

## DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 623

16 July 2021

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT: AIR QUALITY ACT, 2004  
(ACT NO. 39 OF 2004)****CONSULTATION ON THE DRAFT SOUTH AFRICAN ATMOSPHERIC EMISSION LICENCE AND  
INVENTORY PORTAL (SAAELIP) DATA MANAGEMENT POLICY, 2021**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby for the purposes of the undertaking made in paragraph 5.2.4.3 of the National Framework for Air Quality Management, 2017, published under Notice No. 1144 in *Gazette* No. 41996 on 26 October 2018, read with sections 56 and 57 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), consult on the draft South African Atmospheric Emission Licence and Inventory Portal (SAAELIP) Data Management Policy (Draft Policy), as set out in the Schedule hereto.

Members of the public are invited to submit, within 30 days from the date of publication of this Notice in the *Gazette*, written representations or objections on the Draft Policy to the following addresses:

**By post to:** The Director-General: Department of Environment, Forestry and Fisheries  
Attention: Mr Mapitso Nkoko  
Private Bag X447  
Pretoria  
0001

**By hand at:** 473 Steve Biko Road, Environment House, Arcadia, Pretoria  
Please note that anyone entering the Department's building will be subjected to COVID 19 procedures. Due to the COVID 19 pandemic delivering comments by hand at the Department is being discouraged.

**By e-mail:** [MNkoko@environment.gov.za](mailto:MNkoko@environment.gov.za)

Any inquiries in connection with the notice can be directed to Dr Vincent Gololo at 012 399 9203 or Mr Mapitso Nkoko at 012 399 9214

A copy of the Draft Policy is also available on SAAQIS ([saagis.environment.gov.za](http://saagis.environment.gov.za))

Comments received after the closing date may not be considered.



**BARBARA DALLAS CREECY  
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

**SCHEDULE**



**environment, forestry  
& fisheries**

Department: Environment, Forestry  
and Fisheries  
REPUBLIC OF SOUTH AFRICA

**DRAFT SOUTH AFRICAN ATMOSPHERIC EMISSION LICENSE AND INVENTORY PORTAL  
DATA MANAGEMENT POLICY, 2021**

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## SAELIP DATA POLICY STATEMENT

The Department of Environment, Forestry and Fisheries (DEFF) has developed a South African Atmospheric Emission Licence and Inventory Portal (SAELIP) to support reporting of air emissions nationwide through National Atmospheric Emission Inventory System (NAEIS) and the processing and management of Provisional /Atmospheric emission licenses through the System for National Atmospheric Emission Licensing (SNAEL). SAAELIP provides a platform for online reporting of air pollutants and GHGs towards the compilation of a national emissions inventory. SAAELIP provides an online platform for AEL holders to submit annual emissions inventory reports in the form necessary for the compilation of the national emission inventory profile. The SAAELIP also provides for an online lodging of an AEL application and the managements. The system also provides an emission inventory reporting platform for non-listed activities, including all sector categories from the Intergovernmental Panel for Climate Change (IPCC) such as Energy; Industrial Processes and Product Use (IPPU); Agriculture, Forestry and Other Land Use (AFOU) and Waste. Emissions are estimated inside NAEIS or outside the system depending on the emission sources types.

Section 5.2.4.3 of the National Framework for Air Quality Management (2017) states that the South African Atmospheric Emission Licence and Inventory Portal Data Management Policy will be developed to specify the protocols for data management and levels of accessibility for all users including stakeholders/general public. The Policy and manuals of the system will also give guidance with regard to the specific location of the NAEIS and SNAEL according to legal mandates, objectives of SAAELIP and the desired integrity of the system.

### 1.1 Purpose of this Policy

The purpose of this SAAELIP Data Management Policy, (hereinafter the Policy), is to give effect to Section 5.2.4.3 of the National Framework for Air Quality Management (2017) that states that the South African Atmospheric Emission Licence and Inventory Portal Data Management Policy will be developed to specify the protocols for data management and levels of accessibility for all users including stakeholders/general public.

