



# Government in the dock over air pollution standards

Environmental Affairs Minister Nomvula Mokonyane has been taken to court after government failed to alert the public about its plan to weaken South Africa's SO<sub>2</sub> emission standard.

By: [Tony Carnie](#)

[@tonycarnie](#)



Photographer: [Daylin Paul](#)

[@daylinpaul](#)

16 May 2019



29 April 2018: Eskom's Duvha Power Station at dawn. The facility, 25km from eMalahleni, is one of 12 coal-burning power stations in Mpumalanga.

More than seven million people die prematurely every year at the hands of a silent, global killer. Often invisible, the World Health Organisation has fingered the culprit as the increasing volume of polluted air creeping into human lungs and other vital organs.

Estimates on the number of South Africans who die each year from breathing polluted air remain contested. But in several parts of the country, a thick fog of poison often clouds the air, adding to the health burden of the many poor communities who live in the shadow of Eskom power stations and other heavy industry facilities.

In an effort to safeguard these communities, the government made the decision in 2013 to establish minimum emission standards to reduce the volume of some of the most common pollutants pumped out from industrial smokestacks.

Barely six years later, the Department of Environmental Affairs has backpedalled on its plans to reduce the permissible emission level for sulphur dioxide (SO<sub>2</sub>), an acidic and foul-smelling gas that can induce noticeable impacts on the heart and lungs in less than 10 minutes.

Now environmental health watchdog groundWork is taking Environmental Affairs Minister Nomvula Mokonyane to court after a government decision to raise the SO<sub>2</sub> emission limit from 500mg/Nm<sup>3</sup> to 1 000mg/Nm<sup>3</sup> – double the [gazetted standard](#).

According to high court papers submitted by groundWork director Bobby Peek, this new change meant that South African standards for this chemical would be 10 times weaker than those in India and 28 times weaker than in China.

The department was invited to comment on these calculations, but spokesperson Albi Modise did not respond, saying simply that it is “considering its options”.

### **Lack of consultation**

Melissa Fourie, an environmental lawyer and director of the Centre for Environmental Rights, which is acting for groundWork, said: “The minister has indicated her intention to oppose groundWork’s court application and her answering affidavit is expected at the end of May.”

In his court affidavit, Peek says the law requires that the public be consulted about changes to air pollution laws, but that the government failed to alert the public about its plan to weaken the SO<sub>2</sub> standard.

Had these proposed amendments been published for comment, groundWork and other non-governmental organisations would have objected.

Peek says SO<sub>2</sub> harms the respiratory system and can aggravate asthma and chronic bronchitis. Studies have linked the chemical to low birth weights and an increased risk of stillbirths and diabetes, along with a greater risk of death and cardiac attacks on days when there are high levels of SO<sub>2</sub> in the air.

The watchdog said airborne emissions of this chemical can induce acid rain by reacting with water to produce sulphuric acid.

### **Lax standards lowered**

While Eskom and Sasol have already applied for several exemptions from the minimum emission standards, Peek said the latest changes could weaken pollution controls for about 25 coal-burning

plants across the country, including several Eskom power stations and a number of pulp and paper mills.

“South Africa’s minimum emission standards are already lax and air pollution in many parts of South Africa exposes people to dire health impacts,” Peek said.

After groundWork became aware of the proposed weaker standards, its legal representatives wrote to the country’s national air quality officer, Dr Thuli Khumalo.

Khumalo wrote back to say that the new “special arrangement” on SO<sub>2</sub> would “open up scope for more technological options to be used in the Republic for SO<sub>2</sub> abatement”.

“It is beneficial to manage overall environmental impact as opposed to shifting a problem from one environmental media to another as it could be the case with some technologies,” she said, without further elaboration.

### **Out of options**

In response to further queries, department officials said they had invited groundWork by email to a consultation meeting in Benoni before acting environment minister Derek Hanekom made the amendment in October. But groundWork said it had no record of this invitation.

In any event, said Peek, the changes had not been the result of open and transparent consultation. His organisation urged the government to withdraw the contested amendment, failing which it would have no alternative but to review the decision in court.

In November, soon after Mokonyane was appointed as the new minister, the department requested more time to respond to groundWork’s objection.

In March, after further correspondence, Peek and attorneys from the Centre for Environmental Rights travelled to Pretoria to meet the new minister. But she did not arrive, apparently because of a family emergency.

Peek said that having made all efforts to avoid litigation, groundWork now had no alternative but to approach the Pretoria high court for relief.

### **Attempt at exemptions**

Peek said a number of industries had sought to be exempted from tougher pollution limits on the basis that compliance would require significant investment to reduce pollution.

According to court papers, Sasol lodged a court application in 2014 seeking to overturn some of the new minimum emission standards for several chemical pollutants.

In court papers resisting Sasol, Khumalo stated that new emission standards were separate to existing ambient (outdoor) air quality standards.

“The fact that ambient air quality in Secunda or Sasolburg is bad, but it is good in Port Nolloth or Colesburg, can have no influence on the decision to establish a national standard for minimum emissions in respect of a limited activity that can take place anywhere in South Africa.

“The ambient air quality of a particular location, town or region will simply be an irrelevant consideration in this context. I respectfully submit that there is a fundamental misconception on the part of [Sasol]. They regard the ambient air quality standards as their licence to pollute up to the levels thereof.

“Achieving ambient air quality standards is not an exercise in economics, nor is it a matter for negotiation with the applicants; that fundamental right may not be infringed by Sasol or any other of the applicants and their argument or defence that they are infringing that environmental right, because it costs too much to adapt their existing plants and bring them up to standard, must be rejected out of hand.

“The very idea that our fundamental rights are only valid if they are regarded as being affordable by those undermining those rights is ludicrous,” Khumalo declared in an affidavit in 2014.

Now, five years later, Khumalo and her officials have been put on terms to explain why they agreed to make “special arrangements” for increased laxity in the control of SO<sub>2</sub> emissions.

<https://www.newframe.com/government-in-the-dock-over-air-pollution-standards/>