and both have stated that they will not comply with the SO₂ new plant standards, even by 2025. The proposed amendments to the List of Activities – repeated in the draft Framework - make some proposals in this regard – proposing that stations that cannot meet the new plant MES by 2025 and will be decommissioned by 2030, may, in certain circumstances, apply to suspend such compliance. Eskom has also informed us that, despite these proposed amendments, it has no intention of meeting the SO₂ new plant MES for any of its stations, except Medupi and Kusile, and will therefore seek the once-off suspension for all of its stations, and not only those that will be decommissioned by 2030. In other words, as far as Eskom is concerned, the proposed amendments to the List of Activities have no bearing on its intention to be completely exempt from SO₂ new plant MES for every single other station. This is unacceptable and unlawful.

12.6. Despite Eskom having significantly more lax emission standards in its atmospheric emission licences (AELs) as a result of the postponements, it still fails to comply with these standards. We refer in this regard to our correspondence to the Department of 31 May 2017,¹⁴ and record that an updated assessment of Eskom's data for 1 April 2016 to 31 March 2017 demonstrates that such regular non-compliance persists at by far the majority of Eskom's stations. Despite this, no enforcement action has been taken against Eskom in relation to such non-compliance. An updated report on this non-compliance will be provided to the Department as soon as it is ready.

12.7. Notwithstanding this non-compliance with NAAQS in the priority areas (and the several other adverse impacts not only of coal in general, but specifically of new proposed coal plants)¹⁵, Government still intends

¹¹ <https://www.iea-coal.org/library/emission-standards/>

¹² Sections 7(5)(c)-(d), 9(2), 21(b).

¹³ Paragraphs 5.4.3.2-5.4.3.3.

¹⁴ https://cer.org.za/wp-content/uploads/2016/07/CER-letter-to-DEA-re-Eskom-non-compliance_31-May-2017.pdf and https://cer.org.za/wp-content/uploads/2016/07/AEL-Compliance-Assessment-of-Eskom-CFPSs-final-19-May-2017_final.pdf

¹⁵ <https://cer.org.za/news/ministers-statement-flies-in-the-face-of-latest-no-new-coal-report>

to construct and operate a fleet of new, independent power producer (IPP) coal-fired power stations within these priority areas, in addition to Eskom's Medupi (Waterberg) and Kusile (Mpumalanga) power stations. Thabametsi and Khanyisa power stations are both preferred bidders in the coal baseload IPP procurement programme, and are proposed to be based in the Waterberg-Bojanala and Highveld Priority Areas, respectively. It is clear that such stations – which will be amongst the most greenhouse gas emissions-intensive plants in the world,¹⁶ will not only exacerbate climate change, but will contribute to the ongoing non-compliance with NAAQS in the priority areas. This is particularly concerning, since, in the Waterberg, Limpopo, the air quality since the 2012 Framework has deteriorated from "potentially poor" to "poor" – according to the draft Framework.¹⁷ Using the precedent of the other two priority areas, and bearing in mind the plans to develop the Waterberg, air pollution will only deteriorate. Similarly, in Mpumalanga, two out of three district municipalities' air quality remains poor in comparison to the current revision, and the third (District Ehlanzeni), has further deteriorated from "potentially poor" to "poor".

- 12.8. This non-compliance with NAAQS is reflected in the Department's own reports presented at priority area meetings, as well as in its mid-term review of the Highveld Priority Area (HPA) air quality management plan (AQMP),¹⁸ and in the State of Air report presented at the 2017 Air Quality Lekgotla.¹⁹ In this regard, we also note that the draft Framework records that, in relation to the monitoring stations (some are no longer reported and others seem to be new) around 14 district municipalities (some with more than one monitoring station), air quality has deteriorated from "potentially poor" to "poor".²⁰
- 12.9. None of the priority areas shows any prospect of having their declarations withdrawn as is envisaged by section 18(5) of AQA if the area is in compliance with NAAQS for a period of at least two years.
13. In relation to the proposed amendments to the procedure for applying to postpone MES compliance, we refer again to our submissions on the List of Activities and require that they be read as if incorporated herein. We also record our clients' objection to the proposed elimination of the phrase from section 5.4.3.4 of the 2012 Framework, which indicates that applications for postponement may be made provided NAAQS in the area are in compliance and will remain in compliance even if the postponement is granted. We also object to the proposed deletion of the postponement application requirement that it must be demonstrated that the facility's current and proposed air emissions are not causing and will not cause any adverse impacts on the surrounding environment. **It is appropriate that no applications for postponement (or suspension) be considered in priority areas or in any areas where there is non-compliance with NAAQS or where such non-compliance may result from an application.** The draft Framework proposes a less stringent test – eliminating reference to the underlined portions above and instead referring to the "industry's emissions causing direct adverse impacts". This change which weakens the Framework, is unlawful and unacceptable, as it violates the values in section 24 of the Constitution, and is likely to open the door to even more postponement applications. As things stand, Eskom and Sasol – despite being the biggest polluters in the country - already largely deny responsibility for adverse impacts of their emissions. The 2012 Framework's provisions in this regard should be retained.
14. Further we support the statement that "*sufficient time has been afforded to industry towards compliance with the initial MES by 2020*". We reiterate that we, on 25 June 2018, submitted comments on the proposed amendments

¹⁶ <https://cer.org.za/news/thabametsi-coal-plant-given-go-ahead-despite-staggering-climate-impacts>

¹⁷ 2012 Framework, page 54, 2018 Framework, Appendix 2.

¹⁸ https://cer.org.za/wp-content/uploads/2016/07/HPA-AQMP-Midterm-review-Draft-Report_February-2016.pdf

¹⁹ http://www.airqualitylekgotla.co.za/assets/2017_1.3-state-of-air-report-and-naqi.pdf

²⁰ KZN: Umgungundlovu, Amajuba, iLembe, Ugu; Uthungulu; NW: Bojanala, Dr Kenneth Kaunda; Limpopo: Capricorn, Greater Sekhukhune/Sekehune, Mopani, Waterberg; FS: Mangaung; Gauteng: West Rand; Western Cape: Cape Winelands, Eden; and Mpumalanga: Ehlanzeni. There are numerous instances in which air quality remains poor and there only appears to be one municipality in which air quality has improved (from poor to acceptable) – Pixley Ka Seme in Mpumalanga.

to the MES postponement provisions in the List of Activities and require that those comments be considered together with these comments pertaining to the postponement provisions.