### 1.2 Objectives of Policy

The objectives of the Policy are to:

- (a) Provide guidance on the collection, use and dissemination of data in the NAEIS and SNAEL.
- (b) Provide guidance on the dissemination of data held in SAAELIP for Public Good purposes.
- (c) Provide guidance on the dissemination/accessibility of data from SAAELIP to/by stakeholders/general public.
- (d) Ensure that dissemination of data in SAAELIP is done lawfully in a manner that protects data holders.
- (e) Ensure the protection and security of collected data and the SAAELIP infrastructure for future generations.
- (f) Give guidance with regard to the specific location of the NAEIS and SNAEL according to legal mandates, objectives of SAAELIP and the desired integrity of the system.
- (g) Uphold the constitutional right of South Africans to information held by the state.

### 1.3 Policy Scope

This SAAELIP Data Management Policy has been developed in line with section 5.2.4.3 of the National Framework for Air Quality Management (2017) to support the compilation of the national emission inventory profile through reporting on NAEIS and the processing and management of Provisional /Atmospheric emission licenses through the System for National Atmospheric Emission Licensing (SNAEL) by specifying protocols for data management and levels of accessibility for all users.

## LEGISLATIVE CONTEXT OF THE POLICY

### 1.1 The Constitution of the Republic of South Africa, 1996

Section 32 of the Constitution states that all South Africans have the right of access to any information held by the state, and any information that is held by another person and that is required for the exercise or protection of any rights. Section 32 further states that national legislation must be enacted to give effect to this right.

### 1.2 Promotion to Access of Information Act, 2000 (Act No. 2 of 2000)

The Promotion of Access of Information, 2000 (Act No. 2 of 2000), was enacted to give effect to the section 32 of the Constitution. The objects of the Act are:

- (a) to give effect to the constitutional right of access to any information held by the State or held by another person and that is required for the exercise or protection of any rights subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution; and
- (b) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible.

### 1.3 Protection of Personal Information Act, 2013 (Act No. 4 of 2013)

The Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (POPI), gives effect to the constitutional right to privacy provided in section 14 of the Constitution –

- (i) by safeguarding a person's personal information when processed by public and private bodies;
- (ii) in a manner which balances the right to privacy with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution, particularly the right to access to information; and
- (iii) subject to justifiable limitations, including, but not limited to effective, efficient and good governance and the free flow of personal information, particularly trans-border transfers.

#### **1.4 The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA)**

Chapter 1 of NEMA deals with the national environmental management principles and in terms of section 2(4) (k) it is provided that decisions by government must be taken in an open and transparent manner and access to information must be provided in accordance with the law.

#### **1.5 National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (AQA)**

Section 8(c) of AQA provides that the National Framework must establish national standards for the collection and management of data necessary to assess, among other things access to information by the public.

#### **1.6 2017 National Framework for Air Quality Management in South Africa, Section 5.2.4.3**

Section 5.2.4.3 states that a SAAELIP Data Management Policy will be developed to specify the protocols for data management and levels of accessibility for all users including stakeholders/general public. Emission inventory information from all sources as well as a summary of AELs will be available on the SAAELIP.

#### **1.7 References to Other Policies**

##### **Government Information Communication and Technology Policy of the Department of Environment, Forestry and Fisheries**

The Department of Environment, Forestry and Fisheries Information Technology Security policy (April 2019) provide standardised procedure and processes for the effective implementation of Information Technology (IT) security requirements in order to protect and manage information and IT assets against internal and external threats while adhering to the information security principles of confidentiality, integrity and availability.

### **SAAELIP ORGANISATIONAL CONTEXT AND APPLICATION**

#### **3.1 SAAELIP System Management and Organisational Context**

The SAAELIP is structured in accordance with information management governance functions of AQA as detailed in the National Framework. In this regard, the management of information and information in the AEL reported by facilities is a function of the Atmospheric Emission Licencing Authority within the respective jurisdictions.

#### **3.2 SAAELIP Data Access according to the roles**

In order to fulfil the purpose of the SAAELIP, the various users will have access to data or information as shown in the Table 1.

