COMMENTS

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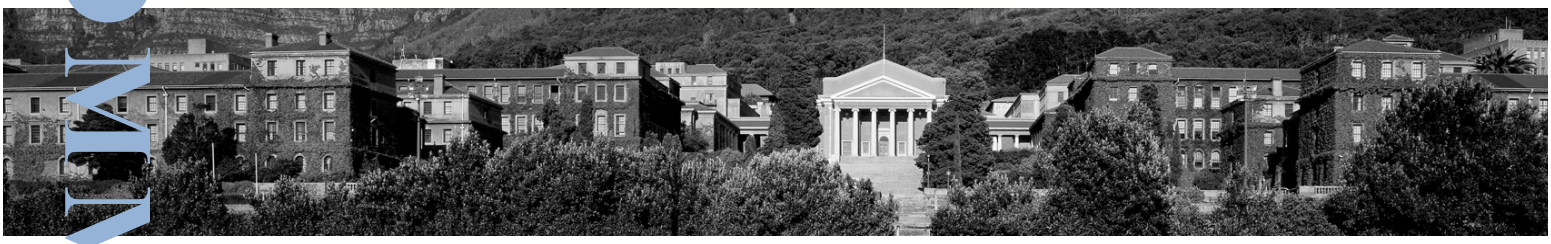

Comments on the *National pollution prevention plans regulations* and the *Declaration of greenhouse gases as priority air pollutants* gazetted by the Minister of Environmental Affairs in January 2016

COMMENTS BY ENERGY RESEARCH CENTRE AT THE UNIVERSITY OF CAPE TOWN

Introduction

The Energy Research Centre welcomes the opportunity to provide comments on the *National pollution prevention plans regulations* (DEA 2016b – hereafter the 'Regulations'); and the *Declaration of greenhouse gases as priority air pollutants* (DEA 2016a – hereafter the 'Declaration'). The Regulations and Declaration have been published for comment, by the Minister of Environmental Affairs in terms of the National Environmental Management: Air Quality Act (Act 39 of 2004 as amended up to 2014 – hereafter 'NEMAQA').

Overall, ERC welcomes the introduction of a requirement for pollution prevention plans for large emitters, and the concomitant declaration of greenhouse gases (GHGs) as priority air pollutants, by the South African government. Identifying GHG as priority pollutants to be controlled, and requiring the reporting and implementation of mitigation measures, are essential elements of climate change policy. The following comments are offered as suggested technical improvements, as well as raising some further questions for consideration regarding the relationship between overall climate mitigation policy and the measures proposed in these regulations.

1. Declaration of greenhouse gases as priority air pollutants

a) General comments

Common elements and integration – there are a large number of common elements referred to in the reporting regulations, the Declaration, and the PPP regulations – for instance reporting of emissions – which are not integrated. Specifically in the case of reporting emissions it is important to establish one reporting process, using one methodology, and one set of entities (companies or, preferably, installations), and to build the rest of the system on this basis. It would therefore make more sense to simply refer to the reporting process in the reporting regulations, with the appropriate technical guidelines, in the declaration and PPP regulations. Moreover, it may be worth sketching out a view of the whole system to make it clear how the various components fit together: e.g. reporting, monitoring, reporting and verification (MRV), pollution prevention plans (PPPs), carbon budgets; and the Declaration, PPP Regulations, GHG Reporting Regulations, Technical Guidelines for MRV of GHG Emissions by Industry and anyother related regulations and guidelines, be considered by DEA as a coherent, single system. While appreciating the importance of finalising the regulatory framework, it might be useful to commission a technical and legal review of the combined documents as a matter of urgency.

We are of the view that per company ('person') rather than per installation reporting and intervention will not capture the level of detail government will require to make and implement efective policy. Most other jurisdictions have elected to pursue a installation-based system.

Disclosure: since persons / companies who emit large quantities of pollution of any sort are imposing a cost on the nation as a whole, from which they benefit privately, pollution data should be publicly accessible, as it is in other jurisdictions.

b) Definitions

Direct emissions: The use of 'direct' is redundant here. 'Owned' and controlled' need to be defined legally – e.g. in the case of joint ownership, operation of subsidiaries, etc. Ideally, this should be the operator of the installation in question.

