



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Our ref: CER51.1/RH
Date: 27 May 2015

Dear Sirs

SUBMISSIONS ON THE DRAFTS OF THE NKANGALA DISTRICT MUNICIPALITY AIR QUALITY MANAGEMENT PLAN AND AIR QUALITY MANAGEMENT BY-LAW PUBLISHED FOR COMMENT ON 6 MAY 2015

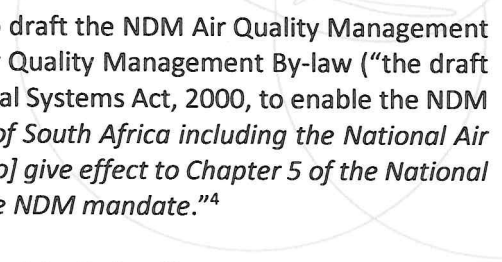
- 1 We address you on behalf of the Highveld Environmental Justice Network (HEJN),¹ groundWork (gW)² and Earthlife Africa, Johannesburg (ELA)³ ("our clients").
- 2 As you are aware, our clients represent various community members and organisations interested in and concerned with the management and implementation of the three priority areas declared in terms of section 18 of the National Environmental Management: Air Quality Act, 2004 (AQA), including the Highveld Priority Area (HPA), in which the Nkangala District Municipality (NDM or "the Municipality") falls.

¹ 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. HEJN is founded by and represents the following organisations: Ekurhuleni Environmental Organisation; Greater Middelburg Residents Association; Movement for Environmental Defence; EarthNoGenesis; Mpumalanga Youth Against Climate Change; Schoongezicht Residents Committee; Wonderfontein Resettlement Forum; Guide the People; Khuthala Environmental Care; SANCO Tokologo; SANCO Emalahleni; Outrageous Courageous Youth; Carolina Environmental Crisis Association; and Iguqa Environmental Community Service.

² gW is a non-profit environmental justice service and developmental organisation aimed at improving the quality of life of vulnerable people in South Africa, through assisting civil society to have a greater impact on environmental governance.

³ ELA is an environmental justice organisation which promotes sustainable solutions to South Africa's challenges, without exploiting people or degrading the environment.

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- 3 We refer to the current process being undertaken by the Municipality to draft the NDM Air Quality Management Plan ("the draft AQMP") in terms of section 15 of AQA and the NDM Air Quality Management By-law ("the draft by-laws") as per section 11, 12 and 13 of the Local Government: Municipal Systems Act, 2000, to enable the NDM Council to *"give effect to section 24 of the Constitution of the Republic of South Africa including the National Air Quality Act, 39 of 2004 and its associated regulations and policies; [and to] give effect to Chapter 5 of the National Environmental Management: Air Quality Act(39 of 2004) in respect of the NDM mandate."*⁴
- 4 We refer further to the stakeholder engagement meeting held at the Municipality's offices on 26 March 2015, to discuss the first drafts of the draft AQMP and the draft by-law. Sylvia Kamanja and Nicole Löser from the Centre for Environmental Rights (CER) - representing our clients – as well as some members of our clients, attended the meeting and asked questions and made oral submissions. We have, in previous correspondence referred to below, noted our clients' dissatisfaction with the process followed prior to and during this meeting, including, inter alia, the unreasonably short notice given of the meeting and the delay in making the necessary drafts available prior to the meeting.
- 5 We refer to our clients' preliminary written submissions on the first drafts of the draft AQMP and draft by-law submitted by the CER on our clients' behalf to the Municipality on 29 April 2015 ("the preliminary submissions"), copies of which are attached hereto marked "1". These recorded, inter alia:
- 5.1 our clients' concerns over the purported stakeholder engagement process being followed by the Municipality with regard to the draft AQMP and draft by-law;
 - 5.2 our clients' comments on and suggested amendments to the draft AQMP; and
 - 5.3 our clients' comments on and suggested amendments to the draft by-law.
- 6 We confirm that, on 4 May 2015, an email was circulated by the Municipality to stakeholders, with an attached invitation to "the second Stakeholder engagement meeting of the policies" to be held at the Municipality's offices at 10h00 on 12 May 2015 ("the invitation").
- 7 On 5 May, a further email was circulated by the Municipality to stakeholders attaching a notice titled "Notice of Public Meetings on Draft Air Quality Management Plan and Draft Air Quality Management By-Laws and Request for Public Comment" ("the notice"). The notice invites members of the public to submit input and comments on the draft AQMP and draft by-law within 21 days from the date of availability of the copies of the draft AQMP and by-law; and to attend the public participation meetings on the draft AQMP and draft by-law to be held:
- 7.1 on 7 May 2015 at Steve Tshwete, for Steve Tshwete Local Municipality;
 - 7.2 on 14 May 2015 at Emalahleni City Hall, for Emalahleni Local Municipality;
 - 7.3 on 14 May 2015 at Bramfischer Hall, for Victor Khanye Local Municipality; and
 - 7.4 on 18 May 2015 at Kwaggafontein Hall, for Thembisile Hani Local Municipality.
- 8 We wish to point out that section 21 of the Local Government Municipal Systems Act, 2000 (MSA) provides that *"[w]hen the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person's comments or representations."*⁵ The notice falls short of this provision in that it fails to accommodate persons who are unable to read or write as required.
- 9 A revised draft by-law was circulated by the Municipality by email, to stakeholders on 6 May 2015. On the same day, but in a separate email, the revised draft AQMP was emailed to certain stakeholders by Abdul Ebrahim of Escience. The Municipality did not circulate a copy of the draft AQMP to the CER or its clients.