15. We note that the Framework, in section 5.4.7, refers to the Strategy to Address Air Pollution in Dense Low-income Settlements. We refer to our previous correspondence in relation to this Strategy – to which no response has been received - and reiterate that, as far as we are aware, it has not been finalised. Please advise us what the status is of the Strategy.
16. Many of the same problems which existed when the first Framework was gazetted in 2007 still persist today, 11 years later. These include: a lack of monitoring stations which operate reliably according to prescribed criteria; the dearth of easily-accessible and publically-available air quality and emission data; the lack of meaningful comprehensive enforcement action; and the lack of meaningful public participation in various air quality-related processes, among others. To exacerbate matters, the draft Framework does not review the progress (or the lack thereof) made in respect of targets in the current (2012) Framework, or reasons why it failed to meet the targets. The draft Framework merely extends the previous targets, and this makes it difficult to evaluate how and where improvements are required. For instance, in the 2012 Framework, Appendix 2 prescribes the indicators to be included in the NAQO's annual report. This has to identify specific listed problems, and next to each problems are columns in respect of targets for various years, such as: "baselines, July 2007", "2012 target", "2012 achievement", and "2017 target". Such problem identification includes the number of pollutants associated with NAAQS, the number of district municipalities with air quality that do not conform to NAAQS, the number of provinces with AQMPs, etc.²¹ This makes it easy to see the targets previously achieved, where the difficulties lie, the new targets set, and new targets to be met. However, in Appendix 3 of the 2018 Framework, there is no past indication, with only the "baseline 2017", and target included. The NAQO's annual report will therefore not reveal any progress or help to identify challenges or areas that require improvement.
17. In our submission of 29 September 2017, we also requested confirmation from DEA as to whether feedback would be provided in relation to how comments made on the draft Framework were considered and addressed. Our request stands, as, to date, we have received no response.
18. In section 4.4.3 of the draft Framework, reference is made to the Committee for Environmental Coordination. This should be deleted, as provision for such committee was deleted from NEMA in 2009.

B. Public Participation

19. Sections 3.5 of and 5.9.1 of the 2012 Framework outline the importance of public participation to ensure good air quality governance, and mandate that public participation take place in the establishment of National Framework (and amendments thereto), NAAQS, priority area AQMPs, the listing of activities, the declaration of controlled emitters, and any regulations.
20. The AQA requires that norms and standards established in terms of the Framework are aimed at ensuring, *inter alia*, opportunities for public participation in the protection and enhancement of air quality.²² There is provision for public participation in relation to various sections of AQA (such as licensing;²³ transfer of AELs;²⁴ renewal;²⁵ and variation of licences.²⁶ In general, the Minister or MEC must give due consideration to all representations or objections received from or presented by the public - before exercising various powers.

²¹ Appendix 2, 2012 Framework, pg 101.

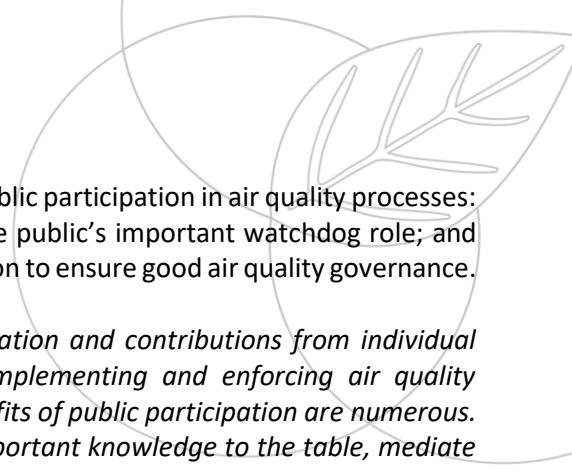
²² See section 7(2)(a) of the AQA.

²³ See section 38(3) of the AQA

²⁴ See section 44(4) of the AQA.

²⁵ See section 47 read with section 38 of the AQA.

²⁶ See section 46(3), (4) and (5).



21. The 2012 Framework makes extensive references to the importance of public participation in air quality processes: Section 3.5 notes the direct impact on the public of air pollution and the public's important watchdog role; and 5.9.1 of the 2012 Framework outlines the importance of public participation to ensure good air quality governance.
22. Section 5.9.1.1 of the 2012 Framework provides that "*(a)ctive participation and contributions from individual citizens and citizen groups is of utmost importance in developing, implementing and enforcing air quality management decisions within the context of the AQA. The potential benefits of public participation are numerous. If well-planned and managed, public participation can bring new and important knowledge to the table, mediate between conflicting perspectives early in the process and facilitate more efficient air quality governance. Equally important, public participation in air quality management plays a vital role in strengthening and deepening democracy in South Africa and in giving effect to the constitutional right to an environment which is conducive to health and well-being.*"
23. According to sections 5.9.1.3 of the 2012 Framework: "*(t)o keep stakeholders informed about on-going and planned air quality management projects and decision-processes (and related public participation opportunities), all three spheres of government must make relevant information available in a timely manner through, for example, dedicated air quality management websites and other suitable means, such as actively notifying known stakeholders.*

Public participation opportunities for air quality decision-processes referred to in the AQA must be publicised on the national department websites and in other appropriate media and notifications sent electronically to stakeholders directly using up-to-date databases and electronic mailing lists. Special efforts will be made to ensure that vulnerable and affected communities are informed about relevant decision-processes. Information on the stage in the decision-process at which public participation is planned and the type of public participation activities envisaged will assist stakeholders in planning their participation and assigning necessary time and resources. It will also allow stakeholders to suggest possible adjustments to the envisaged public participation process early in the decision-process.²⁷

Public participation must take place early in the process, when key options are still open. This will ensure that all perspectives are captured and can be properly assessed at the outset. It will also ensure that all stakeholder groups have equal opportunities to convey their views. For major decision-processes, consideration must be given to the organisation of stakeholder workshops and other participatory tools that facilitate in-depth interaction and deliberation at early stages, and which promote face-to-face dialogue.

Providing feedback and acknowledging written contributions from stakeholders is considered essential to participatory processes and will strengthen the relationship and build trust between government and the public. To address related stakeholder expectations in a practical manner, government must prepare concise response documents that explain the rationale for final decisions or outcomes. Government must also provide explanation on why important comments may not have been addressed. The response document must be made available to the public on request.

Vulnerable groups and communities have specific needs in order to effectively participate in air quality decision-making. Capacity constraints include lack of technical and human resources as well as lack of financial resources to attend meetings. Government must take cognisance of these constraints when organising meeting locations and times and when setting timelines for public comment."

