



MAY NEWSLETTER 2019

Dear Readers,

We hope you have had a marvellous month of May!



The May edition of our newsletter looks at updates in the air pollution, carbon tax and energy sectors while also focussing on recent legal notices and amendments.

NATIONAL LEGISLATION

- ❖ **NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004**
GN 666 in GG 42464 of 17 May 2019 - Strategy to address air pollution in dense low-income settlements
- ❖ **MARINE SPATIAL PLANNING ACT 16 OF 2018**
GG 42444 of 6 May 2019 – Commencement to be proclaimed
- ❖ **PLANT IMPROVEMENT ACT 53 OF 1976**
GN 263 in GG 42451 of 10 May 2019 - Regulations relating to establishments, varieties, plants and propagating material amended
- ❖ **MINE HEALTH AND SAFETY ACT 29 OF 1996**
GN 651 in GG 42451 of 10 May 2019 - Guidance Note on Medico-Legal Investigations of Mine Deaths published with effect from 31 March 2019

FOR COMMENT

❖ **NATIONAL WATER ACT 36 OF 1998**

GN 655 in GG 42451 of 10 May 2019 - Proposed classes of water resource and resource quality objectives for the Berg Catchment

❖ **NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004**

GN 686 in GG 42472 – Notice of intention to amend the list of activities which result in Atmospheric Emissions which have or may have a significant detrimental effect on the environment

❖ **NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998**

GN 647 in GG 42451 of 10 May 2019 - Proposed Minimum Standards for the Consideration of Environmental Aspects in the Preparation and Review of Municipal Spatial Development Frameworks (SDFs)

GN 648 in GG 42451 of 10 May 2019 - Proposed requirements for undertaking an initial site sensitivity verification and protocols for the assessment and minimum reporting requirements of environmental impacts for environmental themes for activities requiring environmental authorisation

GN 667 in GG 42464 of 17 May 2019 - Proposed Financial Provisioning Regulations for the Rehabilitation and Remediation of Environmental Damage caused by reconnaissance, prospecting, exploration, mining or production operations

PROVINCIAL LEGISLATION

❖ **LIMPOPO**

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT 16 OF 2013

PN 37 in PG 2995 of 10 May 2019 - Spatial Planning and Land Use Management Act 16 of 2013: Sekhukhune District Municipality: Notice of adoption of the Spatial Development Framework (SDF)

❖ **KWAZULU-NATAL**

NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT 57 OF 2003

PN 55 in PG 2074 of 16 May 2019 - Declaration of Nature Reserves: Umgeni Valley Nature Reserve and uMsonti Private Nature Reserve

❖ **WESTERN CAPE**

NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT 57 OF 2003

PN 61 in PG 8095 of 10 May 2019 - Notice of intention to declare a nature reserve: Rietkraal Nature Reserve

POLICY

❖ **NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004**

GN 644 in GG 42446 of 6 May 2019 - Draft National Climate Change Adaptation Strategy - for comment

GROUNDWORK GOES TO COURT TO DEFEAT MINISTER'S PLAN TO WEAKEN AIR POLLUTION STANDARDS

06 May 2019 by Centre for Environmental Rights

Environmental justice group [groundWork](#), represented by the [Centre for Environmental Rights](#) (CER), has launched [High Court proceedings](#) [1] against Environmental Affairs Minister Nomvula Mokonyane and the President of South Africa to set aside government's plan to double the amount of the harmful pollutant sulphur dioxide (SO₂) polluters are allowed to emit.

The weakening of the standards gazetted by the Minister would allow all coal-fired boilers to emit double their previously-allowed SO₂ pollution from 1 April 2020. This includes the already heavily-polluted Vaal, Highveld and Waterberg Priority Areas, where coal pollution kills thousands of people every year.

The weakened standards for SO₂ are now approximately 10 times weaker than the equivalent standards in India and about 28 times weaker than the standards in China.