Carbon dioxide equivalents: it is not clear whether this should refer to the GHG reporting regulations or their accompanying technical guidelines (unless these are considered to be legally identical).

Person: the use of this terms, to include 'juristic person', is potentially mismatched with the use of the term 'company' in the PPP regulations. The way that the term is used here indicates that the legal entity which operated / owns the emissions process / activity should develop a PPP.

The way in which 'company' is defined in the companion PPP regulations suggests that this might occur at holding company level, or group level, etc, and that companies may effectively elect how their subsidiaries will report. Since the same formulation is used in the draft reporting regs, this may lead to inconsistencies.

c) Section 3

It is not clear from section 3 (1) a, whether the 0.1 Mt threshold applies to individual gases and activities, or to *all* gases and activities, or to gases per activity. This would possibly be clarified by addition of an 's' to 'pollutant' in line 2, but conceptually it is important to clarify this in more detail.

In section 3 (1) b, 'primary activity' needs to be defined.

d) Section 5

This section of the Declaration deals with monitoring, evaluation and reporting. This overlaps with verification of information (para 7 of the Regulations). The draft National GHG Reporting Regulations (DEA 2015) referred to "Technical Guidelines for Monitoring, Reporting and Verification of Greenhouse Gas Emissions by Industry", which would overlap with M&E and reporting in para 5 of the Declaration – or provide much more detail.

e) Annexure A

Paragraph (o) – the distinction between electricity generation and electricity generation from fossil fuels, and the use of backup generators should be clarified.

2. National pollution prevention plans regulations

a) General comments

See comments above, which apply respectively to the same principles in both sets of regulations, since these are closely related.

On the general purpose of the PPPs: it is not clear what the purpose is here, and how this relates to other climate policy. There is a reference to 'carbon budgets' but no reference to where these originate, how they are allocated, or their purpose. If carbon budgets are intended to meet the purpose allocated to them in the White Paper, there is no link here between the allocation of budget and any overal mitigation goals. If there is a link between carbon budgets and PPPs, then there should be some requirement in Section 5 for the planned PPP to somehow result in companies staying within their carbon budget, even if there is no compliance process linked to the actual outome.

In our considered opinion, a installation-based system would be far more suited to the purpose, and also follow the practice in other jurisdictions. The regulations, as currently drafted, foresee PPPs submitted and implemented only by companies, whereas best practice would require these for each installation. Companies would be free to report and implement emissions and mitigation measures at whatever level of ownership they choose, but the basic unit of reporting and intervention should be installations. Further comments follow below.

Disclosure: since persons / companies who emit large quantities of pollution of any sort are imposing a cost on the nation as a whole, from which they benefit privately, pollution data should be publicly accessible, as it is in other jurisdictions. In addition, overall mitigation goals for installations / companies should also be made public, as in other jurisdictions.

Inclusion of electricity use: since electricity is a key source of GHGs in South Africa, electricity use should also be reported, and strategies for improving efficiency should be included in PPPs, or in a separate plan / process.

Compliance: there is no provision for an 'end of plan' reconciliation / report. Even if there is no penalty for non-compliance specified, it is important to require the prepration and submission of a final report for each PPP, to summarise performance against the PPP during the relevant five-

year period. If PPPs do have a connection with the proposed carbon budgets, and these stretch over a five-year period, then it will not be possible to see whether companies have successfully kept within their carbon budgets over this period without providing for a report which covers all five years and is reconciled.

b) Definitions

Company: our preference, and the one which we consider would provide the best basis for policymaking and implementation, is for installation-based reporting and implementation, as in most other jurisdictions. The approach contained in these draft Regulations, and also in other draft Regulations under consideration, is based on reporting emissions at company level. Furthermore, the Regulations do not specify how a company, group of companies, or holding company should report emissions for specific activities. This provides leeway for companies to choose to report emissions in whatever configuration best suits them. This replicates the approach proposed in the draft Regulations on reporting, which at the very least should (a) require a complete description of which operations and installations are covered by reports and PPPs for a specific company, and also (b) require consistency between the approach to reporting used in respect of PPPs and in respect of the reporting regulations.

