**2. REPORT OF THE PORTFOLIO COMMITTEE ON ENVIRONMENTAL AFFAIRS ON THE OVERSIGHT VISIT ON AIR QUALITY POLLUTION HOTSPOTS IN GAUTENG AND MPUMALANGA PROVINCES FROM 28-30 OCTOBER 2014, DATED 24 FEBRUARY 2015.**

The Portfolio Committee on Environmental Affairs (hereinafter, referred to as the Portfolio Committee), having undertaken an oversight visit to Gauteng and Mpumalanga provinces from 28 – 30 October 2014, reports as follows:

1. **INTRODUCTION**

In pursuit of these noble goals as contained in the National Environmental Management: Air Quality Act 34 of 2004, as amended and also in pursuit of the constitutional rights of the people of South Africa, the Portfolio Committee on Environmental Affairs undertook an oversight visit to the Gauteng and Mpumalanga provinces from the 28-30 October 2014.The aim of the oversight was to determine Eskom, Sasol, BHP and other chemical and steel manufacturing companies were doing in complying with the air quality emission standards set by the National Environmental Management: Air Quality Act of 2004 (Act No 39 of 2004), in the context of increasing concerns of air pollution by local communities in the Vaal Triangle Air Pollution Hotspot and the Highveld Air Quality Priority Area, respectively. It is a matter of great concern to the members of the Portfolio Committee that companies continue to emit unacceptably high levels of pollution when *Section 51(1)(e)* has explicitly stated that “A person is guilty of an offence if that person contravenes or fails to comply with a condition or requirement of an atmospheric emission license”. In respect to the penalties, *Section 52(1)* states that “A person convicted of an offence referred to in *section 51* is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million rand or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.”

This oversight visit took place against the backdrop of the fact that the quality of ambient air in many areas of the Republic is not conducive to a healthy environment for the people living in those areas let alone promoting their social and economic advancement. It is for this reason that the Minister of Environmental Affairs declared certain areas in our country Air Quality Hotspots. The burden of health impacts associated with polluted ambient air falls most heavily on the poor, taking into account that air pollution carries a high social, economic and environmental cost that is seldom borne by the polluter. In addition, atmospheric emissions of ozone-depleting substances, greenhouse gases and other substances have deleterious effects on the environment both locally and globally. Notwithstanding, the South African Constitution states that everyone has the constitutional right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

(a) prevent pollution and ecological degradation;

(b) promote conservation; and

(c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

Accordingly, there is an urgent need to minimize pollution through vigorous control, cleaner technologies and cleaner production practices, which are key to ensuring that air quality is improved. Furthermore, legislation is necessary to strengthen the Government's strategies for the protection of the environment and, more specifically, the enhancement of the quality of ambient air, in order to secure an environment that is not harmful to the health or well-being of people, in this regard.

**1.2. DELEGATION**

**The delegation comprised the following members:**

Hon. Mr PS Mabilo, (ANC) – Acting Chairperson, Hon. Ms ZS Makhubele, (ANC), Hon. Mr TJ Bonhomme, (ANC), Hon. Mr T Hadebe (DA), Hon. Ms T Stander, (DA), Hon. Ms J Steenkamp, (DA).

**PARLIAMENTARY SUPPORT STAFF**

Ms T Madubela, (Committee Secretary), Mr D Arendse (Committee Assistant) and Dr S Watts (Committee Researcher).

**1.3. BACKGROUND**

The Portfolio Committee on Environmental Affairs met with the Department of Environmental Affairs (DEA) on 28th October 2014 to be briefed on the national status of air quality; air quality standards; and compliance, enforcement and monitoring within the context of existing legislation. Consequently, the Department’s presentation focused mainly on the legislative framework for air quality management, and progress made in this regard in a democratic South Africa. The briefing also looked at key statistics on emissions, the quality of air in the provinces, priority areas and plans for the future. The briefing on compliance, enforcement and monitoring highlighted ensuing constraints on enforcement, outlined outcomes, criminal enforcement actions regarding atmospheric emissions and other offences related to air quality and administrative enforcement interventions. It is in this regard that members of the Committee raised serious concerns about the capacity of provincial and municipal governments to enforce compliance, with the relevant legislation.

