

FORM C
REQUEST FOR ACCESS TO RECORD OF PRIVATE
BODY
(Section 53 (1) of the Promotion of Access to Information
Act, 2000 (Act No. 2 of 2000)
[Regulation 10]

A. Particulars of private body

Engen Petroleum Limited

Chief Information Officer

Physical Address:
Engen Court Thibault Square
Cape Town
8000

Tel: 021 403 5271
Fax: 021 403 4384

Postal address:
Engen Petroleum Limited
P.O. Box 35
Cape Town
8000

Email: informationact@engenoil.com
Cc: Bongani.tladi@engenoil.com
Sandra.Redelinghuys@engenoil.com
Mpuni.ngema@engenoil.com

B. Particulars of person requesting access to the record

- *The particulars of the person who requests access to the record must be recorded below.*
- *Furnish an address and/or fax number in the Republic to which information must be sent.*
- *Proof of the capacity in which the request is made, if applicable, must be attached.*

Name of organisation: Centre for Environmental Rights
Registration number:2009/020736/08
Postal address: 223 Lower Main Road, Observatory, Cape Town, 7925
Fax number: 0867309098
Telephone number: +27214471647
E-Mail Address: eheitmann@cer.org.za

Capacity in which request is made, when made on behalf of another person:
Attorney

C. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Name of organisation: South Durban Community Environmental Alliance
Registration number: N/A

D. Particulars of record

- *Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*
- *If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:

1. A copy of the Atmospheric Emission Licence (AEL) for Engen Petroleum Refinery;

alternatively, if the AEL has not been granted:

1.1 a copy of the applicable Atmospheric Pollution Prevention Act, 1965 (APPA) registration certificate, **and**

1.2 the pending application for an AEL.

2. The most recent annual report reporting on compliance with the AEL submitted to eThekweni Metropolitan Municipality for the above refinery;

alternatively, if there has not yet been a report on compliance in terms of the relevant AEL (or the AEL has not yet been granted):

2.1 the most recent APPA registration certificate compliance report.

Reference number, if available: Not known

Any further particulars of record: Not known

E. Fees

- *A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.*
- *You will be notified of the amount required to be paid as the request fee.*
- *The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*
- *If you qualify for exemption of the payment of any fee, please state the reason thereof.*

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability:		Form in which record is required:			
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <ul style="list-style-type: none"> Your indication as to the required form of access depends on the form in which the record is available. Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form. The fee payable for access to the record, if any, will be determined partly by the form in which access is requested. 					
1. If the record is in written or printed form-					
X	Copy of record*		Inspection of record		
2. If record consists of visual images- (this includes photographs, slides, video recordings, computer-generated images, sketches, etc).					
	view the images	X	copy of the images*		transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound-					
	Listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)		
4. If record is held on computer or in an electronic or machine ? readable form-					
X	Printed copy of record*		Printed copy of derived from the record*	X	copy in computer readable form* (stiffy or compact disc)
* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?				YES X	NO
A postal fee is payable.					

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record? ENGLISH

G. Particulars of right to be exercised or protected

If the space provided is inadequate, please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.**

1. Indicate which right is to be exercised or protected:

1.1 Rights under Chapter 2 of the Constitution of the Republic of South Africa, 1996:

- Section 24 of the Constitution of the Republic of South Africa, 1996
- Section 33 of the Constitution of the Republic of South Africa, 1996
- Section 32 of the Constitution of the Republic of South Africa, 1996

1.3 Rights under the National Environmental Management Act 107 of 1998 (NEMA) – national legislation enacted to give effect to section 24 of the Constitution.

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

The South Durban Community Environmental Alliance (SDCEA) is an environmental justice organisation based in south Durban. It is a non-profit organisation that operates in the interest of the public. It is made up of 16 affiliate organisations, and it has been active since its formation in 1996. It is successful for many reasons, one of which is that it is a vocal and vigilant grouping in terms of lobbying, reporting and researching industrial incidents and accidents in this area. Issues relating to air quality and health are particularly important to SDCEA and the communities it represents. It also empowers the community and creates awareness about these and other environmental issues.

