

# Air quality: transparency, compliance monitoring & enforcement

CER presentation to Parliamentary Portfolio  
Committee on Environmental Affairs

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Centre *for* Environmental Rights  
Advancing Environmental Rights in South Africa

# Air Quality Act (AQA)

- s2: 1 of s24 Constitution's "reasonable legislative measures" to protect the environment & improve air quality (AQ)
- numerous references in AQA & Framework for Air Quality Management (part of AQA) to ensuring public access to AQ-related information

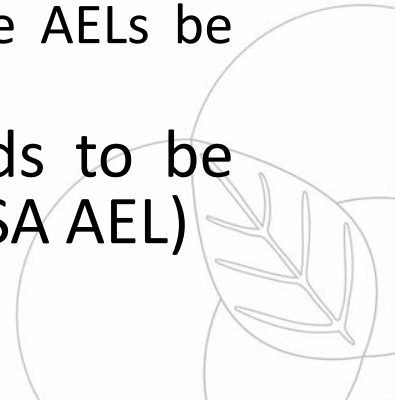
## **BUT:**

- affected communities (& general public) struggle to access information as basic as atmospheric emission licences (AELs) – which contain the conditions set by authorities under which significant polluters may operate



# Refinery AELs

- Eg: requested refinery AELs & compliance reports from all refineries & municipal licensing authorities into Promotion of Access to Information Act (PAIA) – gives effect to constitutional right of access to information
- Only received 1 complete AEL: Chevron's from City of CT. Every other response argued that the records contained commercial &/or confidential information
- This despite the fact that:
  - refineries emit highly hazardous pollutants & many have a history of accidents with impacts on human health
  - anyone can access a copy of the AEL application (into AQA)
  - Chevron's AEL was provided – how can only some AELs be secret documents?
- In any event, PAIA permits sections of records to be severed (Eden Municipality approach for PetroSA AEL)



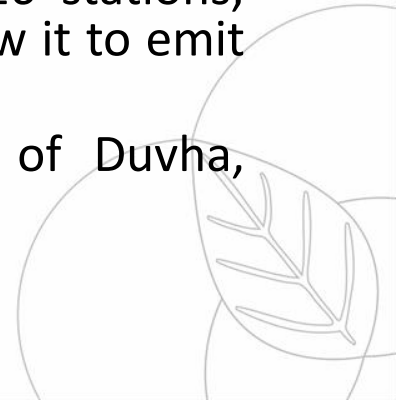
# Right to access information

- Communities & public have right to know operating conditions eg waste management licences online (sawic.environment.gov.za)
- Principle issue of transparency & public participation in environmental governance, expressly provided for in National Environmental Management Act (NEMA)
- *“The participation in environmental governance, the assessment of compliance, the motivation of the public, the mobilisation of public, the dissemination of information does not usurp the role of the State but constitutes a vital collaboration between the State and private entities in order to ensure achievement of constitutional objectives.”*
  - Carstensen AJ, VEJA v AMSA (10/09/13)
- All AELs should be available on [www.saaqis.org.za](http://www.saaqis.org.za) & automatically available to PAIA



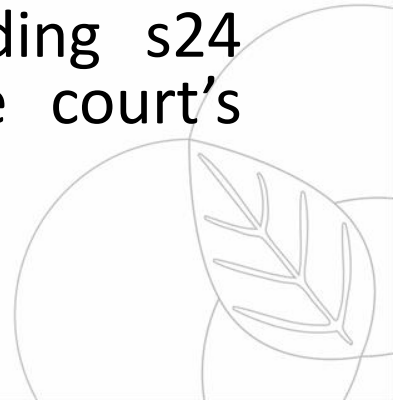
# Compliance monitoring & enforcement (CME)

- Strict CME effective & immediate way to change polluter behaviour
- Despite significant emissions & ongoing exceedances of ambient air quality standards in priority areas, very limited enforcement action underway & very few Environmental Management Inspectors (EMIs) designated
  - As at June 2014, only 2 local authority EMIs designated (6 trained) in whole of Mpumalanga
- Essential to improve, given spate of applications for new mines, coal-fired power stations & several applications to postpone compliance with minimum emission standards (MES), vary & appeal AELs to allow increased emissions
  - Eg Eskom applied to postpone MES compliance for 16 stations, coupled with applications to vary AEL conditions to allow it to emit more than currently allowed.
  - Subsequently also applied for immediate variations of Duvha, Medupi, Majuba & Kriel AELs & appealed Grootvlei



# SASOL & Natref review

- Another serious threat to AQ: Sasol (operations in both Secunda & Sasolburg) & Natref have taken the Minister & NAQO to court, seeking to set aside MES
- Until MES are set again, say that they will comply with alternative emission standards they have determined
- Argue MES unconstitutional, unreasonable & breach NEMA
- Extremely far-reaching implications, undoing many years of hard work to achieve air quality not harmful to health or wellbeing
- gW, ELA, FSE, SDCEA & others will be “friends of the court” - joining to assist the court regarding s24 Constitution, as they are interested in the court’s decision & have expertise



# Thank you

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