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Dear Advocate de Lange

REQUEST FOR HEARINGS ON THE DRAFT AMENDMENT TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004'S LIST OF ACTIVITIES WHICH RESULT IN ATMOSPHERIC EMISSIONS WHICH HAVE OR MAY HAVE A SIGNIFICANT DETRIMENTAL EFFECT ON THE ENVIRONMENT, INCLUDING HEALTH, SOCIAL CONDITIONS, ECONOMIC CONDITIONS, ECOLOGICAL CONDITIONS OR CULTURAL HERITAGE

1. We address you at the instance of our clients groundWork and the Vaal Environmental Justice Alliance (VEJA).
2. groundWork is a non-profit environmental justice service and developmental organisation aimed at improving the quality of life of vulnerable people in South Africa (and increasingly in Southern Africa), through assisting civil society to have a greater impact on environmental governance. VEJA is a non-racist, non-sexist democratic alliance of empowered civil society organisations in the Vaal Triangle, who have the knowledge, expertise and mandate to represent the determination of the communities in the area to control and eliminate emissions to air and water that are harmful to these communities and to the environment.
3. On 23 November 2012, the Minister of Water and Environmental Affairs (the Minister) gave notice of her intention to amend the list of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage (the listed activities). The list was published in terms of section 21 of the National Environmental Management: Air Quality Act, 2004 (AQA). Although the notice invited submissions on the listed activities by 24 December 2012, the Department of Environmental Affairs (DEA) has subsequently agreed to accept submissions until the end of January 2013.

4. The purpose of this letter is to request the Parliamentary Portfolio Committee on Water and Environmental Affairs to exercise its powers to hold public hearings in relation to the proposed amendments to the listed activities under AQA.
5. Section 21(3)(a) and (b) of the AQA provide that the notice which sets out the listed activities:
 - “(a) must establish minimum emission standards in respect of a substance or mixture of substances resulting from a listed activity and identified in the notice, including—*
 - (i) the permissible amount, volume, emission rate or concentration of that substance or mixture of substances that may be emitted; and*
 - (ii) the manner in which measurements of such emissions must be carried out;*
 - (b) may contain transitional and other special arrangements in respect of activities which are carried out at the time of their listing....”.*
6. The listed activities deals with numerous industries and sets out, *inter alia*, the permitted atmospheric emissions per category of industry, and the dates by which compliance with these values is required. In terms of section 22, no activity on the list may be conducted without an atmospheric emissions licence.
7. The AQA provides for consultative procedures before amendment of the list by following the consultative procedures set out in sections 56 and 57,¹ and it is not our contention that these procedures are not being followed. Instead, it is our submission to the Committee that this is a matter of sufficient import and consequence to justify the Committee exercising its oversight powers under the Constitution by calling for public hearings, over and above the statutory consultation process.
8. As you are aware, the Constitution of the Republic of South Africa, 1996 (Constitution) requires that the National Assembly provide a national forum for public consideration of issues, including by scrutinising and overseeing executive action. All executive organs of national in the national sphere are accountable to it and it is required to maintain oversight over organs of state and the exercise of national executive authority, including the implementation of legislation. The rules of the National Assembly reiterate that Portfolio

¹ Section 57 deals with public participation. It provides as follows:

*“57. **Public participation.**—(1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC must give notice of the proposed exercise of the relevant power—*

(a) in the Gazette; and

(b) in at least one newspaper distributed nationally or, if the exercise of the power will affect only a specific area, in at least one newspaper distributed in that area.

(2) The notice must—

(a) invite members of the public to submit to the Minister or MEC, within 30 days of publication of the notice in the Gazette, written representations on or objections to the proposed exercise of the power; and

(b) contain sufficient information to enable members of the public to submit meaningful representations or objections.

(3) The Minister or MEC may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.

(4) The Minister or MEC must give due consideration to all representations or objections received or presented before exercising the power concerned.”

