



## **environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

Ref: EDMS187366 /CN to Eskom Kendal Power Station/Mpumalanga Province

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**To:** Mr Tebogo Lekalakala  
General Manager  
Kendal Power Station  
Private Bag X7272  
Emalahleni  
1035

E-mail: [madikee@eskom.co.za](mailto:madikee@eskom.co.za)

Dear Sir

**COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") FOR THE FAILURE TO COMPLY WITH THE PROVISIONS OF THE LAW IN RESPECT OF ACTIVITIES CONDUCTED BY ESKOM KENDAL POWER STATION, MPUMALANGA PROVINCE ("THE FACILITY")**

### **DECISION:**

1. I, Ishaam Abader, in my capacity as a Grade 1 Environmental Management Inspector ("EMI"), having considered the matter am of the view that Eskom Kendal Power Station failed to adhere to the provisions of environmental law in respect of the activities conducted at this facility.
2. Accordingly, I hereby issue you, Eskom Kendal Power Station, with a Compliance Notice in terms of section 31L of the NEMA.

## INTRODUCTION:

3. I refer to the following:
  - 3.1. The environmental compliance inspection conducted at your facility on the 15<sup>th</sup> of December 2015;
  - 3.2. The Notice of Intent to issue a Compliance Notice in terms of Section 31L of the NEMA dated the 24<sup>th</sup> of October 2016 ["Pre-Compliance Notice" ("PCN")];
  - 3.3. Your representations dated the 15<sup>th</sup> of December 2016 to the Notice mentioned in paragraph 3.2 above;
  - 3.4. The joint follow-up environmental compliance inspection conducted at your facility from the 06<sup>th</sup> to the 07<sup>th</sup> of December 2017;
  - 3.5. The Pre-Compliance Notice in terms of Section 31L of the NEMA dated the 09<sup>th</sup> of November 2018;
  - 3.6. Your response dated the 31<sup>st</sup> of January 2019 to the Notice mentioned in paragraph 3.5 above;
  - 3.7. Your document *titled "Submission of Action List for Commitments made on Intention to issue a Compliance Notice \_Kendal Power Station"* (hereinafter referred to as the "Action List") *via* email in addition to the representations mentioned in paragraph 3.6 above dated the 29<sup>th</sup> of March 2019;
  - 3.8. The observations made during the criminal investigation conducted at your facility on the 16<sup>th</sup> of May 2019;
  - 3.9. The Emissions Reports of January 2019 to June 2019 submitted to the Department's Directorate: Air Quality Management;
  - 3.10. The Pre-Compliance notice in terms of Section 31L of the NEMA dated the 14<sup>th</sup> of August 2019; and
  - 3.11. Your response dated the 30<sup>th</sup> of August 2019 to the Notice mentioned in paragraph 3.10 above.

**DETAILS OF THE NON-COMPLIANCES AND RATIONALE FOR THE COMPLIANCE NOTICE:**

4. The Compliance Notice that I am issuing relates to your facility's failure to comply with the requirements of the Atmospheric Emission Licence ("AEL").
  
5. The details of the specific failures to adhere with the provisions of environment law are given in paragraph 6 below.

6. Non-Compliances with the AEL

**Table 1: Justification for enforcement action:**

[This must be read together with Annexure B (Facility's complete response to the PCN) and Annexure C (the PCN)]