Table 1: SAAELIP users' data or information access

National	Province	District/Metro and Local Municipalities	Facility/data provider	Public
Users can view all facility information in SAAELIP, nationally. However, users can ONLY MANAGE those facilities whose AEL has been issued by National. Users' roles are detailed in Appendix 2	Users can view all facility information in their provinces. However, users can ONLY MANAGE those facilities whose AEL has been issued by the Province. Users' roles are detailed in Appendix 2.	Users can view all facility information in their District/Metro. However, users can ONLY MANAGE those facilities whose AEL has been issued by the District/Metro. Users' roles are detailed in Appendix 2.	Users can view all information about their Facility in SAAELIP . However, management of information is based on the users' roles as detailed in Appendix 2.	Facility Name, Location based on the SAAELIP Geographic Information System (Province, District Municipality) and total emissions of all pollutants as last reported. Data provided at a facility level with information on MES permitted and non confidential information.

## SAELIP DATA MANAGEMENT

### 4.1 Data Collection and Reporting

Data for the NAEIS and SNAEL will be in the format required by the SAAELIP system and the data in the NAEIS will be reported in accordance with the NAEIS Reporting Regulations.

### 4.2 Data Use

Government shall use data in the SAAELIP for:

- (a) Compilation of emissions inventories at national, provincial, municipality, ward, town or suburb level. Any assessment required for planning and strategy development required in terms of the AQA;
- (b) Matters relating to implementation of AQA and the NEMA (including its subordinate legislation);
- (c) Any other matter to allow government to execute its functions; and
- (d) Monitor compliance with AEL conditions.

### 4.3 Data Dissemination

The DEFF will publish by the end of December each year, an electronic annual emissions report based on the verified, quality assured information submitted to the NAEIS in the preceding year. The emissions report will include details of total emissions of each criteria pollutant per sector (categories of listed activities). The annual emissions report shall be approved by the Director General responsible for environmental affairs before being published. SAAELIP through SNAEL provides access to members of the public to view data provided at facility level with information on MES permitted and on the non-confidential information.

The provision of such information should be in line with the requirements of legislation as stipulated in APPENDIX 1 of this policy.

### 4.4 Data Request

Members of the public may also request current or historical data sets that are more detailed than what is published in the SAAELIP and its annual report. These data sets may include among other things:

- (a) Industry level emissions for all pollutants per emission unit;
- (b) Stack parameters;
- (c) Geographic location and coordination associated with each facility;
- (d) Abatement technology used by a facility to reduce emissions; without the details of the facility; and
- (e) Efficiency of the abatement technology used.

The above mentioned data sets may only be issued on condition that consent has been given by data providers.

That notwithstanding the authorities may issue the following data to data requesters without seeking consent from data providers:

- (a) Total emissions of a specific pollutant for specific facility(ies)



The licensing authorities are the custodians of information provided to the SAAELIP by the facilities within their respective jurisdictions and are therefore responsible for dealing with data requests from the public.

In all instances, data in the SAAELIP shall be shared in the form and manner that is not in contravention with the following (also see Appendix 1 for details on the sections):

- (a) Section 36 of Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- (b) Section 73 of the Promotion of Access to Information Act, 2013 (Act No 4 of 2013)
- (c) Section 17 of the Statistics Act, 1999 (Act No. 6 of 1999)
- (d) Regulation 11 of the NAEIS Reporting Regulations, 2015 (GN R283 in GG 38633 of 2015)

In addition, data requests should follow the protocols, policies and procedures for managing data requests published by various spheres of government.

The following paragraphs outline some of the minimum conditions associated with various data requests.

#### **4.4.1 Provision of Data for Research and Academic use**

- (a) Data to bona fide scientific researchers shall be provided with a quotation based on the relevant authority's pricing/tariff policy.
- (b) Any provision of data or products for use for research purposes shall be subject to written explanation of the research project for which the data is to be utilised as well as a motivation
- (c) The authority (ies) reserves the right to require, prior to issuing of data, a commitment to provide a copy of the final research document for which research data was supplied by the authority (ies)
- (d) All requests for data for research that is to be undertaken as part of a commercially funded project or for which commercial gain will be forthcoming shall be treated as a commercial data request