Carbon budget: contained in the definition of company, but not defined here. There is no guidance in the regulations as to how companies should (or not) take allocated carbon budgets into account when proposing PPPs. The reference to 'carbon budgets' presumably means that the set of persons requiring PPPs is established by the allocation of carbon budgets; however, carbon budgets are not further addressed in the other sections of the Regulations, nor is a process established for deciding to whom to allocate carbon budgets.

Direct emissions: 'direct' is redundant here. See comments on 'company' above. The key question is: who decided which 'emissions' are reported by which persons?

Mitigation intervention; *anticipated future levels*; and *existing counterfactual techniques*: these are not defined. Perhaps some clarification would be helpful here – should this include interventions which are mandatory (e.g. as the result of the implementation of standards)? And should there be an 'additionality' clause – i.e. if process improvements are aimed at reducing energy use (and therefore as a result of rising electricity prices, possibly because of the imposition of a carbon tax), should these be regarded as 'mitigation interventions'? This raises questions regarding the point of these Regulations, and how they interact with others, which is not fully clear from the draft. Methodologies used must be precisely identified.

c) Section 4

General: First, it would be preferable to structure PPPs based on installations rather than companies; and, secondly, there is no indication as to the desired scale of the PPP. There is a passing reference to 'carbon budgets' in the definitions section, but no guidance whatsoever as to the desired scale of emissions limitations / reductions to companies drawing up such plans. Government has set a national mitigation goal, detailing 'the 'peak, plateau and decline trajectory' used as the initial benchmark against which the efficacy of mitigation actions will be measured' (RSA 2011). The mitigation component of South Africa's intended nationally determined contribution (INDC) 'takes the form of a peak, plateau and decline GHG emissions trajectory range. South Africa's emissions by 2025 and 2030 will be in a range between 398 and 614 Mt CO_2–eq, as defined in national policy. This is the benchmark against which the efficacy of mitigation actions will be measured' (RSA 2015). South Africa was part of negotiating the Paris Agreement, which requries mandatory preparation, submission and maintenance of successive NDCs every five years, and also requires countries to puruse domestic mitigaiton measures to achieve the objectives of their contribution – in South Africa's case, the PPD trajectory range. Furthermore, each future NDC will have to progress beond the current, i.e. show increasing ambition over time. A clear connection should be made between these national goals and international requirements, and the domestic requirements for emissions reduction on a company level. This connection is currently absent, which carries a high risk of PPPs which in sum are inadequate to achieve the national goal and put South Africa out of compliance with international requirements. In this regard, the reporting of details of mitigation interventions in

para 6(2) is welcomed. However, no clear goal or target is specified, which the PPPs are to achieve. To enable transparent accounting of progress, it is suggested that goals or targets be included as a requirement of PPPs in paragraph 4, and reporting in para 6 includes progress. Initially, such goals might be set by companies themselves, though over time, effective mitigation will require that goals relate to overall goals, including SA's nationally determined mitigation contribution.

Furthermore, thirdly, there is a lack of distinction between existing and additional measures. Should PPPs consist of both mandatory measures (such as the impact of carbon pricing or standards?) as well as further additional measures (not required by other legislation / regulations?) etc.

Fourthly, para 6(2)(b) explicitly allows for "deviations" and only required remedial actions to be report. Clarity on progress towards achieving mitigation goals would be better given by – apart from having clearly stated goals – providing explanations of any inconsistencies with reporting by companies and installations for the purposes of the GHG inventory.

4.1 (b): It is not clear here what a 'description' entails, other than a reference to the categories in Annex A.

4.1 (d): This is vaguely drafted. We assume that the aim of this clause is to require persons to report GHG emissions for the calendar year preceding the start of the (five-year) period for which the PPP applies. There are several problems with this:

i. the regulations should require a longer time period, e.g. three or five years, since emissions levels may vary for several reasons;

ii. emissions data for the immediately preceding year is unlikely to be available if plans are approved in advance – i.e. the cycle of reporting and planning applicable to PPPs needs to be clearly understood; and

iii. there needs to be consistency between reporting and the entity which is reporting. The current regulations mean that changes in ownership etc will not be described in detail in the reporting process, making it difficult to track the resulting changes in emissions.

While these comments are not particularly relevant to a transitional situation (after which these Regulations will be replaced by a more permanent regime, etc), it seems wise to design the best system possible from the start. In this context, DEA might consider the 'start-up' situation in which there is no data, and a regular cyclical process. The relevant data should also be sourced from the reporting required by the reporting regulations (DEA 2015).