Intended Instruction (as stated in the PCN)	Facility's Response	Justification for Enforcement Action.
<p><b>6.1</b> "Immediately (within 24 hours) upon receipt of the final Compliance Notice, cease with all activities related to Units 1, 5 and 6 until the Department agrees, in writing, that operations may re-commence." (Refer to Annexure C for detailed non-compliances)</p>	<p><b>UNIT 1:</b> As described in Item b above (Refer to Annexure B), Unit 1 was shut down for an Outage on the 2<sup>nd</sup> of November 2018. The unit was synchronised back onto the grid on the 29<sup>th</sup> of March 2019. A scope of work was completed for both ESP and the DHP. Correlations were conducted and implemented. Emission performance is currently below the limit of 100mg/Nm<sup>3</sup> since the implementation of the correlations. Given that the unit now complies it is no longer necessary for the Department to issue the instruction to cease activities at this unit.</p>	<p>Unit 1 has exceeded the limit for all the months (as high as 1312mg/Nm<sup>3</sup> in April 2019) since being synchronised back to the grid in March 2019. Eskom claims that based on the correlations, Unit 1 is operating below 100mg/Nm<sup>3</sup>. The Department however has yet to see this data and no proof has been provided. The graph represented on page 8 of the facility's response is a gross misrepresentation of the facts. An example of such misrepresentation would be that Eskom claims that Unit 5 averaged less than 600mg/Nm<sup>3</sup> in February 2019, however, according to the monthly Emissions Report for February 2019, the monthly average is estimated at 1227mg/Nm<sup>3</sup>. The figure of 600mg/Nm<sup>3</sup></p>

<p>claimed by the facility is because Eskom, in this case, has decided to add days in which the unit was switched off in determining the monthly average. Eskom is well aware that this is unacceptable practice but is deliberately applying it in its submission. This puts the entire data presented and the claimed reductions in question. The stipulated reductions in PM levels are based on information that has not been submitted to the authorities.</p>	
<p>The anticipated 66-day outage for Unit 5 will not guarantee compliance with the limit.</p>	<p><b>UNIT 5:</b>  Unit 5 was shut down on the 15<sup>th</sup> of August 2019 for an outage. The scope of work to be implemented on this unit is as described in item b on the above. Given that the unit is on outage for 66 days already, it is not necessary for the Department to issue an instruction to cease all activities on this unit. After the repairs are completed and the unit synchronised, correlations will be conducted and implemented. It is anticipated that the unit will operate within the 100mg/Nm<sup>3</sup>. Monthly Emissions Performance Reports will be submitted to the relevant Authority once the unit is put back onto the grid.</p>

**UNIT 6:**

As already stated in Item b above (Refer to Annexure B), Unit 6 was shut down on the 27<sup>th</sup> of August 2019 for a 7 day outage. The scope to be executed is as indicated on this document above. Upon inspection, it was discovered that Unit 6 will require a longer outage of about 60 days for major repairs to be conducted for the unit to operate below 100mg/Nm<sup>3</sup>. With the 7 days outage, and correlations implementation, the Station anticipates that the unit will operate around 150mg/Nm<sup>3</sup>. This unit will be shut down again after the Unit 5 outage. With the anticipated improvement after the 7 days outage, the Station appeals that the Department not issue an instruction for activities to cease on this unit.

To date, none of the commitments made/ action plans submitted to the Department have resulted in any of the units being in compliance with the 100mg/Nm<sup>3</sup> limit.

Eskom recognised that the anticipated performance improvements associated with the previous action plans were not being realised. The Department does not believe that the current action plans will result in compliance.

Furthermore, upon review of Table 1 and Table 2 of Part A of your response, the following abatement control efficiency percentages were recorded for June 2019 and July 2019:

Unit:	June 2019	July 2019
1	99.35	99.24
2	99.76	99.57
3	99.02	99.28
4	99.24	98.89

5	94.82	97.17
6	99.00	98.68

However, upon review of your Monthly Emission Report for June 2019, various PM exceedances can be detected. Should your abatement equipment be in correct working order, as indicated in the Table above, the facility should not be experiencing any exceedances in terms of the PM limit. The Department therefore does not consider this to be a true reflection of what is occurring on site.

Correlations have not been conducted yet, and there is no evidence to suggest that the scope of work will result in compliance with the limits. The compliance with the 100mg/Nm<sup>3</sup> limit is left open-ended due to a lack of service providers, thereby essentially delaying complying with the limit until after a service provider is sourced to undertake the tests. Furthermore, Eskom has not approached the DEA in order to engage on the

**UNIT 2:**  
As described in Item b (Refer to Annexure B), the unit was shut down for an Outage on the 26<sup>th</sup> of July 2019. The scope of work to be executed is also described in item b. This is a specific scope of work based on plant condition, which is performed during outages. A similar scope has improved emission performance on Unit 1 after correlations implementation. Given the scope proposed has already shown itself to be successful it is thus not considered necessary to appoint an independent