#### **4.4.2 Provision of Data to Other Government Departments**

- (a) Data to Governmental Departments shall be provided either free of charge or with a quotation based on the relevant authority's pricing/tariff policy
- (b) Requests for data from consultants or third parties commissioned to perform tasks for Government Departments shall be treated as commercial requests

#### **4.4.3 Provision of Data for Commercial Services**

- (a) Individual requests for data will be provided with a quote based on the relevant authority's pricing/tariff policy.
- (b) Any provision of data or products for use for commercial purposes shall be subject to a written explanation of the project for which the data is to be utilised as well as a motivation
- (c) The Authority (ies) reserves the right to require, prior to issuing of data, a commitment to provide a copy of the final research document for which research data was supplied by the authority (ies)
- (a) Special conditions shall be applied to any data requested for commercial purposes as the relevant authority (ies) deem fit
- (b) Payment for data gives the user the right to use the data, but it does not transfer ownership of the data to the Client. As such, the user is not entitled to transfer this data to any third party without the written consent of the relevant authority (ies)

#### **4.4.4 Re-sale of Data**

- (a) Re-sale of any data provided through the SAAELIP is prohibited

#### **4.5 Data Request Templates**

- (a) All data requests as well as data provided must be recorded in a central database
- (b) The DEFF shall develop both electronic and manual templates / data request forms that members can complete to request data from different spheres of government

#### **4.6 Limitations**

The following data may not be provided to the data requester:

- (a) Personal information of data subjects that is not already in the public domain
- (b) Data with intellectual property rights or proprietary information
- (c) Details of process for which the company may deem sensitive
- (d) Information such as material throughput, facility processes, efficiency of control technologies and facilities under investigation information will not be made available to the public

#### **4.7 Liability**

Government cannot be held liable for the use of such data by third party or for accuracy or inaccuracy of information provided through the SAAELIP. It is the responsibility of the responsible party or third party to ensure that the personal information and any other information obtained from the system is complete, accurate not misleading and updated where necessary.

#### **4.8 Sanctioning of SAAELIP Data Management Policy**

Any amendments hereto must be approved by Minister. In the event that there is a need to deviate from any of the provisions of this Policy, a formal deposition document shall be prepared stating the nature and the reasons for the proposed departure from the policy and this shall be submitted to the Deputy Director General responsible for Air Quality Management for approval.

#### **4.9 Ownership, Custody and Intellectual Property Rights**

- (a) Intellectual property rights belong to government and the data providers
- (b) DEFF will ensure SAAELIP security and infrastructure integrity
- (c) Government cannot be held liable for the use of such data by third party

#### **4.10 Adherence and Use**

This policy forms part of the practices of all SAAELIP users and as such shall be referred to when similar policies are developed. Non-compliance with the provisions of the policy may result in the necessary legal or disciplinary action being instituted against the party in question.

#### **4.11 Referencing**

Information retrieved from the SAAELIP shall be referenced as "DEFF, [year in which data was accessed], National Atmospheric Emissions Inventory System"

## APPENDIX 1: LEGISLATIVE EXTRACTS

### 1. NATIONAL ATMOSPHERIC EMISSION (NAEIS) REPORTING REGULATIONS

Regulation 11 and 12 of NAEIS Reporting Regulations state that:

11. It is an offence for any person to disclose confidential information if that information was acquired while exercising or performing any power or duty in terms of these Regulations, except—
- (a) If the information is disclosed in compliance with the provisions of any law;
  - (b) if the person is ordered to disclose the information by a court of law; or
  - (c) if the information is disclosed to enable a person to perform a function in terms of these Regulations.
12. (1) The relevant authority may place NAEIS data and information in the public domain if—
- (a) it does not promote unfair competition;
  - (b) it does not contravene section 36 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); and
  - (c) it does not contravene section 17 of the Statistics Act, 1999 (Act No. 6 of 1999).

### 2. PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000) (PAIA)

Chapter 4 of PAIA deals with the grounds for refusal of access to records.