Members further heard about the reluctance of companies to comply with legislation and contraventions involving water. They asked the Department about the magnitude of the impact of air pollution on human health and about the utilisation of the money generated from fines and the consideration of administrative penalties in dealing with air pollution offences, as successful prosecution of offenders seemed to be a slow process, and hence may not resolve the urgency needed to respond to certain air pollution incidents. In addition, a number of civil society organisations concerned about prevailing air quality made very short presentations. GroundWork, the Centre for Environmental Rights, the Highveld Environmental Justice Alliance, the Vaal Environmental Justice Alliance and the South Durban Community Environmental Alliance, were represented in the briefing. The lack of information from companies and government authorities, the lack of enforcement and monitoring, and government’s insufficient response, were the concerns raised by these organisations and lamented the effects of air pollution on people’s health in hotspot areas. The civil society organisations at the meeting made passionate pleas to the members of the Committee to seriously consider the impact of air pollution on vulnerable communities; and highlighted the need for the relevant industries to meet the most stringent emission standards. The Acting Chairperson of the Committee assured the members of the civil society organisations that the Committee would visit them and engage them more on the concerns that they had raised.

It was against this background that the members of the Portfolio Committee decided to go on an oversight visit to the Gauteng and Mpumalanga provinces to interact more fully with the representatives of the affected communities during the course of the visit; and also make site visits to Sasol’s Secunda Plant and Eskom’s Kendal Power Station, respectively.

1. **Briefings at the OFFICES OF Department of Environmental Affairs**

The Acting Chairperson of the Committee, Hon Mr Solomon Mabilo invited the Chief Director for Air Quality Management, Dr Thuli Mdluli to open the meeting with the civil society organisations and companies whose activities have very important implications for the South African air quality, particularly in air pollution hotspots. Dr Mdluli welcomed the members of the Committee as well as representatives of civil society organisations and companies to the *green* departmental offices. She indicated upfront that the industries were at different levels of compliance and were by and large compliant to the minimum emission standards, although there were specific cases where they needed a bit more time to reach compliance.The Acting Chairperson made opening remarks after introductions, highlighting South Africa’s significant role in global environmental governance, citing the hosting of the World Summit on Sustainable Development in 2002 and COP17/CMP7 in 2011, and drew the attention of the stakeholders to the fast-approaching COP20/CMP10 in Lima, Peru, where there is an expectation on South Africa to play a meaningful role. Thereafter, Hon Mr Mabilo invited the representative of the Highveld Environmental Justice Alliance, Mr Thomas Mnguni to make his input.

**2.1 Highveld Environmental Justice Alliance**

Mr Mnguni fervently maintained that many power stations and the international integrated energy and chemicals company Sasol’s well as coal mining and steel manufacturing companies exert negative impact on the nation’s air quality, especially in the Highveld. Pollution from these industries severely impact the natural environment, water and the coal dust problem in the area impinges on human health. Land contamination in the area leads to fish and crocodile death, with equally negative impacts on tourism and agriculture. Similarly, abandoned mines burn hampering visibility and adding to the already stressed air quality. These burning sinkholes pose a serious health danger to the local inhabitants who as well as the livestock also run the risk of falling into some of those disused, uncovered sinkholes. Indoor air pollution due to indoor burning of coal poses another significant risk to human health in the area. Mr Mnguni wanted polluters to pay for their health and wondered as for whom Eskom produces electricity when the very people who live in the vicinity of power stations in the Highveld do not have access to electricity.

Hon Ms Terri Stander asked what the Highveld Environmental Justice Alliance would like the industry or government to do legislation-wise. Conversely, Hon Mr Zondi Makhubele asked whether the civil society organisations have been able to interact with the polluting industries. The Highveld Environmental Justice Alliance indicated that they would like the issue of energy mix to be considered very seriously; they would also like to see polluters penalised and assuming more responsibility for their actions; and would like the government to become tougher with emitters. They further stated that polluting industries were reluctant to engage with local communities. Dr Mdluli, speaking on behalf of the Department, indicated that plans were underway to deal with the issue of indoor air pollution due to coal burning.