**6.2:** "In relation to units 2, 3 and 4 submit to the Department within thirty (30) calendar days of receipt of the final Compliance Notice, a Plan of Action compiled by a suitably independent specialist outlining the measures that will be implemented (together with timeframes) to ensure that

<p><i>these units operate within the requirements of the Atmospheric Emissions Licence.</i></p> <p>(Refer to Annexure C for detailed non-compliances)</p>	<p>specialist to identify extra corrective measures to ensure compliance.</p>	<p>correct calculation or correlation methods to be used.</p>
<p><b>UNIT 3:</b></p> <p>Unit 3 is planned to be shut down mid-September 2019 for 7 days to execute the scope as indicated on item b of this document. This is a similar scope of work implemented on Unit 4 and the performance on that unit has improved, however, we anticipated that both Units' 3 and 4 emissions will be within the limit of 100mg/Nm<sup>3</sup> after correlations are conducted and implemented. The scope of work for both Units 3 and 4 is remedial action to improve performance, further longer outages are required to do major repairs. It is thus not considered necessary to appoint an independent specialist to identify extra corrective measures to ensure compliance.</p>	<p><b>UNIT 3:</b></p> <p>Unit 3 is planned to be shut down mid-September 2019 for 7 days to execute the scope as indicated on item b of this document. This is a similar scope of work implemented on Unit 4 and the performance on that unit has improved, however, we anticipated that both Units' 3 and 4 emissions will be within the limit of 100mg/Nm<sup>3</sup> after correlations are conducted and implemented. The scope of work for both Units 3 and 4 is remedial action to improve performance, further longer outages are required to do major repairs. It is thus not considered necessary to appoint an independent specialist to identify extra corrective measures to ensure compliance.</p>	<p>Previous experience with Eskom's action plans is that it has failed to produce the desired outcomes and based on Eskom's own admission in this response, the Department has every reason to require an independent specialist to conduct the work prescribed.</p>



	<p><b>Unit 4:</b></p> <p>As stated on item b (Refer to Annexure B), Unit 4 was shut down and remedial scope of work executed as described. Unit 4 performances has improved but correlations still have to be conducted and implemented to confirm that the unit operates within the limit of 100mg/Nm<sup>3</sup> as anticipated. Given the scope proposed has already shown itself to be successful we would suggest it is not necessary for the Department to issue an instruction to appoint an independent specialist to identify extra corrective measures to ensure compliance.</p> <p>Kendal Power Station has already implemented some actions on both Units 3 and 4. The station continues to stabilise the DHP and improve reliability and availability of this plant. Based on the responses made on this document, the Station appeals that the Department should consider not to issue a compliance notice in terms of Section 31L of The National Environmental Management Act, 1998 to Kendal Power Station.</p>	<p>Eskom recognised that the anticipated performance improvements associated with the previous action plans were not being realised. The Department does not believe that the current action plans will result in compliance.</p>
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## **INSTRUCTIONS:**

7. I, Ishaam Abader, in my capacity as a Grade 1 EMI, hereby issue, you, Eskom Kendal Power Station, with a Compliance Notice in terms of Section 31L of NEMA, which instructs you to:

7.1 Within 30 (thirty) calendar days upon receipt of this notice cease with the operation of Units 1 and 5 until such time that the Department agrees in writing that the operation thereof may recommence.

7.2 In relation to units 2, 3, 4 and 6, submit to the Department within thirty (30) calendar days a Plan of Action compiled by a suitably qualified independent specialist outlining the measures that will be implemented (together with timeframes) to ensure that these units operate within the requirements of the Atmospheric Emissions Licence.