#### 34 Mandatory protection of privacy of third party who is natural person

- (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information—
- (a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;
  - (b) that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
  - (c) already publicly available;
  - (d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—
    - (i) under the age of 18 years; or
    - (ii) incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;
  - (e) about an individual who is deceased and the requester is—
    - (i) the individual's next of kin; or
    - (ii) making the request with the written consent of the individual's next of kin; or
  - (f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to—

- (i) the fact that the individual is or was an official of that public body;
- (ii) the title, work address, work phone number and other similar particulars of the individual;
- (iii) the classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual; and
- (iv) the name of the individual on a record prepared by the individual in the course of employment.

**36. Mandatory protection of commercial information of third party**

- (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains—
- (a) trade secrets of a third party;
  - (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
  - (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected
    - (i) to put that third party at a disadvantage in contractual or other negotiations; or
    - (ii) to prejudice that third party in commercial competition.
- (2) A record may “not be refused in terms of subsection (1) insofar as it consists of information
- (a) already publicly available;
  - (b) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned; or
  - (c) about the results of any product or environmental testing or other investigation supplied by, earned out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.
- (3) For the purposes of subsection (2)(c), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

**37. Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party**

- (1) Subject to subsection (2), the information officer of a public body -
- (a) must refuse a request for access to a record of the body if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement; or
  - (b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party -
    - (i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and
    - (ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information -
- (a) already publicly available; or
  - (b) about the third party concerned that has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned.

#### **46. Mandatory disclosure in public interest**

Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(1)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if -

- (a) the disclosure of the record would reveal evidence of -
  - (i) a substantial contravention of, or failure to comply with, the law; or
  - (ii) an imminent and serious public safety or environmental risk; and
- (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question

#### **65 Mandatory protection of certain confidential information of third party**

The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

#### **70 Mandatory disclosure in public interest**

Despite any other provision of this Chapter, the head of a private body must grant a request for access to a record of the body contemplated in section 63 (1), 64 (1), 65, 66 (a) or (b), 67, 68 (1) or 69 (1) or (2) if-

- (a) the disclosure of the record would reveal evidence of-
  - (i) a substantial contravention of, or failure to comply with, the law; or
  - (ii) imminent and serious public safety or environmental risk; and
- (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

### **3. STATISTICS ACT, 1999 (ACT NO. 6 OF 1999)**

#### **17. Confidentiality and disclosure**

- (1) Despite any other law, no return or other information collected by Statistics South Africa for the purpose of official or other statistics that relates to -
- (a) an individual;
  - (b) a household;
  - (c) an organ of state;
  - (d) a business; or
  - (e) any other organisation, may, subject to subsections (2) and (3), be disclosed to any person.
- (2) The return or other information contemplated in subsection (1) may, subject to the directions of the Statistician-General, be disclosed—
- (a) to the Statistician-General and officers concerned of Statistics South Africa who have taken the oath of confidentiality referred to in subsection (7)(a);

- (b) to the person from whom such return or other information was collected or his or her representative;
  - (c) with the prior written consent of the person from whom such return or other information was collected or his or her representative;
  - (d) where the information is already available to the public from the organ of state, business or other organisation concerned; 10
  - (e) in the form of lists of the names and addresses of individual organs of state and other organisations and their classifications by function, type of legal entity and range of numbers of members and employees, or other indicator of size;
  - (f) in the form of lists of the names and addresses of individual businesses and their classifications by industry or activity, type of legal entity, and range of numbers of employees or other indicator of size;
  - (g) in the form of lists of the kinds of products produced, manufactured, stored, bought or sold or services rendered, by businesses, organs of state or other organisations or classes thereof.
- (3) The Statistician-General may, for statistical purposes, disclose to another organ of state information or data gathered in the course of a joint collection undertaken with that organ in terms of section 14(11), on condition that—
- (a) the name, address or any other means by which the respondents may be identified is deleted;
  - (b) any person who is involved in the collection of, or who may use, that information or data, must first take an oath of confidentiality similar to the one provided for in subsection (7)(a) irrespective of whether he or she has taken an oath of confidentiality in terms of any other law; and
  - (c) the Statistician-General is satisfied that the confidentiality of that information or data will not be impaired.
- (4) Despite any other law—
- (a) an entry made by the competent person concerned in terms of this Act in any document; or
  - (b) a return or its contents, is not admissible as evidence in legal proceedings, except for purposes of criminal proceedings in terms of this Act.
- (5) Information collected by any person, organ of state, business or other organisation for his, her or its own purposes and communicated to Statistics South Africa is subject to the same confidentiality requirements as information collected directly by Statistics South Africa, irrespective of any other confidentiality requirements to which it may have been subject when it was collected.
- (6) The results of the compilation and analysis of the statistical information collected in terms of this Act may not be published or disseminated in a manner which is likely to enable the identification of a specific individual, business or other organisation, unless that person, business or organisation has consented to the publication or dissemination in that manner.
- (7) The Statistician-General and every officer of Statistics South Africa must—