One of SDCEA's strengths is the quality of the information it is able to gather on the various industries and in relation to the many accident and incidents that occur in south Durban. SDCEA has a very strong ability to mobilise the local people around

environmental justice issues. However, this ability is undermined where there is a lack of information.

In relation to the records being “required for the exercise of protection” of the rights set out above, the legal test developed by our courts is that **information must be reasonably required and there should exist a substantial advantage or an element of need on the requester’s part. The question whether a person is entitled to a particular record must be determined on the facts of each case.**

This means that, when establishing the nexus between the information and the right, for purposes of this request, SDCEA must show that access to the information will give it a substantial advantage in exercising or protecting one or more of the constitutional rights referred to above, or that there is some element of need for it to obtain access to the information in order to exercise or protect those rights.

SDCEA’s request pertains to emissions resulting from the activities carried out by industry, including refineries, which are directly related to air quality. These emissions are of vital relevance to the health and well-being of the residents within this area.

Section 24 – Environment, NEMA and NEMAQA

In terms of section 24 of the Constitution, everyone has the right to an environment that is not harmful to their health or well-being. Furthermore, section 24 guarantees everyone the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution, ecological degradation and secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.

The nature of the work conducted by Engen Petroleum Refinery, in general, and the subject matter canvassed in the requested information, in particular, could potentially impact on the exercise and protection of the rights enshrined in section 24 of the Constitution. The atmospheric emissions referred to in this application have the potential to cause significant air pollution and ecological degradation. The pollution could also lead to health problems for the people living in and around the area in question; thus jeopardising their right to a healthy environment. The aforementioned place a threat on the right guaranteed by section 24; the protection and exercise of which can only be obtained through access to the required documents.

Section 24 provides that reasonable legislative and other measures must be put in place to ensure that the environment is protected for present and future generations. Licensing in terms of the National Environmental Management Air Quality Act 39 of 2004 (NEMAQA) is one such measure as it constitutes a necessary environmental authorisation. It aims, in concert with the annual compliance reports, to ensure compliance with environmental legislation and provides a vital mechanism for the regulation and monitoring of activities that result in air pollution and thus affect air quality.

Access to these records would give the SDCEA a substantial advantage, by placing it in a position to ascertain whether Engen Petroleum Refinery is in possession of this authorisation in compliance with legislation, and to assess whether they are complying with the provisions and conditions imposed by their Atmospheric Emissions Licence (AEL) or Atmospheric Pollution Prevention Act, 1965 (APPA) permit.

The NEMA expressly recognises and encourages the participation of civil society and local communities in the enforcement of environmental laws.

Accordingly, SDCEA's exercise and protection of the right to an environment not harmful to health or well-being entails it playing an active role in environmental governance, including, assessing whether a body such as Engen Petroleum Refinery has complied with NEMA and other applicable environmental laws.

Section 32 – Access to information.

Section 32 of the Constitution provides that everyone has the right to any information that is held by another person and that is required for the exercise and protection of any rights. The section goes further to provide that legislation must be enacted to give effect to this right. Such legislation is the Promotion of Access to Information Act 2 of 2000 (PAIA). Section 50 of PAIA reiterates section 32 of the Constitution, by stating that a requester must be given access to any record of a private body if that record is required for the exercise or protection of any rights.

Furthermore, section 70 of PAIA provides for the mandatory disclosure in the public interest which states:

“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 if the disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law; or imminent and serious public safety or environmental risk; and the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.”

Further, as mentioned above, SDCEA is a non-profit alliance that operates in the public interest. The records could reveal risk to the environment and the public as a result of non-compliance with environmental legislation or authorisation. Disclosure of the records is in the public interest. Therefore, failure to grant SDCEA access to the required documents may well contravene section 70 of PAIA.