⁴ NDM Notice of Public Meetings on Draft AQMP and Draft Air Quality Management By-laws. And Request for Public Comment, sent by email, 5 May 2015.

⁵ S21(4).

- 10 Accordingly, in adhering to the 21 day period afforded by the notice for comment, the submissions on the draft AQMP and by-law are due on 27 May 2015.
- 11 We were unable to attend the above stakeholder engagement meetings on behalf of our clients, although we do note that Robby Mokgalaka, Thomas Mnguni and Nomcebo Makhubelo of gW and HEJN were present, along with other members of our clients, at the meeting of 12 May 2015. We are advised that the consultants tasked with drafting the draft AQMP and by-law, Abdul Ebrahim of Escience and Jenny Hall of Environmental Counsel CC, respectively, were not present at the meeting to present the revised drafts and address questions of the stakeholders. We are advised that, at this meeting, our clients again expressed their dissatisfaction with the short notice period given prior to the meeting, the failure to make the drafts available far enough in advance prior to the meeting and a general lack of adequate measures to ensure effective and meaningful stakeholder engagement and participation. Our clients note that they would not have incurred the time and expenses of attending the meeting on 12 May 2014 had they been told, as they should have been, that the consultants would not be present at the meeting to explain the drafts and respond to their queries.
- 12 While we do not intend to repeat the submissions made in the preliminary submissions regarding the need for a fair and meaningful stakeholder engagement process to be followed in preparing and adopting an AQMP and air quality management by-law for the Municipality, we wish to place on record that the notice given for these meetings was inadequate in that it was unreasonably short and did not afford our clients or the CER sufficient time to make the necessary travel arrangements to attend or to prepare for the meeting. In the case of the meeting at Steve Tshwete Local Municipality, notice was given one-and-a-half days prior to the meeting arranged at Steve Tshwete, and the draft by-law and draft AQMP were only made available to stakeholders late on 6 May 2015, the day before the meeting. This is unreasonable and unacceptable and does not amount to procedurally fair administrative action as required by the Promotion of Administrative Justice Act, 2000 (PAJA).
- 13 As previously advised, we regard this process and the draft AQMP and by-law as essential means for addressing the air quality concerns within the HPA, and a fundamental stepping-stone towards addressing, *inter alia*, better regulation of industrial emissions; regulation and reduction of poor air quality within dense low-income settlements; and improvement of the health of members of communities within the Municipality's jurisdiction and in the HPA.
- 14 We hereby make submissions on the latest drafts of the draft AQMP and the draft by-law, made available on 6 May 2015. Our submissions on the draft AQMP are attached hereto as annexure "2", while our submissions on the draft by-law are attached as annexure "3", for your ease of reference.
- 15 We have also attached a document on pollution charges, fees, and taxes - annexure "4", that was referred to us by our colleagues at E-LAW in the United States. We believe that a similar system would be useful in South Africa and should be considered for purposes of assisting to resolve the significant financial and capacity issues in local government. Please have regard to this attachment.
- 16 Please be advised that any failure by us to make submissions on certain aspects of the draft AQMP and draft by-law should not be construed as an acceptance of those provisions, and we reserve our clients' rights to make further submissions and/or to amend any submissions made hereunder at a later stage.
- 17 Please be advised further that insofar as recommendations or submissions made previously have not been incorporated into the revised draft AQMP or by-law, unless otherwise stated, we stand by our preliminary submissions and our failure to repeat them herein should not in any way be construed as a denial or dismissal of those submissions.
- 18 We trust that you will give due consideration to the attached submissions and our clients look forward to participating further in the process of adopting an AQMP and air quality by-law for the Municipality.

19 Should you require more information regarding any aspect of the submissions made in the annexures, please let us know.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:

A handwritten signature in black ink, appearing to read 'RHUGO', written over a faint circular watermark in the background.

Robyn Hugo

Attorney & Programme Head: Pollution and Climate Change

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