- (a) before assuming duty, take an oath of confidentiality prohibiting disclosure of any information coming to his or her knowledge by reason of such duty before its release is authorised by the Statistician-General;
- (b) preserve, and promote the preservation of, confidentiality in respect of all information that may come to his or her knowledge by reason of such employment

#### **4. THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

##### **31. Access to environmental information and protection of whistle blowers**

- (4) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of an environmental risk and the disclosure was made in accordance with subsection (5).
- (5) Subsection (4) applies only if the person concerned -
  - (a) disclosed the information concerned to -
    - (i) a committee of Parliament or of a provincial legislature;
    - (ii) an organ of state responsible for protecting any aspect of the environment or emergency services;
    - (iii) the Public Protector;
    - (iv) the Human Rights Commission;
    - (v) any attorney-general or his or her successor;
    - (vi) more than one of the bodies or persons referred to in subparagraphs (i) to (v);
  - (b) disclosed the information concerned to one or more news media and on clear and convincing grounds believed at the time of the disclosure -
    - (i) that the disclosure was necessary to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
    - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for nondisclosure;
  - (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure, other than the procedure contemplated in paragraph (a) or (b), for reporting or otherwise remedying the matter concerned; or
  - (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.
- (6) Subsection (4) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the matter concerned.



- (7) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (4).
- (8) No person may threaten to take any action contemplated by subsection (4) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (4).

## 5. PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO 4 OF 2013)

### Definitions

1. In this Act, unless the context indicates otherwise—

“data subject” means the person to whom personal information relates;

“person” means a natural person or a juristic person;

“personal information” means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—

- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- (b) information relating to the education or the medical, financial, criminal or employment history of the person;
- (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- (d) the biometric information of the person;
- (e) the personal opinions, views or preferences of the person;
- (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the person; and
- (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

“processing” means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—

- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form; or
- (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;

“public record” means a record that is accessible in the public domain and which is in the possession of or under the control of a public body, whether or not it was created by that public body;

“record” means any recorded information—

- (a) regardless of form or medium, including any of the following:



- (i) Writing on any material;
  - (ii) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;
  - (iii) label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
  - (iv) book, map, plan, graph or drawing;
  - (v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;
- (b) in the possession or under the control of a responsible party;
  - (c) whether or not it was created by a responsible party; and
  - (d) regardless of when it came into existence.

“responsible party” means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

2. The purpose of this Act is to—

- (a) give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at—
  - (i) balancing the right to privacy against other rights, particularly the right of access to information; and
  - (ii) protecting important interests, including the free flow of information within the Republic and across international borders;
- (b) regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that prescribe the minimum threshold requirements for the lawful processing of personal information;
- (c) provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this Act; and
- (d) establish voluntary and compulsory measures, including the establishment of an Information Regulator, to ensure respect for and to promote, enforce and fulfil the rights protected by this Act.

## CHAPTER 2 APPLICATION PROVISIONS

### Application and interpretation of Act

- 1. (1) This Act applies to the processing of personal information—
  - (a) entered in a record by or for a responsible party by making use of automated or non-automated means: Provided that when the recorded personal information is processed by non-automated means, it forms part of a filing system or is intended to form part thereof; and
  - (b) where the responsible party is—
    - (i) domiciled in the Republic; or
    - (ii) not domiciled in the Republic, but makes use of automated or non-automated means in the Republic, unless those means are used only to forward personal information through the Republic.