24. In the 2017 submissions, we referred to a meeting held by the DEA in respect of the amendment of the draft Framework on 6 September 2017 in Cape Town, wherein it was raised by community organisations in attendance (gW and HEJN) that there were no public participation meetings on the draft Framework held in the priority areas where the air quality is at its poorest, with the most serious impacts on human health.. Section 5.9.1.3 of the 2012 Framework makes clear that constraints of vulnerable groups - such as lack of technical, human, and financial

²⁷ Sections 5.9.1.3 of the 2012 Framework

resources to attend meetings - have to be considered, and, in doing so, "government must take cognizance of these constraints when organizing meeting locations and times, and when setting timelines for public comment." Community stakeholders often do not have the means to travel to major cities. It was simply by chance that gW and some community representatives were in Cape Town in 2017 at the time of the meeting. As stated above, in the 2018 consultation process, meetings were again not held in priority areas, and in the affected communities. In fact, there was only one public consultation at one venue, and once again (whether due to technical issues or otherwise) we did not receive the invitation timeously. We reiterate that, in order for there to be meaningful engagement and a more reasonable attempt to garner the views of affected people, it is imperative that these workshops be held in the affected areas, in appropriate venues, at reasonable times and with adequate notice.

25. It is requested that an adequate public participation process – which includes, but is not limited to: unpacking the proposed amendments to the draft Framework; sincere, meaningful engagement with community stakeholders and a meaningful opportunity to discuss and submit concerns – take place in each of the priority areas before any further drafts of the Framework are published. As described above, following the promulgation of the 2018 draft Framework, one workshop was held: on 14 June 2018 at the Kopanang Hotel and Conference Centre in Gauteng, which apparently discussed both the draft Framework and proposed amendments to the List of Activities. We have yet to receive the minutes or any summary or presentations from this meeting, despite repeat requests. It is of great concern that only one workshop was held and in an areas inaccessible to community members who have access to limited resources.
26. In our 2017 submissions, we submitted that section 47(5) of the AQA provides that the procedures outlined in section 38 for licence applications "read with the necessary changes as the context may require", will apply to AEL renewals. Therefore, since section 38 requires public participation, this is also required in AEL renewals. However, the authorisation process flows reflected in section 5.6 of the draft Framework do not mention or require public participation at any stage for the renewal, review, and variation of an AEL.²⁸ We note that a "Public Participation Report" is listed as a minimum application requirement in the authorisation process flows for the variation (with no potential increase in emissions) and transfer of an AEL.²⁹ We submit that the public participation requirements in this section are incorrect, insufficient, and inconsistent with both the AQA and section 5.9.1.1 and 5.9.1.3 of the 2012 Framework, which highlight the crucial role that public participation plays in advocating for the need to achieve and maintain clean air in South Africa, in order to promote and protect constitutional rights.
27. In respect of the public participation provision in the draft Framework itself, we note that section 5.9.1.3 in the 2012 Framework pertaining the establishment of a national air quality reference group (which is comprised of a maximum of 15 members who are stakeholders - including industry, NGOs, labour and community groups) has now been deleted. The NAQO was to meet with these groups four times a year to provide an update on progress in respect of the implementation of the Framework and other air quality-related initiatives, and, in turn, the reference group will assist the NAQO through the public participation process outlined in the public participation process contained in the Framework. It is not known whether this group was ever established, nor why a decision has been made to abolish the provision therefor.
28. We now turn to address the State's failure to assess progress since the publication of the current Framework.

C. Absence of comprehensive progress review against the objectives of the 2007 and 2012 Framework

29. Our previous submissions requested that an audit be conducted so that an assessment could be made as to whether DEA had met its objectives and if objectives had not been met, that reasons be provided to ensure improvements are made in the future. We reiterate this request, as to date, no measurements or indication of progress has been provided. We note that section 6.3 of the draft Framework provides "progress in respect of

²⁸ See page 79-81 of the Draft Framework. Refer to Figure 13: *Process flow for AEL renewal*; Figure 14: *Process flow for AEL review* and Figure 15: *Process flows for AEL variation*.

²⁹ See page 82 -84 of the Draft Framework. Refer to Figure 16: *Process flows for AEL variation (with no potential increase in emissions)* and Figure 17: *Process flow for AEL transfer*.

2012 National Indicators". However, it does not provide sufficient detail to ascertain progress or failures, and in many instances where targets are not met, the target is adjusted, or deleted, indicating that "indicator will be removed - there is no new target to date" or the target is being "adjusted". This is problematic in instances where further targets are required, but are not set, or targets are being lowered/weakened, since the original target was not met. In other instances, the target is reported as "maintained", even though there is insufficient information to verify the numbers. For instance, under item 8 – enforcement - one of the target items in 10.1 is the "participation in the annual air quality governance Lekgotla, with the baseline in 2012 being 350 participants. However, it is proposed that the indicator will now be deleted, as the numbers in 2017 cannot be verified. The targets should become stricter, and not simply weakened to accommodate past failures. Where certain information could not be verified, the indicator should remain and the lack of information explained. All in all, this table should contain sufficient details to ascertain whether past and current targets were met. Table 20 as it currently stands fails to allow such assessment. Steps must be taken to explain and address failures to meet targets.

30. In our 2017 submissions, we illustrated that, in most cases, the DEA's failures to meet its objectives are not explained and the expired deadlines are simply extended, without reason. This unacceptable situation persists in the current draft Framework.:

30.1. The 2012 Framework (section 5.2.1), required the establishment of the South African Air Quality Information System (SAAQIS) in phases, to achieve the completion of a full system. Phase 1 required the establishment of a user-friendly general air quality information, web landing page, document management module and the ambient air quality monitoring, which comprised information input and extraction modules and application tools. Phase 1, according to section 5.2.1.1 and 5.2.1.2 of the 2012 Framework, was initiated in July 2007 and completed in September 2009, with further upgrades due to be completed in 2013/2014. According to the 2012 Framework, Phase 2 of SAAQI envisaged the establishment of the National Atmospheric Emission Inventory System (NAEIS), which is an internet-based system to monitor details of emissions from all source type, GHG gas types, details of licensed emissions etc. According to the 2012 Framework, this has been under development since 2011 and was due to be finalised in 2014; however, according to section 5.2.4.2 of the draft Framework dealing with the NAEIS, there appears to be no longer a deadline for this project, except the GHG compilation tool, which previously had a deadline for 2014/2015, and now has been extended to 2017/2018, with no explanation for the delay provided. The rest of Phase two targets related to NAEIS inventory Modules have all been rescheduled from 2014/2015 to "ongoing" and 2015/16 to "ongoing". Phase 3 related to SAAQIS for providing air quality forecasting information to the public in order to provide health warning messages so that the public can take precautionary measures. This has now been launched through the new SAAQIS online platform. This platform is described under section 5.2.3.3 under "South African Air Quality Index", although no targets are provided in terms of upgrades and improvements.