NEMA, other environmental legislation, and international law provide that civil society has a critical role to play in environmental governance, including by monitoring pollution and compliance with environmental laws. The South Gauteng High Court confirmed, in the judgement of *Vaal Environmental Justice Alliance v ArcelorMittal South Africa and another* (Case No. 39646/12), that organisations like SDCEA are entitled to protect and exercise the right to a healthy environment by seeking information to enable them to assess environmental impacts, and to exercise a watchdog role. The judgement can be accessed at: <http://cer.org.za/wp-content/uploads/2013/09/VEJA-v-AMSA-SGHC-10-Sept-2013.pdf>


In the circumstances, for the reasons set out above, the required documents are reasonably required for the exercise or protection of one or more of the rights set out above.

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record? **By email** at ehitmann@cer.org.za and rhugo@cer.org.za

Signed at CAPE TOWN this 10th of December 2013.

A handwritten signature in black ink, appearing to read 'S. Kamanja', with a long horizontal line extending to the right.

SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

Ms Sylvia Kamanja (Attorney)

Centre for Environmental Rights

FORM C
REQUEST FOR ACCESS TO RECORD OF PRIVATE
BODY
(Section 53 (1) of the Promotion of Access to Information
Act, 2000 (Act No. 2 of 2000)
[Regulation 10]

A. Particulars of private body

The Head: Shell and BP Petroleum Refinery

Shell and BP Petroleum Refineries

Attn. of Cindy Govender, Communications Manager

PO Box 3179

Durban

4000

Email: cindy.govender@sapref.com; public@sapref.com

Telephone: +27 480 1303

Fax: +27 31 468 1111

B. Particulars of person requesting access to the record

- *The particulars of the person who requests access to the record must be recorded below.*
- *Furnish an address and/or fax number in the Republic to which information must be sent.*
- *Proof of the capacity in which the request is made, if applicable, must be attached.*

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This section must be completed only if a request for information is made on behalf of another person.

Name of organisation: South Durban Community Environmental Alliance
Registration number: N/A

D. Particulars of record

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- *If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:

1. A copy of the Atmospheric Emission Licence (AEL) for Shell and BP Petroleum Refinery (SAPREF);

alternatively, if the AEL has not been granted:

- 1.1 a copy of the applicable Atmospheric Pollution Prevention Act, 1965 (APPA) registration certificate, **and**
- 1.2 the pending application for an AEL.

2. The most recent annual report reporting on compliance with the AEL submitted to eThekweni Metropolitan Municipality for the above refinery;

alternatively, if there has not yet been a report on compliance in terms of the relevant AEL (or the AEL has not yet been granted):

2.1 the most recent APPA registration certificate compliance report.

- Reference number, if available: Not known

- Any further particulars of record: Not known

E. Fees

- *A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.*
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Disability:	Form in which record is required:
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Mark the appropriate box with an "X".
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X	Copy of record*		Inspection of record
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2. If record consists of visual images-
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc).

	view the images	X	copy of the images*		transcription of the images*
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3. If record consists of recorded words or information which can be reproduced in sound-

	Listen to the soundtrack (audio cassette)	X	transcription of soundtrack* (written or printed document)
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4. If record is held on computer or in an electronic or machine ? readable form-

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* If you requested a copy or transcription of a record (above), do you wish the copy or	YES X	NO
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transcription to be posted to you?		
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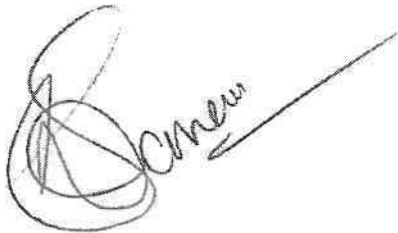
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H. Notice of decision regarding request for access

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How would you prefer to be informed of the decision regarding your request for access to the record? **By email at eheitmann@cer.org.za and rhugo@cer.org.za**

Signed at CAPE TOWN this 10th of December 2013.

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SIGNATURE OF REQUESTER / PERSON ON WHOSE BEHALF REQUEST IS MADE

Ms Sylvia Kamanja (Attorney)

Centre for Environmental Rights