- (2) (a) This Act applies, subject to paragraph (b), to the exclusion of any provision of any other legislation that regulates the processing of personal information and that is materially inconsistent with an object, or a specific provision, of this Act.
- (b) If any other legislation provides for conditions for the lawful processing of personal information that are more extensive than those set out in Chapter 3, the extensive conditions prevail.
- (4) “Automated means”, for the purposes of this section, any equipment capable of operating automatically in response to instructions given for the purpose of processing information.

#### **Lawful processing of personal information**

4. (1) The conditions for the lawful processing of personal information by or for a responsible party are the following:
- (a) “Accountability”, as referred to in section 8;
  - (b) “Processing limitation”, as referred to in sections 9 to 12;
  - (c) “Purpose specification”, as referred to in sections 13 and 14;
  - (d) “Further processing limitation”, as referred to in section 15;
  - (e) “Information quality”, as referred to in section 16;
  - (f) “Openness”, as referred to in sections 17 and 18;
  - (g) “Security safeguards”, as referred to in sections 19 to 22; and
  - (h) “Data subject participation”, as referred to in sections 23 to 25.
- (2) The conditions, as referred to in subsection (1), are not applicable to the processing of personal information to the extent that such processing is—
- (a) excluded, in terms of section 6 or 7, from the operation of this Act; or
  - (b) exempted in terms of section 37 or 38, from one or more of the conditions concerned in relation to such processing.

#### **Rights of data subjects**

5. A data subject has the right to have his, her or its personal information processed in accordance with the conditions for the lawful processing of personal information as referred to in Chapter 3, including the right—
- (a) to be notified that—
    - (i) personal information about him, her or it is being collected as provided for in terms of section 18; or
    - (ii) his, her or its personal information has been accessed or acquired by an unauthorized person as provided for in terms of section 22;
  - (b) to establish whether a responsible party holds personal information of that data subject and to request access to his, her or its personal information as provided for in terms of section 23;
  - (c) to request, where necessary, the correction, destruction or deletion of his, her or its personal information as provided for in terms of section 24;
  - (d) to object, on reasonable grounds relating to his, her or its particular situation to the processing of his, her or its personal information as provided for in terms of section 11(3)(a);
  - (e) to object to the processing of his, her or its personal information—
    - (i) at any time for purposes of direct marketing in terms of section 11(3)(b); or

- (ii) in terms of section 69(3)(c);
- (f) not to have his, her or its personal information processed for purposes of direct marketing by means of unsolicited electronic communications except as referred to in section 69(1);
- (g) not to be subject, under certain circumstances, to a decision which is based solely on the basis of the automated processing of his, her or its personal information intended to provide a profile of such person as provided for in terms of section 71;
- (h) to submit a complaint to the Regulator regarding the alleged interference with the protection of the personal information of any data subject or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in terms of section 74; and
- (i) to institute civil proceedings regarding the alleged interference with the protection of his, her or its personal information as provided for in section 99.

### **CHAPTER 3**

#### **CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION**

##### **Condition 5**

##### **Information quality**

##### **Quality of information**

16. (1) A responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.

##### **Condition 6**

##### **Openness**

##### **Notification to data subject when collecting personal information**

18. (1) If personal information is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware of—

- (a) the information being collected and where the information is not collected from the data subject, the source from which it is collected;
- (b) the name and address of the responsible party;
- (c) the purpose for which the information is being collected;
- (d) whether or not the supply of the information by that data subject is voluntary or mandatory;
- (e) the consequences of failure to provide the information;
- (f) any particular law authorizing or requiring the collection of the information;
- (g) the fact that, where applicable, the responsible party intends to transfer the information to a third country or international organization and the level of protection afforded to the information by that third country or international organization;
- (h) any further information such as the—
  - (i) recipient or category of recipients of the information;
  - (ii) nature or category of the information;
  - (iii) existence of the right of access to and the right to rectify the information collected;
- (iv) existence of the right to object to the processing of personal information as referred to in section 11(3); and
- (iv) right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator, which is necessary, having regard to the specific circumstances in which the

information is or is not to be processed, to enable processing in respect of the data subject to be reasonable.