30.2. The draft Framework merely states that the "SAAQIS Upgrade" is due for completion in 2017/2018: there is no indication as to what Phase this would fall under or what such improvements would include – this is problematic as we are unaware as to what should be implemented by this deadline.

30.3. We note that "Table 20: *Progress against the 2012 National Framework indicators*"³⁰, item 9, indicates that Phase 2 of the SAAQIS system has been completed. However, there is no mention as to the status of the Phase 3 system update envisaged in the 2012 Framework which involved "real time reporting and forecasting".

30.4. The SAAQIS emission inventory tools³¹ -- which includes various tools such as emission data reporting, review, import and assessment tools -- was initially due for completion by 2014/2015. However, despite our request for an explanation as to this delay of three years, we have received no further information as to why

³⁰ See page 97, refer to Table 20: *Progress against the 2012 National Framework indicators*.

³¹ See page 49, refer to Table 14: *National Atmospheric Emission's Inventory Modules* development targets.

it remains an on-going project with no deadline in sight. Furthermore, the “emission inventory guidelines, manuals and reporting regulations” were intended to be developed by 2015/2016; however, this too remains unexplained as an on-going project;

30.5. In our 2017 submissions, we requested reasons for the unexplained delay of the National Ambient Air Quality Monitoring strategy for five years - it was due to be in place in 2013/2014; however, this has now been extended to 2018/2019.³² This request stands, as the timeframe is still projected for 2018/2019, and still remains unexplained.

30.6. Previously, a minimum of 30% of information obtained from the live reporting of air quality monitoring stations, was to be entered into the SAAQIS. However, under the draft Framework, this has been extended to 2018/2019, and any indication as to the minimum percentage has been removed.³³ In our 2017 submissions, we requested that, DEA provide us with clarity as to what percentage of stations will engage in live reporting and the reasons for the delay. No response has been received.

30.7. Section 5.4.6.10 of the 2012 Framework required that human health impact assessments be conducted in the priority areas to assess *“the existing diseases and health profiles in relation to the prevailing ambient air quality conditions – short and long term, using questionnaires and approved medical tests”*. This was due to be completed for the Vaal Triangle Airshed Priority Area (VTAPA) by 2015, the HPA by 2017, and the Waterberg-Bojanala Priority Area (WBPA) by 2018. The draft Framework has inexplicably removed this commitment to conduct human health impact assessments.³⁴ Kindly clarify whether this means that DEA no longer intends to conduct such assessments. In light of the health impacts of air pollution, properly assessing these impacts should be prioritised. Furthermore, there is no indication from the face of the Framework as to whether any of the other timelines have been – or are on track to being - met, and if not, what the explanations are for such failures.

30.8. The SAAQIS database for the reporting of listed activities was scheduled for completion in 2014/2015. This function has now been delegated to the South African Atmospheric Emission Licensing and Inventory Portal (SAAELIP), to be completed by 2017/2018. In our 2017 submissions, we requested reasons for this unexplained three year delay – to which no response has been received. We note the existence of the SAAELIP website;³⁵ however, in terms of the content, the resource remains vague and superficial; for instance, the website does not provide a “library” or “easily accessible database containing vital air quality information” i.e. AELs.³⁶ The website requests information such as an AEL licence number, which would clearly generally not be in the possession of a citizen seeking to obtain information relating to the permit of a polluting industry.

30.9. As mentioned above, the NAQO’s annual report should also contain such indicators from the 2007, 2012 milestones and targets, as well as from 2017, and not just the latest targets and figures. These milestones and targets should be reported annually and there should be provision for this in appendix 3.

31. In our previous submissions, we noted our clients’ concern and disappointment that DEA is neither complying with its obligations, nor providing explanations for the failure in meeting its objectives; and reiterate our request that there needs to be clearly-defined targets set out in the draft framework, which:

31.1. contain clear, time-delineated milestones;

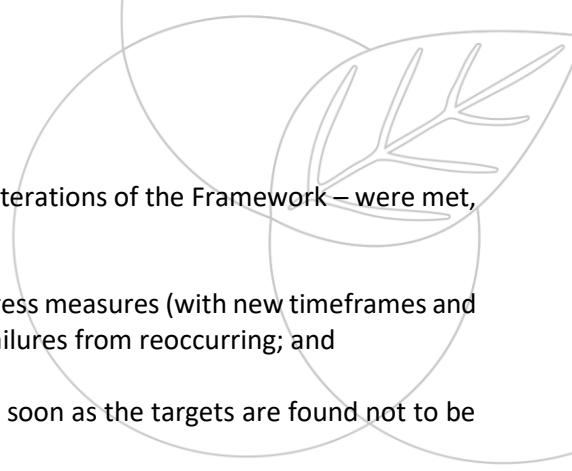
³² See page 38, refer to Table 10: SAAQIS ambient air quality related implementation targets

³³ Ibid.

³⁴ See page 73 of the Draft Framework

³⁵ https://saaelip.environment.gov.za/SAAELIP/SAAELIP_FACILITY/GovEnt/Shared/Pages/Main/Login.aspx

³⁶ https://saaelip.environment.gov.za/SAAELIP/SAAELIP_FACILITY/Client/SNAEL/Pages/PublicApplicationList.aspx



- 31.2. indicate which previous targets – as set out in the 2007 and 2012 iterations of the Framework – were met, and if not, there should be reasons provided for this;
- 31.3. include measures for previously-failed targets and specifically address measures (with new timeframes and milestones) as to how the new targets will prevent the previous failures from reoccurring; and
- 31.4. include measures for oversight and remedial action by the DEA as soon as the targets are found not to be met.

