

Deadly Air Case

South African Medical Research Council
6 March 2025



Centre *for*
Environmental Rights

Advancing Environmental Rights in South Africa

Who we are

We are activist lawyers who help communities and civil society organisations in South Africa realise our constitutional right to a healthy environment, by advocating and litigating for environmental justice.

The Life After Coal Campaign aims to: discourage the development of new coal-fired power stations and mines; reduce emissions from existing coal infrastructure and encourage a coal phase-out; and enable a just transition to sustainable energy systems for the people.



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Eskom's coal-fired power stations make us ill and kill thousands of South Africans every year

Source: Dr Mike Holland, Health impacts of coal fired power plants in South Africa, 2017

Air pollution from Eskom's coal-fired power stations cause:

1110 deaths

from ischaemic (coronary) heart disease

719 deaths
from strokes

180 deaths
from lower
respiratory
infection

157 deaths
from lung
cancer

73 deaths
from chronic
obstructive
pulmonary disease

2 239 deaths per year

2 781

cases of chronic bronchitis
per year in adults

9 533

cases of bronchitis
per year in children
aged 6 to 12



94 680

days of asthma symptoms
per year in children
aged 5 to 19

2 379

hospital admissions
per year

996 628

**lost working
days per year**



3 972 902

**days of restricted
activity per year**



The total costs associated
with these impacts exceed

USD2.3 billion per year



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Section 24 of the Constitution provides that:

“Everyone has the right:

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”



CONSTITUTIONAL RIGHTS

- Section 10 – Right to human dignity
- Section 11 – Right to Life
- Section 28 – The fundamental rights of the child



NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT NO. 39 OF 2004

[View Regulation]

[ASSENTED TO 19 FEBRUARY, 2005]

[DATE OF COMMENCEMENT: 11 SEPTEMBER, 2005]

(Unless otherwise indicated) (English text signed by the State President)

This Act has been updated to *Government Gazette* 37666 dated 19 May, 2014.

as amended by

National Environment Laws Amendment Act, No. 44 of 2008

Environment Laws Amendment Act, No. 14 of 2009

National Environmental Management Laws Amendment Act, No. 14 of 2013

National Environmental Management: Air Quality Amendment Act, No. 20 of 2014

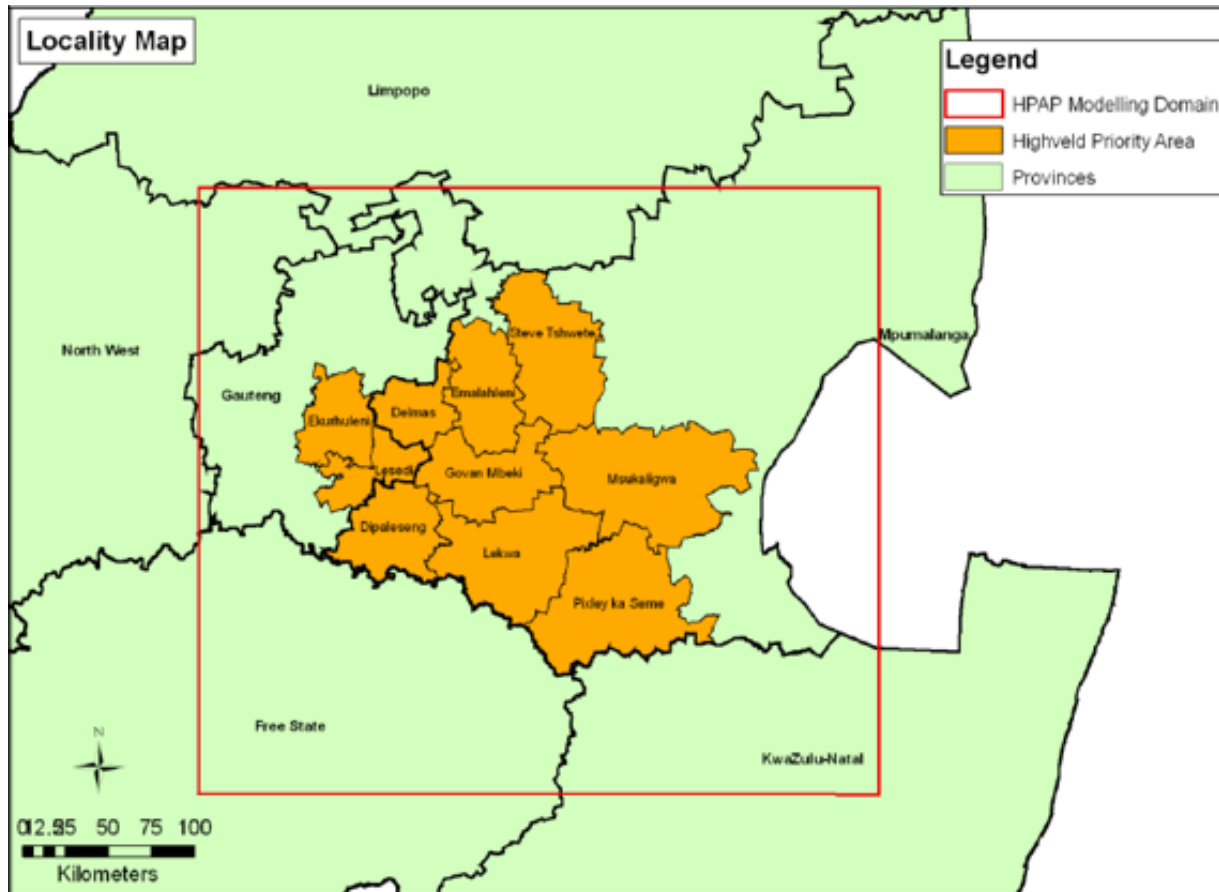
ACT

To reform the law regulating air quality in order to protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development; to provide for national norms and standards regulating air quality monitoring, management and control by all spheres of government; for specific air quality measures; and for matters incidental thereto.



