

Barbara Creecy overrules officials on air pollution data

By [John Yeld](#)

16 Apr 2020

Environment minister Barbara Creecy has ordered air pollution data and anti-pollution plans of some of South Africa's biggest polluters to be made public, overturning her department's decision to remove some key information sought by lawyers.



Eskom's Lethabo power station in the Free State. Eskom is one of the largest emitters of greenhouse gases in the country. Photo: Simisa Bearbeitung (Ausschnitt, Farben): Pechristener via Wikimedia

But she also approved the redaction of other pollution-related records deemed commercially sensitive.

Creecy was ruling on an appeal by non-profit activist lawyer group the Centre for Environmental Rights (CER), after her Department of Forestry, Fisheries and the Environment redacted some of the documents the CER had requested under PAIA (Promotion of Access to Information Act).

These documents related to pollution data and plans of 16 major polluters: Eskom; Sasol; ArcelorMittal South Africa; Exxaro Resources; Glencore; African Rainbow Minerals; Anglo American; Anglo Operations; South32 (an Australia-based mining and metals company); Seriti Resources Holdings (coal mining); Petmin (anthracite producer); Mbuyelo Coal; Kuyasa Mining (coal mining); Sappi; PPC (cement) and Gold Fields.

Some info to remain redacted

While Creecy agreed with her department that some of the information requested by the CER was commercially sensitive and could remain redacted, she found that other redactions that the department had made – to data on anticipated projected greenhouse gas emissions and on actual emission reductions, and to annual reports – could not be justified and should be released one week after the current Covid-19 lockdown ends.

The public interest outweighed any harm that the release of this information might have, Creecy said. “The full access to this information will foster and contribute towards transparency and accountability which is owed to the public more so in matters pertaining to the environment.”

Creecy noted that three of the companies involved – Eskom, Sasol and ArcelorMittal – were among the largest greenhouse gas emitters both in South Africa and globally.

The CER welcomed Creecy’s decision, signed on 5 April, saying this sent a strong signal that big polluting corporates could not “hide behind government” in respect of their emissions data.

“Data on companies’ anticipated greenhouse emissions are invaluable to enable the public to properly assess emission reduction strategies of polluting companies and to inform the public and shareholders not only of the climate risks to which these companies are exposed, but the risks they pose for the whole planet,” said CER attorney Nicole Loser.



Academics raise alarm over by-law restricting water testing

Steve Kretzmann 31 Mar 2020



Holding companies accountable

The climate crisis affected everyone, particularly vulnerable communities, young people and those with compromised health, she added: “The public needs to know how companies plan to reduce their GHG [greenhouse gas] emissions, in order to hold them accountable when they fail to do so.”

The CER filed a PAIA application in February last year in which it asked for:

- the database of data providers registered in terms of the National Greenhouse Gas Emission Reporting Regulations;
- the latest greenhouse gas emission data reports from the 16 companies; and
- pollution prevention plans for the period up to 31 December 2020 and the latest annual progress reports, submitted by these companies in terms of the national regulations.

In its response, the department provided the CER with redacted records of some of the companies’ annual greenhouse emission reports and plans to reduce emissions over the next five years, and redacted copies of the companies’ audit reports demonstrating the extent of progress measured against these plans.

The department sent the CER ten Greenhouse Gas Emission Data Reports, ten Pollution Prevention Plans and nine annual progress reports.

All had been submitted to the department in terms of the 2017 air quality regulations. It filed affidavits (as required by PAIA) stating that not all of the information requested was available as some of the 16 companies had not submitted their reports to the department.

The department released the full annual progress reports of Anglo Operations, African Rainbow Minerals, South32, Sappi and PPC, but after considering representations from Eskom, Sasol and ArcelorMittal, decided to release only redacted versions of their annual progress reports. Information such as the companies’ anticipated emission reductions for the next

five years was blacked out.

The department said publication of all the requested data and plans was likely to cause financial or commercial harm to the companies involved, or might compromise their competitive advantage.

The CER's PAIA appeal, filed in December last year, argued that the department had failed to provide adequate reasons for its decision; that it had failed to interpret PAIA requirements appropriately; that the records sought did not fall within the section of PAIA cited by the department for its redaction decision; and that there was over-riding public interest in access to the data.



Environmental emergencies as a consequence of Covid-19

20 Mar 2020



Anticipated greenhouse gas emissions

In her appeal decision, Creecy ordered the department to provide access only to anticipated greenhouse gas emissions in the companies' Pollution Prevention Plans and Annual Progress Reports, within seven working days from the date of the conclusion of the lockdown.

She upheld its decision to redact the value of "activity data" in the companies' reports, saying this could justifiably be withheld because it would weaken the companies' competitive advantage and expose trade secrets of the companies in question.

Such "activity data" include the raw material used in production processes; fuel consumed in energy-related activities; plant-specific parameters where plant-specific methodologies were used; and production rates.

The CER had called for full disclosure of the companies' production and usage rates as this was "crucial information" for verifying emissions stated in the companies' reports.

However, while it did not agree with this aspect of Creecy's appeal decision, it was unlikely to challenge it further, Loser said.

[Article](#) originally published on [GroundUp](#).

For more, visit: <https://www.bizcommunity.com>