D. International Obligations, Climate Change, and Greenhouse Gas (GHG) Reporting System

- 32. Section 2.4.1.3 of the draft Framework highlights South Africa's obligations towards meeting its objectives under the United Framework Convention on Climate Change (UNFCCC). To this end, South Africa, in 2011, published a National Climate Change Response White Paper ("the White Paper"), which outlines Government's vision for an adequate and effective response to climate change. As mentioned in our 2017 submissions, as a first step in meeting its objectives, the AQA has been used to regulate GHG emissions. In 2017, government published: a declaration of certain GHGs as priority air pollutants (GN 710 of 21 July 2017); National Pollution Prevention Plan Regulations (GN 712 of 21 July 2017); and National GHG Emission Reporting Regulations (GN 275 of 3 April 2017).
- 33. We note that a Climate Change Bill (GN 580 of 8 June 2018) has been published for comment, and as such, this should be indicated in the Framework, as well as the transitional provision, aims, and targets in respect of this legislation. The Climate Change Bill, as you are aware, seeks to address climate mitigation and adaptation in South Africa and give effect to South Africa's international climate change commitments, including to provide for the phase out and phase down of synthetic GHGs. We note that section 21 of the Bill (transitional provisions) states that the Declaration of GHGs as Priority Pollutants; the National Pollution Prevention Plans; and the National GHG Emission Reporting Regulations under AQA "remain in force and effect until they are amended, replaced or repealed" in terms of the Bill. We trust that until such time as a valid Climate Change Act is promulgated and adequate measures (regulations) are put in place to provide for detailed and transparent GHG reporting, pollution prevention plans, and the regulations under AQA will remain in force and will be duly implemented and enforced. We also note that the Bill makes no mention, in the transitional provisions, of the Regulations Regarding the Phasing-out and Management of Ozone Depleting Substances, 2014, under AQA - we presume that the intention is for these regulation to remain in place. As stated above, the Framework should indicate the overall objectives, targets for implementation, as well as the envisaged transitional arrangements in the Framework.
- 34. In accordance with our 2017 submissions, we again note the numerous deficiencies in the above regulations intended to address reporting and reduction of GHGs. Some of our main concerns are the following:
 - 34.1. We reiterate that GHG reporting **must** be conducted by data providers at facility-level rather than allowing for aggregated company-level reporting (as the Regulations presently appear to do). The Regulations allow a data provider to elect to report in terms of regulation 7(4)(b) in accordance with Annexure 3 (which allows aggregated reporting), and to bypass the National Atmospheric Emission Inventory System (NAEIS) online reporting system and requirements (which do require more detailed facility-level reporting), thereby undermining the integrity of the entire reporting system. It is essential for reporting to be done at a facility-level, and for this to be mandatory, in order to adequately: identify; monitor; and regulate the various sources of GHG emissions in South Africa – particularly where one entity has many sources - and to be able to adequately verify reported emissions and avoid misrepresentations. We are aware that many big industries are averse to facility-level reporting. However, their reluctance is not understood, as companies are, in any event, required to register their individual facilities under the GHG Reporting Regulations and facility-level reporting is already required insofar as GHG emissions must be reported by facilities in accordance with AEL reporting requirements. Further, per-facility reporting is a standard requirement in many developed countries - if multinational corporations (such as Sasol) are already complying in other countries, there is no reason why they should not do this in South Africa. In our 2017 submissions, we

requested that future amendments should address this issue of reporting, without which, meaningful effect will not be given to the GHG reporting system and inventory under AQA. We note that the section 2.4.1.3 of the draft Framework includes a note on “National Greenhouse Gas Emission Reporting Regulations”; however, this merely exists as a superficial and high-level overview of policy, which fails to address any of our previous concerns, again affording no meaningful effect to the AQA.

34.2. We submit that all reporting, under both the GHG Reporting Regulations and the Pollution Prevention Plan Regulations, should be **fully** transparent and reports **must** be made publicly available, online, and on request. Motivations and reasons must be provided if industries argue that any aspects cannot be disclosed, although we dispute that any of this information could be regarded as commercially confidential or justifiably withheld, given the public interest in accessing GHG data and in the reduction of GHG emissions through pollution prevention plans. In a letter from the DEA of February 2018, in response to our request for access to the persons that had submitted pollution prevention plans and also for the list of facilities registered under the GHG Reporting Regulations, the DEA alleged that the pollution prevention plans contain commercially confidential information relating to the production processes of the companies, and that, in relation to the GHG reporting information, “*disclosure of this information shall be made in accordance with the provisions of existing laws ...*” We have, in numerous subsequent correspondence, recorded that this approach is unacceptable, and in a letter of 25 June 2018, we pointed out that making GHG reporting data and pollution prevention plans publicly available would not promote unfair competition or contravene the Promotion of Access to Information Act, 2000 (PAIA) or the Statistics Act, 1999. This information also cannot be regarded as confidential. We have requested a list of the entities that have submitted pollution prevention plans (by 2 July 2018) and also: the names of the category A data providers that have registered in terms of regulation 5 of the GHG Reporting Regulations; the names of the category A data providers that have reported on their GHG emissions in accordance with regulation 7 of the GHG Reporting Regulations; access to the GHG emissions and activity data reports submitted in accordance with regulation 7 of the GHG Reporting Regulations by 31 March 2018; and details of enforcement steps (including whether any fines, pre-compliance, or compliance notices have been issued, how many, and to whom, and what the status of such steps are) taken against those data providers that have not registered in accordance with regulation 5 or reported in accordance with regulation 7. We asked that this information be provided by no later than 16 July 2018.

34.3. In accordance with our 2017 submissions, we again request that an independent body be designated by the Government to verify the information provided and determine whether the pollution prevention plans are being adequately implemented.

34.4. Under the Pollution Prevention Plan Regulations, a pollution prevention plan must, *inter alia*, describe the mitigation measures that will be implemented to achieve a deviation from (instead of a reduction of) the GHG emission baseline (regulation 3(1)(f)). We find this problematic and concerning as allegations of a high baseline could be used as an attempt to excuse high GHG emissions, contrary to achieving a meaningful reduction of GHG emissions. In general, our concerns have always been that the pollution prevention plans are not strict enough to bring about a meaningful reduction of GHGs by polluters. You may recall that, in our 2017 submissions, we requested that you address this and clarify that the primary requirement for a pollution prevention plan must to achieve a reduction of GHG emissions. However, despite this, we note that section 2.4.1.3 of the draft Framework dealing with the pollution prevention plans, merely cites the stated purpose of the regulations (as per regulation 2) and that “*implementation of these plans will help South Africa register its progress towards attainment of its emission reduction objective and tracking its NDC.*” It does not address any of our previous concerns, and it affords no meaningful effect or contribution to the implementation of AQA. We request that future drafts be amended to include our suggestions.

E. Annual Air Quality Management Governance Lekgotla³⁷

35. In the 2012 Framework, it was indicated that the Air Quality Management Governance Lekgotla was to be an annual two day event. We note that this has been removed from the draft Framework and there is no longer any indication as to the frequency or duration of the Lekgotla. In our 2017 submissions, we requested that DEA maintain the event as an annual two day event in order to provide adequate time for:

- 35.1. an opportunity for the State to monitor its progress on whether it has met the AQA's objectives, and
- 35.2. provincial and municipal AQOs to prepare their annual reports -- which are respectively due for submission one month and two weeks prior to the event;

36. In our 2017 submissions, we noted that the 2017 Framework includes an opportunity within the Lekgotla to share information with the regulated community and general members of the public and requested that there should be adequate notification provided – of at least three months' notice – to ensure that communities can adequately prepare for and participate in the event, ensuring that, in light of our social responsibility outlined in section 3.5, civil society is able to contribute to air quality management process in an effective manner. In light of this, we note that for the Air Annual Air Quality Lekgotla held in Sandton Hotel, Johannesburg on 2 October 2017, no such notice was given.