## CHAPTER 10 ENFORCEMENT

### **Interference with protection of personal information of data subject**

73. For the purposes of this Chapter, interference with the protection of the personal information of a data subject consists, in relation to that data subject, of—

- (a) any breach of the conditions for the lawful processing of personal information as referred to in Chapter 3;
- (b) non-compliance with section 22, 54, 69, 70, 71 or 72; or
- (c) a breach of the provisions of a code of conduct issued in terms of section 60.

## APPENDIX 2: ROLES AND RESPONSIBILITIES

The two tables below list all the possible actors and roles within SAAELIP. The table below lists actors and their roles from the authority side.

<b>Actors and Roles (Authority)</b>	
<b>Actors</b>	<b>Task Description</b>
National AQO	<ul style="list-style-type: none"> <li>- Create Authority Staff users</li> <li>- Generate Nation-Wide Master List</li> <li>- Add/Delete Sources</li> <li>- Assign Audits to National Auditor</li> <li>- Perform audits on the National Level</li> </ul>
National Staff	<ul style="list-style-type: none"> <li>- Generate Nation-Wide Master List</li> <li>- Add/Delete Sources</li> <li>- Upload and Submit air emissions data on the National Level</li> </ul>
National Auditor	<ul style="list-style-type: none"> <li>- Perform audits on the National Level</li> </ul>
National Viewer	<ul style="list-style-type: none"> <li>- View-Only access rights to SAAELIP</li> </ul>
Province AQO	<ul style="list-style-type: none"> <li>- Add/Delete industrial and non-industrial sources within its jurisdiction</li> <li>- Perform Audits and set status for Audits on the reports within its jurisdiction</li> <li>- Assign Audits to Province Auditor</li> </ul>
Province Staff	<ul style="list-style-type: none"> <li>- Add/Delete industrial and non-industrial sources within its jurisdiction</li> </ul>
Province Auditor	<ul style="list-style-type: none"> <li>- Perform Audits and set status for Audits on the reports within its jurisdiction</li> </ul>
District Municipality AQO	<ul style="list-style-type: none"> <li>- Create Authority Staff users</li> <li>- Generate District-Wide Master List</li> <li>- Add/Delete Sources</li> <li>- Assign Audits to National Auditor</li> <li>- Perform audits on the District Level</li> <li>- Add/Delete industrial sources within its jurisdiction</li> <li>- Create Facility users that lies within the jurisdiction</li> <li>- Issue final approval for industrial Source(s) within its jurisdiction (after preliminary approval of Metropolitan Municipality Staff)</li> <li>- Publish sources to SAAELIP Facility and issue email notifications to the approved sources</li> <li>- Assign Audits to District Municipality Auditor</li> <li>- Perform Audits and set status for Audits pertaining to reports in their district municipality</li> </ul>
District Municipality Staff	<ul style="list-style-type: none"> <li>- Add/Delete industrial sources within its jurisdiction</li> <li>- Issue preliminary approval for industrial Source(s) within its jurisdiction</li> </ul>

<b>Actors and Roles (Authority)</b>	
<b>Actors</b>	<b>Task Description</b>
District Municipality Auditor	- Perform Audits and set status for Audits pertaining to reports in their district municipality
Metropolitan Municipality AQO	<ul style="list-style-type: none"> <li>- Create Facility users that lies within the jurisdiction of the Metropolitan Municipality</li> <li>- Add/delete industrial point sources within its jurisdiction</li> <li>- Issue final approval of Industrial Source(s) within the metropolitan municipality (after preliminary approval of Metropolitan Municipality Staff)</li> <li>- Publish Source(s) to SAAELIP Facilities and issue email notifications to the approved sources</li> <li>- Assign Audits to Metropolitan Municipality Auditor</li> <li>- Perform Audits and set status for Audits</li> </ul>
Metropolitan Municipality Staff	<ul style="list-style-type: none"> <li>- Add/Delete industrial sources within the metropolitan municipality</li> <li>- Issue preliminary approval of Industrial sources within the metropolitan municipality</li> </ul>
Metropolitan Municipality Auditor	- Perform Audits and set status for Audits