If the court agrees with groundWork, big SO₂ emitters like Eskom and Sasol will have to act immediately to reduce their pollution and so reduce their impact on people's health and well-being. This will require significant capital expenditure – which industries want to avoid – or they could face both criminal and civil action for violating the law.



The doubling of the SO₂ standards - from 500 mg/Nm³ to 1000 mg/Nm³ - was introduced by the Department of Environmental Affairs as an amendment to important air pollution standards known as the minimum emission standards (MES) – but without first publishing the proposed doubling of the SO₂ standard for comment as the law requires. Had these proposed amendments been published for comment, groundWork

and other NGOs would have strenuously objected to weakening the SO₂ MES. On 31 October 2018, then acting Minister Derek Hanekom proceeded to publish the amendments to the MES in their final form.

The [Air Quality Act](#) makes clear that any proposed change to the MES has to be published for public comment and must “*contain sufficient information to enable members of the public to submit meaningful representations or objections.*” Although other proposed changes to the

relevant law were made available for comment in May 2018, there was no indication whatsoever that any changes were being considered in relation to the MES for coal-fired boilers.

For some six years, groundWork and its partners in the [Life After Coal Campaign](#), the CER, and Earthlife Africa have been opposing ongoing efforts by industry – in particular the two biggest polluters, Eskom and Sasol – to delay and evade meeting more stringent air pollution standards. In fact, when the MES were first promulgated, despite their active participation in the multi-year process to set them, both Eskom and Sasol sought to be completely exempt from the MES. Subsequent to that failed attempt, both have brought multiple applications – the majority of which have succeeded – to delay compliance with the MES. In 2014, Sasol brought a [court application](#) – which it withdrew when its applications to postpone MES compliance were granted – seeking to set aside the majority of the MES.

SO₂ is a notorious pollutant that causes significant harm to human health and the environment. It can affect the respiratory system and the functions of the lungs, and causes irritation of the eyes. Inflammation of the respiratory tract causes coughing, mucus secretion, aggravation of asthma and chronic bronchitis, and makes people more prone to infections of the respiratory tract. Studies have linked SO₂ to low birth weight in infants and an increased risk for gestational diabetes mellitus, stillbirths, and pre-term births. Hospital admissions for cardiac disease and mortality increase on days with higher SO₂ levels. When SO₂ combines with water, it forms sulphuric acid, which is the main component of acid rain.

“Air pollution from coal mining and power is already killing thousands of people every year in places like the Mpumalanga Highveld. Instead of enforcing compliance with our already weak standards, government now wants to weaken the standards even further. If government will not defend the right to a healthy environment, we have no option but to ask the court to do so,” says Bobby Peek, Director of groundWork.

The Minister has indicated her intention to oppose groundWork’s court application and her answering affidavit is expected at the end of May.

[1] The founding affidavit is available at:

https://cer.org.za/wpcontent/uploads/2019/05/SO2-litigation_founding-papers.pdf

NEW CARBON TAX GETS ROASTED BY AA, COSATU

21 May 2019 by Lameez Omarjee

There has been largely negative reaction to Finance Minister Tito Mboweni's announcement on Wednesday that a Carbon Tax - which forms part of government's efforts to deal with climate change - will be instituted in early June on petrol and diesel.

The tax is based on the "polluter pays" principle.

It prices greenhouse gas emissions, and aims to ensure that businesses and households take pollution into account in their production and consumption investment decisions, Treasury explained in its 2019 Budget Review document.

"The tax will assist in reducing emissions and ensuring South Africa meets its commitments under the 2015 Paris Climate Agreement," the Budget document read. It will be reviewed in three years.

From June 5, 2019, a carbon tax of 9 cents per litre will be implemented on petrol and 10c/l on diesel. Refunds cannot be claimed against the carbon tax, Treasury added.



