



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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Center for Environmental Rights
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Dear Robyn,

RE: DECISION ON APPLICATIONS FOR POSTPONEMENT OF COMPLIANCE TIME-FRAMES FOR MINIMUM AIR QUALITY EMISSION STANDARDS; REQUEST FOR COPIES OF DECISIONS, AND REQUEST FOR REASONS IN TERMS OF S5 OF THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000

Your letter dated 02 March 2015 has reference. Below is clarification on the matters raised in your letter.

a) *Copies of decisions on the postponement application*

Copies of all postponement decisions as announced at the media briefing held on 24 February 2015 have been attached.

b) *Written reasons thereof in accordance with s5 of the Promotion of Administrative Justice Act, 2000 (PAJA)*

In processing the postponement application and reaching a decision on each of the applications, a number of factors were taken into account. Below is a summary of the factors considered:

1. **Legislation and Legal Provisions**

Section 21 of the AQA instructs the Minister to publish a list of activities which result in atmospheric emissions and to establish minimum emission standards in respect of a substance or mixture of substances resulting from those listed activities. The consequences of listing an activity are prescribed in Section 22 – To conduct a listed activity in the Republic, any person requires a Provisional Atmospheric Emission License or an Atmospheric Emission License (AEL). Atmospheric Emission Licensing Authorities are defined in Section 36 of the AQA.

Section 21 Notice stipulates among others, the type of listed activities, associated Minimum Emission Standards (MES) to be prescribed as part of the AEL, definition of new plants and existing plants, compliance time frames with MES, postponement of compliance time

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frames, compliance monitoring and reporting requirements of AEL holders. With regard to compliance time frames with MES, Section 21 Notice stipulates that:

- New plants must comply with new plant emission standards immediately;
- Existing plants must comply with existing plant standards on 01 April 2015; and
- Existing plants must comply with new plant standards on 01 April 2020.

For those existing plants that are not able to meet the MES as of 01 April 2015, the AQA provides for the existing plants to apply for postponement with the compliance timeframes (Section 21 Paragraph 11). The conditions for applying for postponement of compliance time frames are provided for in:

- The National Framework for Air Quality Management; 11 September 2007 (repealed) and 29 November 2013; and
- The Section 21 Notice: Listed Activities and Minimum Emission Standards; 31 March 2010 (repealed) and 22 November 2013.

Regulations 12 of the Section 21 Notice prescribe that the application for postponement must include:

- An air pollution impact assessment compiled in accordance with the regulations prescribing the format of an Atmospheric Impact Report (as contemplated in Section 30 of the AQA), by a person registered as a professional engineer or as a professional natural scientist in the appropriate category;
- A detailed justification and reasons for the application; and
- A concluded public participation process undertaken as specified in the National Environmental Management Act (107) of 1998 Environmental Impact Assessment (EIA) Regulations.

I would like to highlight that, even though the Section 21 Notice was promulgated on 31 March 2010, it was only by 01 April 2015 that the facilities were required to comply with the MES associated with the operations. This "transitional arrangement" was provided for during the development of the MES under the South African Bureau of Standards (SABS) standard setting process. I would like to also highlight the fact that the SABS standard setting process was consultative process. It was acknowledge during this process that industry would need time to comply to the new standards and that based on industry financial planning/budgeting cycles, the 5 and 10 year compliance time frames would be imposed for existing plants to comply with existing plant standards and for existing plants to comply with new plant standards respectively.

However, there were a number of facilities that indicated that they would need more time to comply with the MES due to the nature and size of their operations. Rather than extend the compliance time frames to cater for these facilities, thereby creating a "blanket postponement" for all industries, these facilities would be able to apply for postponement of compliance time frames. This process would

then allow the regular to assess each application on a case by case basis and allow for decisions to be made on the merits of each application.

2. General Approach Taken

In processing each of the applications, I ensured that each application complied with the legal requirements as stipulated in the AQA and the National Framework for Air Quality Management. A detailed assessment of the reasons and justifications for each of the applications was undertaken. Most importantly, I took the decision that **no postponement decision will result in an increase in emissions** from those that the facility was licensed to emit prior to the coming into effect of the MES On 01 April 2015.

This decision ensured that the ambient air quality in the areas where the applicants operate will not be worse off as a result of the postponement decisions. My assessment of the emissions profile of the applicants revealed that in some cases the applicants applied for postponement emission limits far higher than what the facilities actually emit and have emitted in the past. In all of these cases I rejected the requested emission limits and instead imposed emission limits informed by historic performance and what the facility could emit if each of the plants and appliances were properly operated and maintained. This is evidenced in the postponement decisions as what you have noted as a "*discrepancies in the postponement decisions*".

Each application was assessed to determine the impact of the facility's emission on the human health and the environment. In order for this to be done, each of the applicants was required to undertake detailed emission inventory and modelling. The modelling outputs were analysed to determine what the impact of the emission would be on human health and the environment. A number of scenarios were required to be modelled by each of the applicants, namely (i) current emissions, (ii) requested postponement limits and (iii) MES (if facility complied with MES). This was done in order to ascertain impact of the facility's emissions if granted postponement and what the impact of the facility's emissions would be if the facility complied with MES.

I also took into account each of the applicants' "compliance roadmaps" in my decision making. As indicated by the Minister in her announcement of the decisions, the applicants were required to submit the roadmaps in order to indicate when they envisage to have completed their tasks regarding investments in pollution control technologies. These roadmaps have been made available to you in response to a separate request you made on this matter.

Below is a summary of the guiding principle I adopted for the three major pollutants that the applicants applied postponement for:

- **Particulate matter**

Postponements, where applicable, were only granted for the period between 2015 and 2020 and not beyond. This is because national ambient air quality standards for

PM₁₀ and PM_{2.5} became stricter on 01 January 2015 and so there is a need to conduct further atmospheric impact assessments after this period.

- **Sulphur dioxide**

Applications were made for a number of facilities. For the 2015 period, postponements were not necessary as emission reports indicated that most facilities are operating in compliance with the 2015 standards. For most plants, postponements were however granted from 2020 to enable the facilities to invest towards future compliance where possible and also because some plants are due to be decommissioned around those time lines.

- **Oxides of nitrogen**

A number of applicants requested postponements regarding compliance for Oxides of Nitrogen (NO_x). Careful analysis was conducted and postponements where feasible were granted, although in some specific cases it was found that most facilities already operate in compliance with the 2020 standards. It must be noted that Oxides of Nitrogen are not directly problem pollutants in South Africa, but deserve close monitoring as they are a precursor to ozone, for which we measure exceedences in the National Priority Areas.

Finally I would like to indicate that assessment of postponement applications was a detailed and thorough process which was done per site, per appliance and per pollutants. As a result not all requests for postponements were granted.

To concur with the sentiments expressed by the Minister in her announcement of the postponement decisions, I also want to reiterate the Department's commitment to its constitutional mandate that gives effect to Section 24 (b) to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.

Yours Sincerely,



Dr. Thuli N. Mdluli
NATIONAL AIR QUALITY OFFICER (NAQO)

DATE: 14/01/2016