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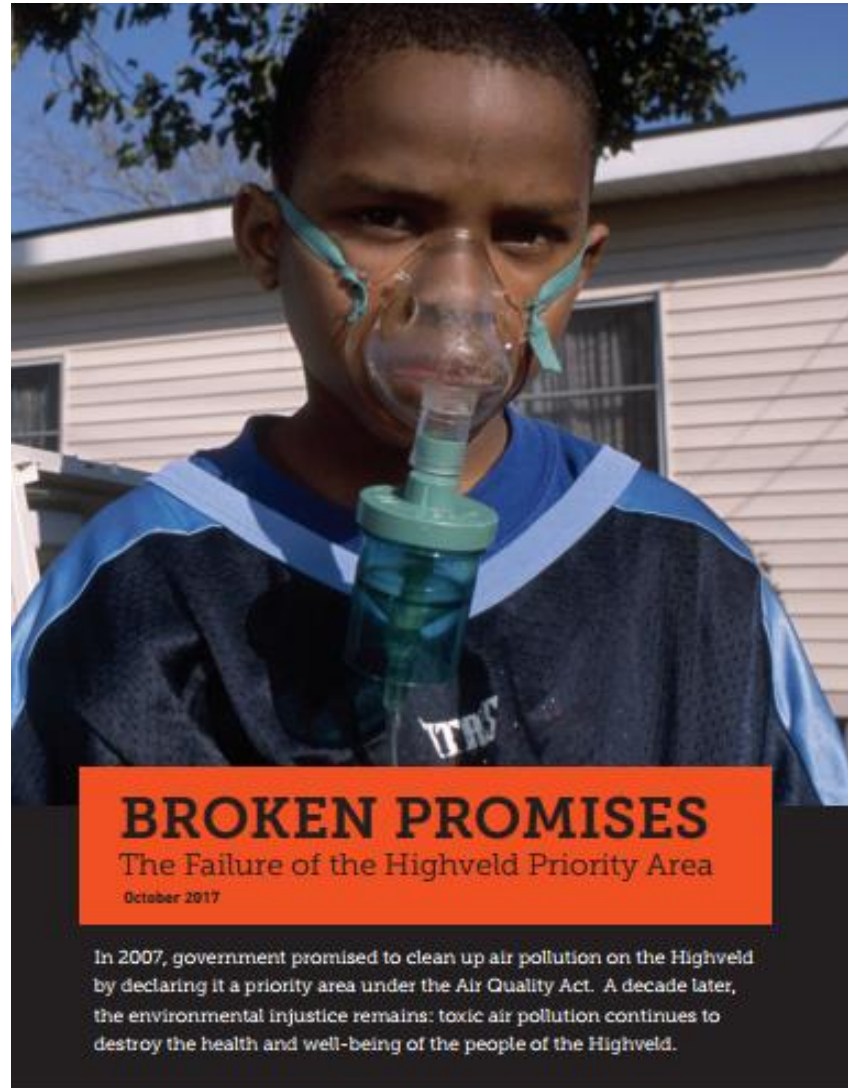
Highveld Priority Area Mpumalanga and Gauteng Provinces



National Air Quality Act 2004:

- Criteria Pollutants
- Ambient (outdoor) standards
- Emission limits
- AQMP

The Failure of the Highveld Priority Area 2007-



Government
satisfied with
progress in
rectifying the
harmful levels
of air pollution
the area

9 May 2019
letter

A report by the Centre for Environmental Rights
in collaboration with groundWork and the
Highveld Environmental Justice Network



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Advancing Environmental Rights in South Africa

groundWork



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LAST RESORT - GOING TO COURT (DEADLY AIR CASE)



The Parties

- groundwork Trust
- Vukani Environmental Justice Movement in Action (VEM)

V

- The Minister of Environmental Affairs
- National Air Quality Officer
- The President of the Republic of South Africa
- Member of the Executive Council for Agriculture, Rural Development, Land and Environmental Affairs Gauteng Province.



Background

- The case was brought because of the dangerous levels of air pollution in the Highveld Priority Area (HPA).
- The people living in this area were getting sick and dying prematurely.
- An Air Quality Management Plan to manage the amount of emissions in the HPA was published.



Background continued

- There were no regulations in place to enforce the AQMP so there were no improvements in the HPA.
- VEM and groundWork took the matter to court because it was a breach of the section 24(a) right to an environment that is not harmful to health and well-being.





Hearing – May 2021



The judgment

- Section 24 (a) is an immediately realisable right. The state must put measures in place to enforce this.
- The state must prepare and publish regulations to enforce the Air Quality Management Plan.
- Judge Collis: “if air quality fails to meet the National Ambient Air Quality Standards (“National Standards”), it is a prima facie violation of the right.”
- Constitutional Court finding in *Eskom Holdings*.



Developments

STAATSKOERANT, 26 AUGUSTUS 2024

No. 51120 3

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. R. 5153

26 August 2024

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004 (ACT NO. 39 OF 2004)

REGULATIONS FOR IMPLEMENTING AND ENFORCING PRIORITY AREA AIR QUALITY MANAGEMENT PLANS

I, Dr Dion Travers George, Minister of Forestry, Fisheries and the Environment, hereby, under section 20 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), made the Regulations for implementing and enforcing priority area air quality management plans, as set out in the Schedule hereto.

‘Deadly Air’: A case about real lives and real people

By Andiswa Matikinca • 2 June 2021



📷 Partner organisations and community members protesting outside the Pretoria High Court on the day of the ‘Deadly Air’ hearing. Photo: Life After Coal



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