'Inferior fuel'

The Automobile Association, in a statement in response to the Budget, said the tax was "grossly unfair" as South Africans will be paying an emissions tax on "inferior quality fuel" despite not having access to higher quality fuels, which are available in many other markets in the world.

The Organisation Undoing Tax Abuse (OUTA) raised concerns that the tax would push up the price of consumer goods, along with other fuel levy increases.

"This tax is a cynical abuse of public sentiment under the guise of tackling climate change, which is an imperative that requires urgent action," said Heinrich Volmink, executive head of OUTA's national division.

The carbon fuel levy appears to be "disingenuous", as there are no clear links to behavioral changes or in line with climate change mitigation initiatives, he added.

"Just as the plastic bag tax has not changed consumer behaviour or reduced pollution, and the funds were not used for recycling initiatives as initially promised, this carbon tax on petrol will just be another revenue stream for government's coffers," OUTA's statement read.

Workers 'abandoned'

Labour federation Cosatu also commented that the carbon tax, in addition to an increase in the sugar beverages tax, was an indication that government had abandoned previous commitments to protect vulnerable workers.

Momentum Securities, Nancy Bambo and Stephen Meintjes are of the view that the carbon tax will impact steel and cement producers, as they are known as the biggest contributors of greenhouse gases. Energy intensive and energy producing companies will also likely be affected.

Affected companies include ArcelorMittal, PPC, Afrisam, and Sasol.

Andrew Howard, head of sustainable research at Schroders, however, is of the view that the tax of \$8 to \$9 per tonne government is targeting falls short of the \$100 per tonne level needed to be effective in combating climate change.

"That said, it's a start, and sets a platform for tougher action in the future," Howard said.

He also noted it would definitely impact companies' profits, but investors needed to start thinking about the impact of the tax and plan accordingly.

INTERESTING ENVIRONMENTAL TOPICS

- ❖ ***Climate change has a bright side too: How SA plans to put a positive spin on global warming***

www.businessinsider.co.za/draft-national-climate-change-adaptation-strategy-positive-message-on-global-warming-2019-5

- ❖ ***South Africa signs oil search deal with South Sudan***

<http://extractives-baraza.com/media-center/news/2019/05/08/south-africa-signs-oil-search-deal-with-south-sudan/>

- ❖ ***SA falls behind in energy transition***

"As the world moves away from coal and towards green power technologies, SA finds itself in distinct danger of failing to realise a just energy transition, according to a Business Day report. Renewable energy provided 70% of all new net energy globally in 2017 and total investment in green power now tallies more than \$300bn. There are 179 countries with renewable power targets and 57 of those have committed to their power mix becoming 100% renewable. 'This is not just because of climate change or the environment. It's mainly driven now by the fact that renewables is just a damn good business deal,' said Stellenbosch University's Professor Mark Swilling. Inevitable as the transition to a low carbon economy might be, SA is woefully unprepared to grab the opportunities presented by the green energy revolution. Mike Levington, MD of Kabi Energy, said there is a lot of confusion rather than consensus as to what a just energy transition in fact is. Zwelinzima Vavi, general-secretary of the SA Federation of Trade Unions, said while some unions will interpret it very narrowly around the immediate interest of workers, 'others from the progressive side believe a just transition should refer to a broader and deeper social economic transformational or societal shift to a sustainable low carbon economy or a zero carbon world over a period of time, not overnight'. Vavi said any ownership model must not entrench the existing patterns of the economy but rather seek to reverse them, given SA's extraordinary developmental challenges. 'We are on a knife-edge,' he said."

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ABOUT GUNN ATTORNEYS

Gunn Attorneys was established in 2014 by Adam Gunn, leveraging on many years of experience in the natural resources sector. Amongst other things Adam was legal counsel to Ridge Mining and First Uranium Corporation and a partner at Edward Nathan Sonnenbergs and Eversheds. The vision of the firm continues to be to provide exceptional service to our clients in the natural resources sector.



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