4.1 (e): Reporting of emissions for the purposes of PPPs should not only be consistent with the reporting regulations, but should be the same process; i.e. all the PPP Regulations need to do is to refer to the reporting process. The second part of this sentence is a little vague: it is unclear whether the intention is for companies/persons to report emissions data with a view to reflecting progress towards a mitigation goal – the PPD trajectory range. This seems preferable, for reasons outlined above, to reporting progress towards implementation of mitigation interventions, i.e. not the emissions themselves, but progress made with the interventions themselves? The PPPs should enable assessment of performance; assessing conformance is not adequate to the task at hand, urgently reducing GHG emissions.

4.1 (f): This has been alluded to above in the draft regulations, but it should be clarified whether companies / persons are going to commit in their plans to emissions limitation / reduction, or to the implementation of interventions, or to both. This raises the problem of attributing emissions reductions to specific interventions, which is not straightforward in many instances, and relies on technical conventions. Depending on the aim of the regulations, these techical conventions should be spelled out, either as technical guidelines to the regulations, or by the companies concerned.

4.2: It may be worth specifying this more tightly; we assume that the intention is to have *all* PPPs follow a common cycle, i.e. 2016–2020, 2021–2025, etc?

d) Section 5

General: There is no provision for a more prolonged dispute between the Minister and companies.

5.6: It is not clear here what the contemplated 'review' would consist of. In addition, it is not clear what the intention of the PPP is with regard to its timeframe: is the PPP specified for a five-year timeframe only (in which case a new PPP would be required every five years, rather than a 'review') or for a longer period? We would suggest that PPPs be strictly applicable for five-year periods only, and therefore a *new* PPP would need to be submitted every five years.

e) Section 6

General: there is no provision for reporting by companies on changes in ownership / operational control of emitting installations, and the implication of these changes on PPPs and emissions.

6.2: This clause seems to imply that companies will be required to report only on the implementation of identified mitigation interventions, and does not refer to either emissions or to any connection between emissions and interventions. This raises once again the question concerning what the PPP primarily consists of – a commitment to manage emissions, or a commitment to implement specific mitigation interventions?

f) Section 7

General: Independent verification should be built into the PPP process as a matter of course, as it is in other jurisdictions.

7.1: It is not clear what 'incomplete or incorrect' mean here, nor what standard of evidence the Minister would be required to meet to 'reasonably believe' that information was 'incomplete or incorrect'. This would be partially remedied by specifying in more detail which information is required in PPPs and their concomitant annual reports, and specifying quality standards.

7.2: It is not clear what 'verify' means in this context, other than the provision of additional information. Credible verification must involve checking by someone independent of the person who originally provided the data. Since it is implied by 7.3 that verification may involve a cost, the current formulation hints at the use of external experts, in which case this needs to be stated upfront, including conditions attached to the verification process – see above.

g) Revision

The Regulations should provide explicitly for the revision of the Regulations, in order to improve the mitigation system overall and the specific part addressed by these Regulations in particular, over time. The Minister has power to amend Regulations; nonetheless a specific provision is recommended, to send a clear signal of continuous improvement over time.

References

DEA (Department of Environmental Affairs) 2016a. Declaration of greenhouse gases as priority air polluants. Draft for comment, *Government Gazette* 39587 no.6, in terms of National Environmental Management Act: Air Qualit Act (no. 39 of 2004). Pretoria. http://www.gov.za/sites/www.gov.za/files/39578_gon6.pdf.

DEA (Department of Environmental Affairs) 2016b. National pollution prevention plans regulations. Draft for comment, *Government Gazette* 39587 no.5, in terms of National Environmental Management Act: Air Qualit Act (no. 39 of 2004). Pretoria. http://www.gov.za/sites/www.gov.za/files/39578_gon5a.pdf.

DEA (Department of Environmental Affairs) 2015. Draft National Greenhouse Gas Emission Reporting Regulations, published for comment in *Goverment Gazette* No. 38857, Notice 541 of 2015. Pretoria. https://www.environment.gov.za/mediarelease/molewa_draftnationalgreenhouse_gasemission