**2.2 Vaal Environmental Justice Alliance**

Mr Samson Mokoena, presenting on behalf of the Vaal Environmental Justice Alliance, stated that the National Environmental Management: Air Quality Act of 2004 (Act No 39 of 2004) had not effectively addressed air pollution in the Vaal Triangle Hotspot, stressing that government interventions were not working. He lamented the non-existence of air quality management plans at the Local Government level. He stated that industries had their own air quality management plans, but that they did not see those plans and could not know whether those plans were being implemented and monitored, or not.

Hon Mr Trevor Bonhomme asked about what underpinned the statement that air quality management in the Vaal Triangle Hotspot was not working effectively or was not being implemented. Hon Mr Makhubele asked whether all polluting companies were not cooperating with local communities or just some. Mr Mokoena responded that lack of resources inhibited the participation of local communities. Local communities had been trying to engage with ArcelorMittal South Africa, but to no avail, and it was precisely for this reason that the community took ArcelorMittal to court. Instead of addressing the pollution problem, ArcelorMittal and other polluters indicated that pollutants in the area of their operation actually comes from Johannesburg. Consequently, local communities in the Vaal Triangle would like the Department to undertake studies that point out who is responsible for what. In this respect, Dr Mdluli stated that the Vaal Health Study was due for completion in July 2015, and would share the report once it is available.

**2.3 Groundwork**

Groundwork’s presentation focused on two reports: *Health Impact of Coal* and *Slow Poison: Air pollution, public health and failing governance*. The presentation on the *Health Impact of Coal* featured the health burden of coal-related emissions; health impacts due to poor ambient air quality on the Mpumalanga Highveld; cardiovascular impacts; life expectancy; health and wellbeing; mercury; and water impacts. Groundwork also offered solutions to reducing the health burden and associated socio-economic impacts. On *Slow Poison: Air pollution, public health and failing governance,* Groundwork presented a sad story of air pollution and political failure to implement the Air Quality Act to protect South Africans from the incidents of air pollution in hotspot areas. As a result, Groundwork suggested the need for a comprehensive study to fully assess the impact of Eskom on air pollution.

Dr Mdluli challenged the portrayal of DEA officials as ineffective implementers and enforcers of relevant legislation, pertaining to air quality; and indicated that the Department works with competent people, authorising and enforcing the Air Quality Act. Concerning the lack of interaction between polluters and local communities, she indicated that certain people from the concerned industries and even herself were threatened by local communities. Mr Samson Mokoena contended that no one was threatened.

**2.4 Eskom**

Eskom’s presentation focused on the organisation’s response to minimum emission standards, highlighting its emission reduction achievements; emission reduction plan; retrofit schedule; technology options for reducing particulate matter and nitrogen and sulphur oxides; full compliance *vs* postponement application; compliance before and after retrofits; health impacts of its operations; and also made reference to Eskom’s Household Emission Offset Pilot Study. Eskom indicated that it had a comprehensive framework and plan to execute emission reductions, and appeared optimistic, in this instance. However, notwithstanding the organisation’s optimism, the presentation raised many questions from the members of the Committee and also from members of the civil society organisations. For example, Hon Ms Terri Stander asked whether Eskom had done an externality study to determine the potential impact of its operations on the natural environment and human health, particularly in pollution hotspots. Eskom was also asked to clarify how it aimed to address emissions that pose serious human health problems, particularly particulate matter. There were further concerns that the poor and the vulnerable had no access to electricity, but they continued to bear the social costs of electricity generation. A member of civil society specifically wanted to know whether Eskom had the statistics of those poor households, which were previously connected, but had come off the grid due to their inability to afford increasingly expensive electricity tariffs. Concerns were also raised about the fate of power stations that had exceeded their lifespan, and the lack of transparency and access to Eskom’s pollution reduction plans.