F. AEL Timeframes, Compliance Monitoring and Enforcement

37. In our previous submissions, we requested that the Framework specify how many Environmental Management Inspectors (EMIs) have been appointed to monitor compliance and enforcement of AQA, as well as of the Waste Act, 2008. It was also requested that the Framework set out the plans and timelines for increasing the numbers of EMIs. We note that our concerns remain and request once again that they be addressed in the next Framework review. We also refer to and reiterate the conclusions and demands made in *Broken Promises* regarding compliance monitoring.

38. We note that specific timeframes for AEL issuance (with and without an environmental authorisation), renewal, review, variation (with and without emission increase) has been specified in the Framework, each varying between 30 and 90 days. Whilst certainty is welcomed, we request that a longer period of 90 days be provided for public participation in all of these processes.

39. We note that section 5.7.2 of the 2018 Framework includes a new section specifically stating that the Environmental Management Inspectorate at the National Department may conduct compliance monitoring activities in any facility issued with an AEL within the country, and that such EMIs should inform and share the findings of the compliance monitoring activities with the licensing authority. This provision is welcomed; however, we recommend that a reasonable timeframe for the finalisation of the report and sharing of the report should be specified in the Framework.

40. We also welcome the provision in section 5.7.4 which specifically states that municipalities are also responsible for compliance monitoring for dust-generating activities and compliance monitoring in respect to any notice issued in terms of section 23 of AQA. We once again request that our submissions on the proposed amendments to the Dust Control Regulations also be taken into account.

G. Ambient Air Quality Monitoring and Monitoring Stations

41. In our previous submissions, we have noted our dissatisfaction with the severe delays that exist in implementing measures that provide for the monitoring of ambient air quality and the persistent, unexplained extensions of these deadlines.

³⁷ See section 4.4.6, page 36.

42. In terms of Table 10 of the draft Framework,³⁸ we note that there should be “reporting of all government-owned air quality monitoring stations into SAAQIS” and the timeframe for this is “as per outcome 10 of delivery agreement”. In our 2017 submissions, with regard to this “Outcome 10” deliverables timeframe, we submitted that:

42.1. We are already far behind the proposed implementation schedule i.e. at the time of the publication of the deliverables, that there were only 90 air quality monitoring stations established *“measuring and reporting quality controlled and quality assured ambient air quality data; and data ...is being reported to the South African Air Quality Information System (SAAQIS) where it is compared to air quality standards and is reported publicly via, the internet”*.

42.2. We submitted further that, of those, 80% of government-owned monitoring stations, were required to report to SAAQIS by March 2014 and it was also envisaged that there would be 100% countrywide compliance with NAAQS by 2020. Additionally, Phase 2 of SAAQIS – which involved the establishment of the National Atmospheric Emission Inventory System – was to be completed by mid-2012.

42.3. In other words, reporting of all government-owned air quality stations into SAAQIS should already have happened. Since the deliverable deadlines have long expired, we also requested reasons for this delay and that a new urgent deadline be proposed. To date, this request remains unanswered as the draft Framework has failed to address our concerns. Given that the monitoring of air quality is essential to address air pollution, we reiterate that this is of great disappointment to us, more so since this objective remains unfulfilled almost 11 years after publication of the initial Framework. We therefore request once again that Table 10’s timeframe be revised and specified by date, and that reporting be required of all monitoring stations and not just government-owned stations.

43. We are pleased to note that Item 9.18 of Table 20³⁹ indicates that the “norms and standards for air quality monitoring” have been met. However, despite our previous requests – which remain – the Framework has again failed to specify and expressly state:

43.1. what timeframes these norms should contain for maintenance and calibration;

43.2. that reporting should be made publicly accessible; and

43.3. that any claimed confidentiality in respect of data should be properly motivated.

44. Our 2017 submissions noted that section 5.2.1.3 of the 2012 Framework contained provisions relating to the siting of air quality monitoring equipment, which included considerations with regard to location and the necessary criteria for determining the minimum number of sampling sites. We requested that these paragraphs be retained in future drafts of the Framework and include further provisions which state that siting stations must involve community participation and that there must be a minimum number of monitoring stations in certain residential or priority areas and densely-populated areas – we reiterate this request for further provisions.

45. Section 5.2.1.4 of the 2012 Framework (now in 5.2.3.4) pertains to the National Air Quality Indicator (NAQI), which is a methodology for calculating and ascertaining an indicator to monitor the state and trend of ambient air quality in South Africa. The 2012 Framework contains various phases of implementation and deadlines for NAQI. However, this is no longer in the draft Framework. As previously commented in the 2017 submission, the phases should be retained so that the past deadlines can be seen, and future progress to be made in respect of the various phases can be evaluated; in particular:

³⁸ See page 39 of the Draft Framework, refer to Table 10: SAAQIS ambient air quality related implementation targets.

³⁹ See page 97, refer to Item 9.18 entitled “Norms and Standards for Air Quality Monitoring” within Table 20: *Progress against the 2012 National Framework indicators*.

45.1. Phase 1 (2008-2014) envisaged that the NAQI will be based on all monitoring stations that have been operating since 2008, and that once more networks start reporting to SAAQIS, better trends will emerge. The annual average NAAQS of PM_{10} for this period was 50ug/m³.

45.2. Phase 2 (2015-2020) envisaged that NAAQS of 40ug/m³ of PM_{10} would apply and all government stations measuring PM_{10} and SO_2 from 2014 will be incorporated into the development of NAQI. All government monitoring stations should also be included.

45.3. Phase 3 will be addressed in a future Framework. In other words, a new baseline, details of monitoring stations, an indication of what annual average of NAAQS should apply should have been included in this Framework. This should, we submit include any stricter annual average, which may be planned for the NAAQS.

45.4. We note that the 2018 draft Framework⁴⁰ has removed all mention of these phases and implementation deadlines, which is especially problematic as it also fails to specify whether the previous phases of the NAQI objectives were met, and if not, to provide reasons. There is also no provision for the future phases which should come into operation from 2020 onwards.