8. Please note that the offences and penalties are set out in Annexure A attached hereto.

## **9. PROCEDURAL ARRANGEMENTS:**

9.1 In terms of the legislation you are entitled to lodge an objection to this Compliance Notice in terms of section 31M of NEMA. Kindly note the following in relation to these options:

9.1.1 If you would like to request a variation of this Compliance Notice and extend the period to which it relates, you may make written representations to me to do so;

9.1.2 If you wish to lodge an objection to the Compliance Notice you may do so by making representations, in writing, to the Minister within thirty (30) days of receipt of this Compliance Notice;

9.1.3 If you intend to submit an objection to the Minister, you may also make representations to the Director-General ("DG") to suspend the operation of this Compliance Notice, pending finalisation of the objection, as this function has been delegated to the DG; and

9.1.4 Irrespective of any representations you may make to the Department, you must comply with this Compliance Notice within the time period stated in the Compliance Notice unless the DG agrees to suspend the operation of the Compliance Notice.

10. An objection, as well as any request for suspension, should be sent to the Minister as follows:

By post: Private Bag X447, Pretoria, 0001

By hand: Environment House, 473 Steve Biko Street, Arcadia, Pretoria

10.1 Objections must be submitted in writing to:

a) Mr Mokete Rakgogo, Director: Appeals, of this Department

By email: [Appealsdirector@environment.gov.za](mailto:Appealsdirector@environment.gov.za)

By post: Private Bag X447, Pretoria, 0001

By hand: Environment House, 473 Steve Biko Street, Arcadia, Pretoria.

b) For guidance on the prescribed form, please find a copy of the guideline on the administration of objection on the Department's website: ([https://www.environment.gov.za/documents/forms#legal\\_authorisations](https://www.environment.gov.za/documents/forms#legal_authorisations)).

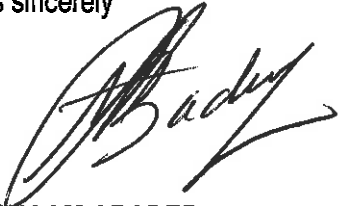
c) A copy of the appeal and / or suspension should also be submitted to the office of the Director: Enforcement: Environmental Impact and Pollution by email to: [gwalters@environment.gov.za](mailto:gwalters@environment.gov.za).

### **FAILURE TO COMPLY WITH THIS COMPLIANCE NOTICE**

11. Should you fail to comply with this Compliance Notice, you will have committed additional offences in terms of the NEMA (please refer to Annexure A below). Kindly take note that the designated Environmental Management Inspectors from this Department are given wide powers

in terms of the NEMA to investigate whether or not you are complying with this Compliance Notice, and to enforce any contravention, including the power to arrest.

Yours sincerely



**MR ISHAAM ABADER**

**DEPUTY DIRECTOR-GENERAL: REGULATORY COMPLIANCE AND SECTOR MONITORING**

**GRADE 1 ENVIRONMENTAL MANAGEMENT INSPECTOR**

**DATE:**

*10/12/2019*

**COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") FOR THE FAILURE TO COMPLY WITH THE PROVISIONS OF THE LAW IN RESPECT OF ACTIVITIES CONDUCTED BY ESKOM KENDAL POWER STATION, MPUMALANGA PROVINCE ("THE FACILITY").**

**Acknowledgement of Receipt:**

**Received by Mr/Ms.....**

**On ..... behalf ..... of**

**on this ..... day of ..... 2019, at.....**

**Signature:**

## ANNEXURE A: OFFENCES AND PENALTIES

### National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA")

Section	Provision
<b>49A(k)</b>	<i>A person is guilty of an offence if that person fails to comply or contravenes a compliance notice issued in terms of section 31L</i>
<b>S49B(2)</b>	<i>A person convicted of an offence in terms of section 49A(1)(k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, or to both such fine or such imprisonment.</i>

### National Environmental Management: Air Quality, 2004 (Act No. 39 of 2005) ("NEM:AQA")

Section	Provision
<b>51(1)(e)</b>	<i>A person is guilty of an offence if that person contravenes or fails to comply with a condition or requirement of an atmospheric emission licence</i>
<b>S51(3)</b>	<i>A person performing a listed activity is guilty of an offence if air pollutants at concentrations above the emission limits, specified in an atmospheric emission licence, are emitted as a result of that activity.</i>
<b>52(1)</b>	<i>A person convicted of an offence referred to in section 51 is liable to a fine, or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment.</i>