Eskom responded by pointing out that there were no externality studies conducted to assess the impact of its power stations on the environment and human health. The organisation pointed to its multibillion rand solar power plant in the Northern Cape Province, as a viable initiative for dealing with its heavy dependency on coal in other parts of the country, and the associated particulate matter. Eskom affirmed that it would not altogether deal with the issue of particulate matter even if all of its older generation power stations were retrofitted. It further indicated that 2.5 million houses were electrified in the past 10 years, of which 2 500 houses took place in rural areas and 1 500 connections were done in the previous year alone. It had no data on the number of people who were disconnected due to increasing lack of affordability and did not answer the question relating to its power stations that had exceeded their lifespans.

**2.5 Sasol**

Sasol’s presentation mainly outlined the company’s air quality management initiatives. This generated questions from the members of the Committee and also comments from certain delegates. For example, Hon Mr Makhubele asked about the existence of a forum for community participation, and what Sasol had done since 2004, with meeting of the minimum emission standards. Hon Ms Stander asked whether Sasol had conducted an externality study. Another person commented that Sasol’s emissions needed to be reduced further in the light of Sasol’s statement that even if all Sasol’s plants were retrofitted, it would not make a significant reduction, insofar as current level of pollution in the air is concerned. In response to some of these questions, Sasol spoke about its water programme with the Department of Water Affairs and its own energy efficiency initiatives. The company stated that it is fully compliant with local emission standards, and that it believes that South Africa has world class emission standards. A representative of civil society organisations then asked why Sasol was instituting legal challenge against the Department’s air emission standards that it is expected to comply with.

**2.6 BHP Billiton**

BHP Billiton’s presentation dealt with what BHP Billiton is all about; BHP Billiton demerger; and BHP Billiton Manganese South Africa, where it was stated that approximately 70 per cent of the Manganese ore is mined at mines in the Northern Cape Province, with approximately 25 per cent of production beneficiated at the company’s alloy smelter at Metalloys Smelter at Meyerton. BHP Billiton’s investment in beneficiation of Manganese is consistent with the government’s beneficiation strategy and downstream investment goal. Ms Jenny Cronje outlined the company’s Environmental Management Strategy, covering air quality, water quality and land management. Ms Cronje highlighted BHP Billiton’s commitment, stating that BHP Billiton’s decision-making is based on organisational values that seek to strike a balance between the three pillars of sustainable development, as shown by BHP Billiton’s contributions to ensure community development and energy efficiency projects, including practices to reduce emission and carbon footprint, and broader demonstrations of environmental responsibility.

Members of the Committee as well as representatives of civil society organisations directed three questions at BHP Billiton, relating to whether it had conducted any externality studies to assess the likely impact of its operations; BHP Billiton uses the same type and standard of technology wherever it operates (e.g., developed *vs* developing countries); and whether the company supports local communities, particularly in its areas of operation. Members of civil society organisations challenged BHP Billiton to state how the company had supported local communities. BHP Billiton responded that it had not conducted an externality study, but is adapting its underground management in Australia to suit local conditions. The company stated that it met the conditions in its Atmospheric Emission License**.**

**2.7 Chemicals and Allied Industries’ Association (CAIA)**

Dr Laurraine Lotter, the Chief Executive Officer of CAIA outlined the need to do more to achieve required emission standards and further sketched the existing legal framework for air quality management in the country. CAIA was of the opinion that emissions standards that its members are expected to comply with were determined without the involvement of industry. Members of the Committee asked CAIA to qualify this statement, as policy and law-making in South Africa is known to go through broader public participation to encourage the involvement of affected and connected stakeholders. The Committee wanted clarity from CAIA on why its views were not considered and further asked to determine whether CAIA members were already implementing the relevant legislation in terms of emission standards, and the specific challenges that they had encountered in the process.

CAIA responded that it had a number of engagements with the Department and raised many concerns during those many interactions, including the public hearings in Parliament. In respect to compliance, CAIA encourages its alliance members to adhere to legislation and monitor and/or audit their performance in this regard. Dr Lotter indicated that many companies were already complying with many aspects of the air quality management legislation. However, she was concerned that the issue of “responsible care” is rather vague in the legislation, as there is currently no target or standard that companies should adhere to.