46. We note that section 5.4.3.2⁴¹ and 6 of the 2012 Framework makes specific provision for the need to review the NAAQS, including to coincide with when the Framework is reviewed. This provision pertaining to the NAAQS review is removed from the current section 5.4.3.2 of the 2018 draft Framework, and this is unacceptable. We reiterate that the majority of our NAAQS were set eight-and-a-half years ago, with the $PM_{2.5}$ NAAQS set six years ago – and are already weaker than the outdated WHO guidelines. We note further that, in the case of PM_{10} , $PM_{2.5}$, and Benzene, that the NAAQS make provision for these standards to become stricter over time. Although the PM, NO_2 and O_3 NAAQS should also be reviewed, our most immediate concern has to do with the SO_2 NAAQS, which are extremely lax compared to the WHO guidelines (for all averaging periods other than the 10 minute average). We therefore request that these be reviewed.

47. In respect of monitoring stations, the 2012 Framework lists as many as 80 government-owned monitoring stations (table 18), and according to the Outcome 10, as many as 90 monitoring stations were identified. However, the draft Framework seem to only report 43 report monitoring stations.⁴² It appears that some stations no longer exist. It is also not acceptable that Appendix 2 of the 2018 Framework no longer breaks down the data - not only in respect of problem air quality at a District Municipality level - but at the Local Municipality Level. Appendix 2 also no longer indicates the number of government-owned air quality monitoring stations. We submit that Appendix 2 should retain the same detailed data in respect of monitoring stations as in the 2012 Framework, indicating both the district and local municipalities within the province, the “initial air quality rating”, “Number of Government Owned Air Quality Monitoring Stations”, and “National Quality Passive Sampling Campaign”, in addition to the current 2018 column for current “municipal areas of concern”. The current Appendix 2 is therefore not acceptable: adequate details - as in the 2012 Framework - should be provided. As indicated in our 2017 submissions, we reiterate that some National Air Quality Indicator Stations apparently do not monitor any pollutants; for example Saltworks in Eastern Cape, Welwegund in North West, and King Shaka in eThekweni.⁴³ We had raised this in our 2017 submissions, and that many others do not have PM_{10} , $PM_{2.5}$ and/or O_3 and/or NO_x and/or SO_2 monitoring. We reiterate that this is unacceptable, and should be rectified. In respect of VOCs, these should be monitored in all areas with significant sources of VOC emissions – including oil refineries and petrochemical industries, industries using organic solvents, tank farms and urban areas with high traffic density. In respect of mercury, it was stated in the 2012 Framework that “*South Africa is estimated to be the 6th largest emitter of mercury in the world. The emissions come predominantly from our coal fired power stations*”⁴⁴ (which

⁴⁰ See page 43, refer to Section 5.2.3.4

⁴¹ See page 58-62 of the 2012 Framework

⁴² See 2012 Framework page 58 and Appendix 2 of 2018 Framework.

⁴³ 2018 Framework, Appendix 1

⁴⁴ 2012 Framework, section 2.4.3.2, page 22.

has since been deleted in the 2017 Framework). Given that mercury has health implications especially in respect of impairment of cognitive function, these should be monitored by the DEA through periodic (for example, annual) monitoring campaigns in areas known or suspected to have significant emission sources of these substances. These measurements campaigns should use the appropriate internationally-accepted methods of sampling and analysis to determine the concentrations of these substances in all relevant environmental media, including air, soil, water, crops, and food. We reiterate that the current monitoring network, which does not reliably monitor the most prevalent pollutants, is inadequate and unacceptable. This makes monitoring, compliance, enforcement, and improvement of air quality extremely difficult.

48. The air quality monitoring station network must urgently be improved upon and adequately managed and maintained, so as to produce verified, reliable air quality data that are readily and publicly available. We refer to and reiterate the findings and demands in the *Broken Promises* report.

H. Public Access to Quality Data and information

49. As discussed above, and in our previous submissions, the SAAQIS reporting deadlines have been significantly delayed. We note that this frustrates and provides an obstacle to the public's right to access good quality, verifiable, user-friendly air quality information. As noted in our previous submissions, we reiterate that this is a priority and needs to be treated as such. We request that such information also include all AELs issued per region, ambient air quality data, and point source emission data. We also submit that the mere existence of online platforms (whether new or upgraded) alone is not a measure of success, and success should be measured in whether or not these online platforms deliver good quality, verifiable, user-friendly air quality information. We reiterate that further extensions of deadlines in respect of accessible air quality data and information are contrary to the public interest and unacceptable.
50. In relation to aspects pertaining to additional aspects of SAAQIS (section 5.2.1.10 of 2012 Framework and now 5.2.1.7 of the current 2018 Framework): SAAQIS is to incorporate a media library for air quality information; an interactive learners' centre with air quality information for the public and school children; a database of key stakeholders; a national website for updates on air quality status; a library of relevant links to national and international air quality information; complaints registers; and support centre and help desk, among other things. Generally, there is more information contained in the old SAAQIS website than the new one. We suggest that all information be migrated as soon as possible from the old SAAQIS website to the new website to avoid confusion. The new SAAQIS website does not currently contain any media library, a database of key stakeholders and a library of relevant links, complaints registers, or a support help centre. In respect of the interactive learners' centre, on the new SAAQIS website, although a "learners corner" is reflected on the website, we note that this is a superficial insertion as there is no access to educational resources or further information on the website. At the moment, the new SAAQIS website still resembles a shell with very few operational parts. This should be rectified, and we reiterate that migration from the old website to new website should also take place as soon as possible, since it has been eight months since the launch of the website.
51. Section 5.2.1.4 of the draft Framework requires that a South African Air Quality Research Reference be established. The new SAAQIS website does not have this information, which should be made available online.
52. Information related to AQMPs (5.2.1.5 of the draft Framework) pertains to availability of AQMPs on the SAAQIS website. Currently, the new SAAQIS website indicates that two provinces (KZN and Mpumalanga) do not have AQMPs. The SAAQIS website also indicates that 25 municipalities have no AQMPs and seven municipalities' AQMPs are being drafted. Furthermore, of all the AQMPs that are apparently available, only five provinces' and 15 municipalities' AQMPs are accessible via the website.⁴⁵ This is also different to the information provided in Table 20 of the 2018 Framework, which states that only six out of nine provinces have AQMPs. What are the deadlines and targets for the finalisation of these outstanding AQMPs and when will all AQMPs be made accessible to the public? Further, in addition to quality information on the website, we again reiterate that information

⁴⁵ See <https://saqis.environment.gov.za/home/text/358>

provide in table 20 of the draft Framework, should also be accurate, detailed and verifiable. It is also noted that the new website should also contain AQMPs for all the priority areas. In this regard, it appears that substantial information migration still needs to take place from the old SAAQIS to the new SAAQIS website.

