



**MINISTER  
FORESTRY, FISHERIES AND THE ENVIRONMENT  
REPUBLIC OF SOUTH AFRICA**

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Tel: (012) 399 8743  
Private Bag X9052, Cape Town, 8000, Tel: (021) 469 1500, Fax: (021) 465 3362

Ref: EDMS MCE193395

Mr Timothy Lloyd  
Centre for Environmental Rights  
2<sup>nd</sup> Floor Springtime Studios  
1 Scott Road  
**OBSERVATORY**  
7925

Email: [tlloyd@cer.org.za](mailto:tlloyd@cer.org.za)

Dear Mr Lloyd

**REQUEST FOR REASONS FOR THE AMENDMENT OF THE LISTED ACTIVITIES AND ASSOCIATED MINIMUM EMISSION STANDARDS IDENTIFIED IN TERMS OF SECTION 21 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004 (ACT NO. 39 OF 2004)**

Thank you for your letter of 03 April 2020.

You have made a request for written reasons in respect of the Minister's decision to amend the Listed Activities and Associated Minimum Emission Standards identified in terms of section 21 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (Minimum Emission Standards), for existing subcategory 1.1 facilities. Whilst I have previously provided the reasons for the amendment in a media statement issued on 27 March 2020, the following are hereby provided as per your request:

- This amendment aims to reduce sulphur dioxide emissions from plants that were authorised to operate before 01 April 2010, from 3500mg/Nm<sup>3</sup> to 1000mg/Nm<sup>3</sup> instead of the 500mg/Nm<sup>3</sup> which was due to come into effect on 01 April 2020. The minimum emission standard for plants authorised after 01 April 2010 remains at 500mg/ Nm<sup>3</sup>;
- When implemented, the revised limit of 1000mg/Nm<sup>3</sup> will achieve a 58% reduction in total emissions. It will significantly improve general compliance with the national ambient air quality standards compared to the current state of air, in which sulphur dioxide emissions from the power generation sector are measured at 3500/Nm and above;
- The amendment of the Minimum Emission Standards followed a consultative process in terms of section 56; as well as a public participation process in terms of section 57 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), which provided significant inputs from stakeholders;

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- During the consultative and public participation processes mentioned above, the department received 13 submissions representing divergent viewpoints. Many industries argued that amendments to the Minimum Emission Standards should be pegged at the 3500 level for all plants built prior to 2010 regardless of whether or not they plan to decommission by 2030;
- The considerations taken into account include a commitment to progressive improvement in air quality, submissions made on measures required to enable retrofitting of old plants and associated socio-economic implications;
- The Constitution provides a set of socio-economic rights that are to be progressively achieved. In this context the Department of Environment, Forestry and Fisheries must ensure the progressive realization of environmental rights through various means including regulatory instruments;
- The National Environmental Management Act, 1998 (Act No. 107 of 1998), establishes a comprehensive environmental management framework founded on a set of principles that ensures sustainable development through balancing environmental rights while ensuring socio-economic growth is not hampered. This framework includes establishing the Minimum Emission Standards;
- At present, neither Eskom nor Sasol, the major emitters of sulphur dioxide, meet current minimum standards for plants constructed prior to 2010. A Technical and Cost Benefit Analysis undertaken by independent scientists including departmental specialists, has shown that to comply with the standard of 500mg/ Nm<sup>3</sup>, Eskom and Sasol respectively would have to invest significantly based on the sheer size of the installed boilers and complex integrated systems linked to production of synfuels;
- It is clear that given the current financial situation of both Eskom and Sasol, the achievement of this in the near future is unlikely. It is however of critical importance that both companies commit to a path that sets their facilities on a road to a vastly reduced level of emissions. In a letter received by the department from Sasol, they have committed to achieving the revised standards by 2025. Eskom's submission in this regard is still awaited;
- They cited costs of retrofitting plants as the major stumbling block to compliance. They argued further that international precedent enables a principle of grand fathering or allowing the plants to operate until end of life in accordance with the original licensing regime, in cases where changes in legislation or new standards were introduced;
- Environmental organisations argued strongly against the amendment, citing concerns over current air quality and its impacts on human health;
- In weighing up these submissions, the department has chosen a compromise which will allow for the progressive achievement of environmental rights and improved air quality for human health, without undermining the viability of key industries;
- International comparisons were not considered appropriate in the South African situation given that our legislation already establishes the need to progressively improve air quality; and

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- We nevertheless find it regrettable that the challenges facing our country in relation to energy security and the state of the economy, have resulted in a slower achievement of the desired state of air.

Furthermore, you have, in terms of section 5(1) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), requested specific information that I considered when I made the decision to amend the Minimum Emission Standards for the existing combustion installations. Whilst I am of the view that your rights have not been materially or adversely affected by this decision, and I am not in agreement that reasons for the decision were not previously made public, this information is hereby provided as annexures to this letter.

Yours sincerely



**MS B D CREECY, MP  
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

DATE: 20/7/2020