**2.8 ArcelorMittal South Africa (AMSA)**

ArcelorMittal is an integrated steel-making and mining company, and hence has an impact on South Africa’s air quality, particularly where the company operates. Thus, ArcelorMittal’s presentation dealt with its nature of work and also what the company intended to do in realising compliance with relevant air quality management legislation. AMSA cited the impact of global economic crisis, which had affected their operations, resulting in decommissioning of several plants, particularly in the Vanderbijlpark. ArcelorMittal implemented several emission reduction interventions, namely, vegetation of open areas; removal of historical oil ramp at its metal recovery plant; installation of Dust Extract System for Blast Furnance stockhouse; and conducted air quality awareness campaigns with NGOs to educate communities.

The Portfolio Committee considered AMSA’s input well-presented and also appreciated the frankness of the company in its presentation. There were no significant issues raised besides the concern raised by Samson Mokoena that sufficiently community participation in areas around ArcelorMittal’s plants was not strengthened enough. He emphasised that existing engagements were only via formally established, distant non-governmental organisations, such as World Wide Fund for Nature South Africa (WWF-SA) and International Union for Conservation of Nature (IUCN), among others.

ArcelorMittal’s presentation and the discussions that followed ended the oversight meeting with civil society organisations and the Committee proceeded to visit the Department’s Hartbeespoort Weather Monitoring Station that provides real-time information on the state of air quality in Hartbeespoort and the surrounding areas.

**3. Site visit to Sasol’s Secunda Plant**

The Portfolio Committee was shown safety video, outlining safety emergency procedures at Sasol’s Secunda Plant, which produces concentrated gas chemicals, and is a National Key Point. This was followed by a presentation dealing with health, safety and environmental management. Thereafter, the members of the Committee boarded a bus with officials from Sasol and went on the tour of the Plant. Members of the Committee and Sasol hosts disembarked at a compost-making site where the conversion of industrial waste to a useful resource takes place. The Portfolio Committee learnt that composite-making had been taking place at the Secunda Plant in the past two to three years, and showed innovation and beneficiation. It was stated that women and youth were well-represented at the Secunda Plant and that 70 per cent of procurement at the Plant is per the prescripts of BEE. The group boarded the bus again and drove through the plant, stopping at the boiler plants (17 of them in total) and two gas turbines, which produce a significant part of the Plants energy. This ended the tour of the Secunda Plant and the group was taken to visit Sasol’s Air Quality Monitoring Station.

The group returned to the hall where the members of the Committee were received in the morning by the management of Sasol. Sasol appreciated the visit by the Committee and saw the need for further engagements with DEA, especially on offsets. Mr Hermann Wenhold, speaking for Sasol, indicated that Sasol should be able to comply with 70 per cent point source pollution, but not the 30 per cent, which posed a technological challenge. He thanked the members of the Portfolio Committee and staff, DEA staff and Sasol staff for organising the visit by the Committee. Mr Wenhold also wished the Chairperson of the Committee, Hon Mr Mthembu well and speedy recovery. On the other hand, the Acting Chairperson of the Committee Hon Mr Mabilo acknowledged Sasol’s contribution to the socio-economic development of South Africa as well as the entire southern African sub-region. He also underscored Sasol’s massive investment in infrastructural development, technology and innovation, which places the company among the best in its niche area of operation. Notwithstanding, Hon Mr Mabilo encouraged Sasol to do its uttermost in complying with the air quality law, as laws are formulated to be adhered to at all times, rather than at times that are convenient to companies. Thereafter, lunch was served and a group photograph of MPs and Sasol officials was taken. Finally, the parliamentary delegation left Secunda for Eskom’s Kendal Power Station.

**4. Site visit to Eskom’s Kendal Power station**

The Portfolio Committee drove from Sasol’s Secunda Plant to Eskom’s Kendal Power Station where they linked up with the Chief Director for Air Quality Management, Dr Mdluli. The Safety Manager took the Committee through “evacuation procedure and safety induction” before Mr Christo van Niekerk (SGM Coal) rose to make some welcoming remarks, followed by Mr Christopher Nani (Power Station Manager), who gave an overview of the Kendal Power Station. Members of the Portfolio Committee and staff were issued with personal protective equipment, in preparation for the tour of the Power Plant. They were divided into small groups of *seven* to *nine* persons and went on a guided tour of the facility. They asked questions for clarity in their small groups and were shown the scenarios under which load shedding takes place. The tour ended and everyone returned to the boardroom where the Committee was received, and lunch was served.

