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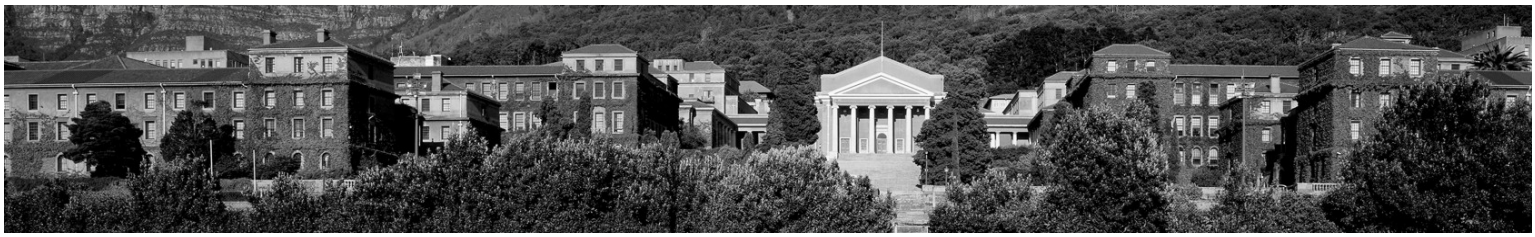

Comments on the *Draft National Greenhouse Gas Emission Reporting Regulations* gazetted by the Minister of Environmental Affairs in June 2015

COMMENTS

COMMENTS BY ENERGY RESEARCH CENTRE AT THE UNIVERSITY OF CAPE TOWN

Comments submitted 4th August 2015

Introduction

ERC welcomes the opportunity to provide comments on the *Draft National Greenhouse Gas Emission Reporting Regulations* (DEA 2015), hereafter the 'Regulations'. The Regulations 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').

There are many positive elements in the regulations as drafted. The comments focus on possible improvements, but should be read bearing in mind this overall positive assessment. Some general comments are made first, followed by detailed specific comments on the text of the Regulations and the Annexure.

1) General comments

National climate policy specifies that the "reporting of emissions data will be made mandatory for entities (companies and installations) that emit more than 0.1 Mt of GHGs annually, or that consume electricity which results in more than 0.1 Mt of emissions from the electricity sector. Qualifying entities will also be obliged to report energy use by energy carrier and other data as may be prescribed. The emissions inventory will be a web-based GHG Emission Reporting System and will form part of the National Atmospheric Emission Inventory component of the SAAQIS. It will be developed, tested and commissioned within two years of the publication of this policy" (RSA 2011). While work on the mitigation system is under way, it has taken longer than expected to establish mandatory GHG reporting. Reporting is a fundamental basis for action on mitigation and these regulations are an important component of the overall mitigaiton system being implemented.

The regulations as they are drafted are not specific enough to guide the further development and implementation of mitigation policy; nor for South Africa to fulfil its international obligations.

The purpose of the regulations should be conceived broadly, that is enabling South Africa to respond adequately to the climate change response. Even more broadly, the purpose should be in line with the Constitutional rights to a healthy environment and the rights of future generations in Article 24, "to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development." More specifically, the purpose must be include implementation of a mitigation system that is effective in reducing GHG emissions (and cannot be confined to reportgin emissions, without reductions). Broader purpose could be stated in an explanatory memorandum to the Regulations, while specific purposes should be elaborated in the Regulations.

The Regulations require too little information to be reported to support a robust mitigation system. ERC undertakes research on energy and climate change, which includes learning lessons from international experience. The literature clearly indicates that systems internationally are based on facility-level reporting. Examples include reporting for the EU-ETS, the Australian National Greenhouse and Energy Reporting System, and many others. Reporting disaggregated to facility level is a *sine qua non*, as it relates emissions to physical processes, and specific sites/operations. It is also noted that the SAAQIS (of which the NAEIS is a sub-system) is based on reporting by facilities. Reporting only total GHG emissions at a company level will not provide adequate data. Just one of the problems would be changes in ownership of facilities among companies. As drafted, the Regulations would not result in sufficiently transparent, accurate, complete, comparable and consist data on emissions.

Independent third-party verification is essential to ensure quality data. The provisions set out currently are complex, insuficiently independent, and rely too much on companies (data providers). Verification means that someone else must check.

Transparency and public access to information: Paragraphs 13 and 14 frame the issue of data in a manner that places the onus on persons not to disclose. The converse should be the case, to be consistent with a commitment to transparency and the Constitutional right tforthe public to have acces to information. The default should be that GHG emissions data reported to DEA should be public and published, with certain exceptions. The exceptions should be exceptions, not the rule.

2) Specific comments on the text of the regulations

a) Definitions

Data provider

Should include “and” at the end of sub-paragraph (b)

Fugitive emissions

The Regulations define ‘“fugitive emissions" means irregular or unintended emissions from sources which are not localised, or too diverse or too small to be monitored individually’. The IPCC guidance defines them somewhat differently as “an intentional or unintentional release of gases from anthropogenic activities excluding the combustion of fuels” (IPCC 2006). The IPCC definition differs in that it is regardless of intent, and does not relate to localised, diverse or small.” Since fugitive emissions include methane and other gases with high GWPs, their accurate inclusion the GHG inventory is important. ERC suggests the DEA consider the IPCC definition, and possibly revise the definition.

Company, facility, activity, installation

Facilities are defined in the regulations. It would be useful to also define companies, activities and installations. Possible definitions are suggested for DEA’s consideration:

“Company” is a legal person conducting an activity that involves emissions of GHGs.