Committees must maintain such oversight within their portfolios and may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state.

9. The listed activities published under s.21 of AQA are extremely important legislation. It is integral in controlling and monitoring harmful or potentially harmful atmospheric emissions, and in meeting the AQA's objective of protecting the environment and human health. In many respects, our clients are of the view that limits in the current list already do not go far enough to protect the right to an environment that is not harmful to health and well-being.
10. The proposed amendments to the listed activities would make significant and substantive changes to the current list. Several, if not all, changes constitute a relaxation of previously published limits. In some cases, the limits are substantially more lax. The effect of such amendments would be to permit greater volumes of atmospheric emissions which have or may have significant detrimental impacts on the environment, including human health, social conditions, economic conditions, ecological conditions or cultural heritage. In addition, plants are afforded more time to meet the new relaxed standards than they were afforded to meet stricter standards in the current list.
11. For example:
 - a. Significant amendments are proposed in relation to combustion installations (sub-category 2.1 in the draft of the listed activities) when compared with the same sub-category in the current list. For instance, instead of $50\text{mg}/\text{Nm}^3$, the proposed new minimum limit for new plants for particulate matter emissions is $70\text{mg}/\text{Nm}^3$. This would be a 40% higher limit than previously permitted.
 - b. Instead of $250\text{mg}/\text{Nm}^3$ for oxides of nitrogen, the proposed minimum limit for new plants is $400\text{mg}/\text{Nm}^3$. This would be a 60% higher limit than previously permitted.
 - c. These proposed amendments are particularly concerning given the fact that new plants – which include oil refineries – only have to comply with these relaxed limits when the amendments take effect. In fact, as per the current list, all plants where the application for authorisation was made on or after 1 April 2010, were required to comply immediately with the limits in the current list.
12. There are more than 30 additional changes proposed to the listed activities.
13. As is evident from the one example of combustion installations, the final publication of the amended list could have significant impacts for air quality management in South Africa. This is an issue which the public should have the opportunity to discuss in the public forum that Parliament provides. Public hearings on the amendment would allow the Portfolio Committee to maintain oversight regarding the list's implementation.
14. Given the constraints on civil society capacity, as well as its limited access to technical expertise, our clients are concerned that, without the benefit of Parliamentary oversight, the important issues in the list may not be adequately evaluated and debated.
15. Public hearings would allow members of the public, including experts, to have a proper opportunity² to express their views and concerns, and allow the issues to be properly

² Submissions on the amendments to the list were invited over December 2012/January 2013, during a period when many people take their annual leave, and many institutions close their doors. In addition, the DEA has also invited comment on at least three other pieces of legislation over the same period. Not only does this make consultation with clients, partners and experts extremely difficult, but it may very well be that many

ventilated. They would also ensure that the Minister and DEA explain to the Committee and the public why these proposed changes are necessary and appropriate, and how the proposed changes will still protect the environment and human health – to date, no such explanation has been provided.

16. In this way, public hearings would increase transparency and lead to greater accountability in relation to the list. Public hearings would, in addition, mean that the media has the opportunity to engage with the list and potential consequences of its amendment.
17. In these circumstances, and given the powers and role of the Portfolio Committee as set out in the Constitution and the rules of the National Assembly, we request that the Committee exercise its powers to convene public hearings on the proposed amendments to the listed activities. Because of the technical nature of the listed activities, we also suggest that the Portfolio Committee specifically invite inputs from some air quality/process engineering experts to inform its oversight, such as experts from the Department of Geography, Environmental Management & Energy at the University of Johannesburg.
10. Should you have any queries or require more information in relation to our request, please do not hesitate to contact the writer.
11. We look forward to your response.

Yours sincerely

Centre for Environmental Rights

Per:



Melissa Fourie
Executive Director

interested organisations and members of the public are not aware of the invitation to make submissions. This is probably also the case in relation to the media.