Hon Mr Mabilo made some concluding remarks, underscoring the significant role that Eskom plays in the economy and the lives of all South Africans, considering the critical role of energy. He encouraged Eskom to consider environmental sustainability (by adhering to emission standards) in its quest to provide sustainable energy for socio-economic development of the nation. He further echoed the sentiments expressed by representatives of local communities in the meeting at the Department’s offices that stepping up activities to put renewable energy on the grid should be prioritized, taking into account South Africa’s huge potential, in this respect.

1. **RecommendationS**

* This oversight visit should serve as a benchmark for further engagements with the Department, Civil Society Organisations, Industry, such as Eskom and Sasol etc. during the course of the Fifth Parliament;
* Parliament must monitor the effects of municipal and provincial government responses and activities to the air quality laws and regulations viz NEM: Air Quality Amendment Act of 2013 through its oversight activities;
* The Department should ensure that companies that contribute to pollution in our communities should shoulder their responsibility of the health hazards that accompany such pollution activities. They therefore must be penalised and compensate for polluting and causing health hazards to our communities. A law that makes these companies to compensate for health hazards caused to individuals/citizens must be enacted;
* The Department should clarify the composition of the Compliance Team and frequency of enforcement visits. The Department should also clarify whether its officials undertake joint compliance enforcement visits with provincial government officials;
* The Department and Parliament should satisfy themselves on the appropriateness of the penalties that polluters are subjected to;
* The Portfolio Committee would continuously through oversight, ascertain whether the National Government as a whole, including Municipal and Provincial spheres, have the necessary and adequate capacity to monitor and enforce our air quality laws and regulations;
* Government as a whole, and specifically the Department, should take the responsibility for measuring and monitoring the impact of air and water pollution on our communities;
* Communities are barometers for measuring the effectiveness of government service delivery, which in this case is the provision of safe environment that is not harmful to their wellbeing, including clean air. It is therefore important for the Committee to maintain open lines of interaction with communities to be in tune with the processes of policy and legislation implementation on the ground;
* The Government, and specifically the Department of Energy and its entities should urgently ensure that communities and households that are still without electricity are provided with electricity so that they do not depend and use air polluting energy sources;
* The Portfolio Committee would, on a continuous basis engage the Department and affected Stakeholders on air quality, namely the Communities in the air quality hotspots, Community-based organisations/NGOs, Municipal and Local Government and the industry; and
* The Department working with the industry should urgently to undertake or commission studies to determine the *externalities of air pollution* in priority areas to particularly assess economic costs (e.g., loss of useful life, wage losses, decline in agricultural productivity, etc.); social costs (medical services costs and loss of life expectancy); and environmental costs, that is, damage to the various components of ecosystems.

1. **CONCLUDING REMARKS**

The Portfolio Committee agreed that this report is a good representation of the discussions that emanated from the presentations made by representatives of the industry and members of non-governmental organizations that represented local communities in air pollution hotspots at the DEA offices in Pretoria. It also reflects the Committee’s own observations while on oversight visits to the Vaal Triangle Airshed Priority Area and the Highveld Priority Area in the Gauteng and Mpumalanga provinces, respectively. The Portfolio Committee appreciated the Department’s role in ensuring that the quality of air in these two air pollution hotspots are routinely monitored via state-of-the-art monitoring stations, and also commends the Department for its growing and challenging role in the implementation of air quality management legislation and standards to safeguard the protection of the environment as well as the health and well-being of South Africans. This oversight is the very first of many other oversight visits and interactions that the Committee envisages with the three spheres of Government, polluters/industry and local communities to both seek cooperation and enforce compliance with air quality legislation and regulations.

The Portfolio Committee remains resolute and committed to Section 24 of the Constitution of the Republic of South Africa of 1996, which states that everyone has a right to an environment that is not harmful to their health or well-being; and to have an environment protected, for the benefit of present and future generations’’.

The Portfolio Committee will be leaving no stone unturned, in ensuring that our environment is not harmful to all South Africans and ecosystems.

**Report to be considered.**