



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Honourable Minister Barbara Creecy

Minister of Forestry, Fisheries and the Environment

Environment House

473 Steve Biko

Pretoria

By email: fshaik@environment.gov.za

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Copied to:

Appeals and Legal Review Directorate

Department of Forestry, Fisheries and the Environment

By email: appeals@environment.gov.za

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Ms Deidre Herbst

Senior Environmental Manager

Eskom Holdings SOC Ltd

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Maxwell Drive

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By email: HerbstDL@eskom.co.za

Mr Peter Lukey

Acting Deputy Director-General:

Climate Change & Air Quality Management

Department of Forestry, Fisheries and the Environment

By email: plukey@dffe.gov.za

For attention of the National Air Quality Officer

Ms Marissa Botha

Environmental Assessment Practitioner

Naledzi Environmental Consultants Pty Ltd

160 Marshall Street

Polokwane

By email: botham@naledzi.co.za

9 February 2022

Dear Minister

APPEAL PURSUANT TO SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, AGAINST THE NATIONAL AIR QUALITY OFFICER'S DECISIONS REGARDING ESKOM'S APPLICATIONS FOR POSTPONEMENT AND SUSPENSION OF COMPLIANCE TIMEFRAMES, AND/OR ALTERNATIVE LIMITS, RELATING TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004 MINIMUM EMISSION STANDARDS

1. We write to you on behalf of groundWork and Earthlife Africa, the Appellants in relation to the above matter.
2. On behalf of groundWork and Earthlife Africa, we submit this appeal to the Honourable Minister of Forestry, Fisheries and the Environment, directed at the Director: Appeals and Legal Review of the Department of Forestry, Fisheries and Environment ("DFFE"), to set aside the National Air Quality Officer's ("NAQO") decisions regarding Eskom's application for postponement and suspension of compliance timeframes, and alternative limits, relating to the National Environmental Management: Air Quality Act 39 of 2004 Minimum Emission Standards, issued on 30 October 2021 to Eskom Holdings SOC Ltd ("Eskom").
3. In terms of regulation 4(2)(a) of the National Environmental Management National Appeal Regulations, 2014 ("the Appeal Regulations"), an Appeal submission must be submitted in writing in the form obtainable from the appeal administrator, and must be accompanied by: a statement setting out the grounds of appeal; supporting documentation which is referred to in the Appeal submission; and a statement by the appellant to confirm compliance with regulation 4(1) of the Appeal Regulations – which is the requirement that an appellant submit an

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appeal to the appeal administrator, and a copy to the applicant, any registered interested and affected party ("I&AP") and organ of state with an interest in the matter within 20 days from the date that the notification of the authorisation was sent to I&APs by the applicant.

4. We enclose and hereby submit the following:
 - 4.1 The First and Second Appellants' detailed and full appeal submissions containing the **Grounds of Appeal, marked Annexure A;**
 - 4.2 The supporting documentation in respect of the First and Second Appellants' Grounds of Appeal, marked **Annexures A1 to A4;**
 - 4.3 the signed and completed **Department of Forestry, Fisheries and Environment Appeal Questionnaire**, with the signed letters confirming the mandates of the individuals concerned, to represent the Appellants; and
 - 4.4 the prescribed **Department of Environmental Affairs Appeal Response Form** containing the Grounds of Appeal.
- 5 In compliance with regulation 4(2)(iii) read with regulation 4(1) of the Appeal Regulations, we hereby confirm that:
 - 5.1 This letter, with the attached Appeal submission and supporting documentation, is copied - and will be sent simultaneously – to the Acting Deputy Director-General: Climate Change & Air Quality Management, for the attention of the NAQO (the First Respondent in this Appeal) and to Eskom (the Applicant and Second Respondent in this Appeal); and
 - 5.2 We are not in possession of a database of interested and affected parties in relation to the postponement and suspension application process, nor of the list of relevant organs of state with an interest in the matter, which have been consulted in relation to the postponement and suspension application process. We have sought, to the best of our ability, to comply with this legal requirement by copying the Environmental Assessment Practitioner for the application process herein. We request that this appeal be furnished to any registered interested and affected parties. Alternatively, you are invited to provide us with the database and contact details, including email addresses, of the registered interested and affected parties, so that we may endeavour to circulate the appeal.
- 6 Kindly confirm receipt of this letter and the Appellants' Appeal (comprised of the enclosed annexures of the Appeal).
- 7 Should you have any queries in relation to this Appeal, or require any additional information, please let us know.
- 8 Kindly also keep us updated on the progress of the Appeal.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:

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Michelle Sithole

Attorney

Direct email: msithole@cer.org.za