53. Information on SAAELIP:⁴⁶ System for National Atmospheric Emission Licensing (SNAEL) (section 5.2.4.1 of the draft framework) and National Atmospheric Emission Inventory System (NAEIS) (section 5.2.4.2 of the draft Framework), including implementation targets has been delayed. Currently, the emissions information is not accessible to the public, and the area specified on the website is only for reporting, with no actual data available on emissions to be accessed by the public. Further, SNAEL allows the public to view “non-confidential AEL information”. As stated above, AEL, air quality and emission information is public information and cannot be considered confidential. Any entity claiming that this is information is confidential should fully motivate its reasons. AELs should be by default, publicly accessible. That AELs are public documents is confirmed by the DEA’s PAIA Manual.
54. In our 2017 submissions, we requested that AELs for all facilities with significant polluting emissions (especially in priority areas) require real-time emissions monitoring, and that real-time emissions data be publicly available online and on request – we note that our request stands as this information remains unavailable.
55. In our 2017 submissions, we also requested that the DEA and all licensing authorities make all AELs and annual emission reports submitted to them publicly available, and all licence-holders be obliged to make these documents available on their websites and on request. To date, this request remains unanswered and we again request that you treat this as a priority.
56. We are pleased to note that on 2 October 2017, the new SAAQIS website and smartphone application tool was launched at the Air Quality Lekgotla held in Johannesburg. Although the system is relatively new, from our brief interaction with it, we would like to share some of the deficiencies we have noted and request that the system:
 - 56.1. enable a direct comparison for each pollutant between monitored data and different air quality standards, over an extended period i.e. such as the previous month/year etc. For example, the user should be able to graph daily average PM₁₀ and PM_{2.5}, for a period in the past, as a time series, to enable one to get an annual average);
 - 56.2. include a direct comparison for existing SO₂ levels at 15 minute hourly, daily and annual averages;
 - 56.3. include a graph that reflects the relevant NAAQS and the WHO guidelines;
 - 56.4. provide a function to download (in Microsoft Excel or csv) any of the files as hourly average and 24 hour average values, for an extended period of time, so that one is able to download an electronic file that compares monitored values against the AAQS over a period of time. It should also at least be able to include 15 minute averages for SO₂ as well; and
 - 56.5. improve its overall functionality and usefulness, without error messages.
57. We also reiterate that tables 12 and 13 of the draft Framework, which are used in the SAAQIS website, are inadequate. As indicated above, the NAAQS are weak and outdated, and therefore not adequately protective of health. Therefore, in order to more accurately convey the health messaging, particularly the health impacts of air pollution, to the public, the latest WHO guidelines (which are themselves, outdated) should be included in the aforementioned tables, as well as in the new SAAQIS website and SAAQIS App.

⁴⁶ See section 5.2.4 of the draft Framework

58. We also request that the previous SAAQIS website⁴⁷ be taken down as having two SAAQIS websites is unnecessary and confusing.

I. Capacity Building

59. Section 3.2.3 of the Framework indicates that AQOs in all spheres must be “of the calibre and academic qualifications that will enable him/her to perform the duties of the AQO”. Section 4.3 points out that “dedicated air quality management capacity in municipalities is necessary to ensure such effective air quality management”. This section encourages provincial departments to liaise with municipalities - and district municipalities with local municipalities - with a view to cooperative agreements in respect of air quality management functions. There is a dearth of dedicated, appropriately-trained and skilled staff to implement AQMPs and to enforce AQA.

60. In section 5.2.9 of the draft Framework, we note that there are extensive measures proposed in respect of capacity-building, which include, *inter alia*, the provision of additional financial resources; the strengthening of tertiary institution offerings in the air quality field i.e. internships and short courses; and the training and guidance of air quality officers. Although, we are aware that this is understood to be an incremental goal, the draft Framework should outline milestones as to how much has been achieved. We note that the 2012 Framework⁴⁸ included a table which set out the capacity development implementation targets; however this table appears to have been removed from the draft Framework and there is no longer any indication as to what these targets are or the status of their implementation. We again request that this information be provided, with particular regard to:

60.1. outlining specific strategic targets with regard to capacity development;

60.2. the implementation deadline for each target i.e. the budget that was allocated to air quality management in each municipality and how much this has increased over the years; and

60.3. how many AQOs have been appointed, and how many more will be appointed, specifying deadlines for the objectives.

61. Local authorities have a number of critically-important functions (such as issuing AELs, monitoring and enforcing compliance with AELs, establishing and managing a monitoring network, reporting data to national databases etc) and the majority of municipalities do not have the capacity to perform their basic functions, let alone functions that they may regard as unfunded mandates. The apparent difficulty of recruiting suitably educated and skilled staff at local level is compounded by the lack of training (technical, management and on-the-job training programmes) given to recruits. Such attempts as may have been made to transfer skills and/or outsource training have not had the desired effect. In this regard, we would like to suggest that the DEA funds and provides 12 months' training for a minimum number of selected suitably-qualified AQOs, appointed at the local level, including overseas secondment of seniors for on-the-job training.

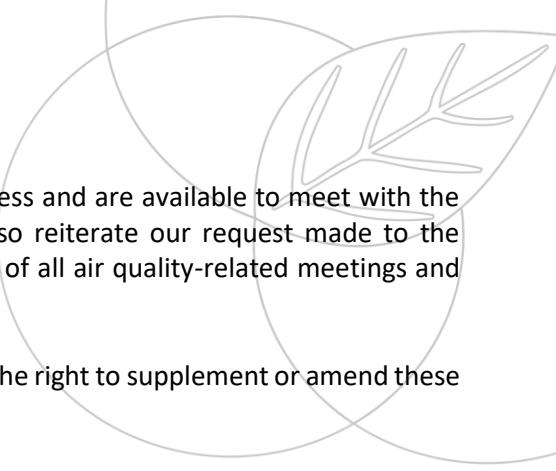
62. In accordance with our 2017 submissions, we also again request that municipalities take urgent steps to ensure the appointment and training of suitable AQOs, EMIs, the development of AQMPs and the incorporation of those plans into Integrated Development Plans. We also refer again to – and reiterate - the conclusions and demands of *Broken Promises*.

Conclusion

63. We submit that the amendments set out above should be made and ask for clarity on the issues we have highlighted.

⁴⁷ See <http://www.saaqis.org.za/>

⁴⁸ See section 5.9.2, refer to “Table 25: Capacity development implementation targets” of the draft Framework.



64. We look forward to hearing from you in relation to this amendment process and are available to meet with the Department and to answer any questions on these submissions. We also reiterate our request made to the Department on prior occasions that we be timeously informed, by email, of all air quality-related meetings and documents for comments.
65. We once again reiterate that our clients' rights remain reserved, including the right to supplement or amend these submissions.
66. We thank the Department for the opportunity to comment on the draft Framework review and look forward to receiving feedback.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

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