“Installation” and “Activity” should also be defined.

Competent authority

The regulations appropriately identify a "competent authority" at the national level. This is apporpriate given that greenhouse gases are part of a global system, and the responsibilty for South Africa’s response is at national level.

Establishing a National Inventory Unit based at the National Department of Environmental Affairs is appropriate. It should be well-resourced, signficantly increasing the current human capacity in the DEA. Its budget should be integrated into the Medium-Term Expenditure Framework.

It is understood that under NEMAQA the competent authority can be specified for various purposes. The Minsiter, and the DEA acting on behalf of the Minister, are the appropriate competent authority for GHG reporting.

Reporting

Should be defined, for example: “Reporting refers to accurate reporting of the physical quantity of GHG emissions from specified activities for facilities within entity boundaries, within a specific timeframe.”

b) Purpose

The purpose includes “policy formulation”. Since South Africa already has national policy (RSA 2011) and there is an intention to have legislation, the purpose should add “and implementation of policy and legislation”.

c) Principles

The Regulations should add a section on principles. These should include the precautionary principle; the polluter pays principle; and the public "right to know".

Accounting principles should include transparency, accuracy, completeness, comparability and consistency. These principles must be applied, that is, have operational regulations given effect to them. Para 9 refer only to completeness; 11(4) refers to accuracy

d) Alternative emission factors

What does "reasonably believes" mean in legal terms?

e) Reporting requirements and data

Amend sub-paragraph 7(1) by adding the words "for each of its facilities", after the words 'from each of the activities'.

Rephrase sub-paragraph 7 (3) from "must report the total of all its facility level emissions" to read "must report the total emissions for each of its facilities and the emissions per activity for all greenhouse gases within the company boundaries"

Add sub-paragraph 7 (3) *bis:* "A data provider required to submit emission data in terms of these Regulations must report greenhouse gas emisions disaggregated for all facilities and activities under its operational control, including (existing) facility data: brief description including the devices responsible for emissions (no. of boilers, dryers, generators, etc), capacity (per year), date of first operation, any previous expansion, annual usage factor (% of hours operating per year), operating now (yes/no), whether reference data is representative of company (yes/no)"

Unless the DEA intends methodologies to be specified in the MRV gudelines (which are said to be on the web, but are not yet avaialble for download), the Regulations should add sub-paragraph 7 (4) *bis* "A data provider required to submit emission data in terms of these Regulations must report the methodology used in calculating the GHG emissions (continuous measurement or fuel based calculation, other) and any assumptions made, including emission factors (IPCC or otherwise), calorific values (measured, default IPCC, other - specify), oxidation factor, conversion factor (process emissions), carbon content (mass balance), other material assumptions."

Add sub-paragraph 7 (4) *ter* "A data provider required to submit emission data in terms of these Regulations must report total energy produced, total energy consumed, total electricity produced, and total electricity consumed." If a company is already reporting this data under energy reporting requirements, the Regulations should provide an explicit link, so that information is passed from the Department of Energy to the DEA for the purposes of implementing climate policy (as envisaged in para 3 (2); and noting that that policy specifies that "qualifying entities will also be obliged to report energy use by energy carrier and other data as may be prescribed" (RSA 2011)).

Add sub-paragraph 7 (4) *quad*: "A data provider required to submit emission data in terms of these Regulations shall provide an uncertainty assessment of data provided"

The Regulations could also provide that companies might voluntarily provide additional data, which DEA would not make public, on:

- Information explaining company's greenhouse gas emission and energy profile and actions being taken or planned to reduce emissions and increase energy efficiency
- Production: type, amount (per equipment) in 2000-2013; any planned expansion or contraction (if planned, provide details including date expected to become operational).
- Any other data the company may wish to provide;

f) Thresholds

Sub-paragraphs 9 (2) that reporting by combustion emission applies to "individual combustion installation with energycapacity that is 10 megawatts or above". The Regulations should also specify the threshold for "entities (companies and installations) that emit more than 0.1 Mt of GHGs annually, or that consume electricity which results in more than 0.1 Mt of emissions from the electricity sector", to give effect to policy (RSA 2011).

g) Verification

The word "reasonably" is applied only to the competent authority, and not the data provider; it should be removed throughout paragraph 12.

Paragraph 12 should make cross-reference to paragraph 16.

No independent verification process is provided, this is essential.

Public access to information from all processes, including the results of verficiation, must be included.

Submissions by data providers should contain methodology and calculations etc, not just the results in terms of emissions.

h) Publishing data

In paragraph 13, confidential information should be defined and circumscribed.

Add sub-paragraph 13 (1) new (d): "Pursuant to a Public Access to Information Act (PAIA) request."

Paragraph 14 should be amended to read: "The competent authority shall at least annually publish and place in the public domain all information reported pursuant to these regulations, including NAEIS data, and the processes under these regulations, as long as that information does not --"

The order of paragraphs 13 and 14 should be reversed.

i) Revisions of regulations

The Regulations shall be updated and revised every xx years, building on experience gained in reporting, in order to improve reporting over time, and in order to enable the meet its obligations under the United Framework Convention on Climate Change and any other international treaties to which it is bound.

3) ANNEXURE 1

- Where would emissions from Secunda be ?
- No detail under 3 AFOLU?

References

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://http://www.environment.gov.za/mediarelease/molewa_draftnationalgreenhouse_gasemission

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