



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Ms Barbara Creecy

Minister of Environment, Forestry and Fisheries
By Email: fshaik@environment.gov.za

Mr Mokete Rakgogo

Director: Appeals and Legal Review
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Copied to:**Dr Thuli N. Khumalo**

Chief Director: Air Quality Management
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By email: TKhumalo@environment.gov.za

Ms Seshni Govender

Environmental Consultant
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By email: seshni.govender@rhdhv.com

Our ref: CER 10.
15 September 2020

Dear Minister

NOTICE OF APPEAL AGAINST THE DECISION TO GRANT APPLICATION FOR THE POSTPONEMENT OF COMPLIANCE TIME-FRAMES RELATING TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004 MINIMUM EMISSION STANDARDS (MES) UNDER REGULATION GOVERNMENT NOTICE 893, GOVERNMENT GAZETTE 37054, 2013 TO ARCELORMITTAL SA VANDERBIJLPARK STEEL WORKS ("AMSA")

1. We address you on behalf of our clients, the Vaal Environmental Justice Alliance (VEJA)¹ and groundWork (gW),² registered Interested and Affected Parties (I&APs) and appellants in relation to the above application for postponement by AMSA and the decision taken by the National Air Quality Officer dated 23 March 2020 to partly grant AMSA's application for the postponement of compliance time-frames relating to the National Environmental Management: Air Quality Act 39 of 2004 Minimum Emission Standards (MES) to AMSA ("the decision").
2. We refer to our clients' notice of the intention to appeal contained in a "request for reasons" letter that was submitted on 21 July 2020 (attached to these submissions as Annexure 5 for ease of reference) which set out not only our client's request for reasons the above decision, but also the intention to appeal the decision.
3. An email acknowledging the receipt of the letter and our instruction to lodge an appeal against said decision was sent by Mr Mokete Rakgogo from the Director: Appeals and Legal Review, 21 July 2020.

¹ VEJA is a democratic alliance of empowered civil society organisations in the Vaal Triangle who have the knowledge, expertise and mandate to represent the determination of the communities in the area to control and eliminate emissions to air and water that are harmful to these communities and to the environment VEJA is an active role-player in various environmental (including air quality) campaigns within the Vaal Triangle Airshed Priority Area (VTAPA).

² groundWork is a non-profit environmental justice campaigning organisation working primarily in South Africa, in the areas of Climate & Energy Justice, Coal, Environmental Health, Waste, Environmental Justice Education and Environmental Justice Information.

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4. We hereby appeal the decision on behalf of our clients, and in pursuance of this appeal, we enclose the following documents, as required by the the National Environmental Management National Appeal Regulations, 2014 (“the Appeal Regulations”), read with the DEFF Guideline on the Administration of Appeal, 2015 (“Appeal Guidelines”):
- 4.1. the Appeal questionnaire including (together with the mandates from VEJA and groundWork);
 - 4.2. the Appeal and Response Form;
 - 4.3. a statement setting out the grounds of appeal (together with the detailed Appeal submissions as well as accompanying Annexure 1-10 to the Appeal).
5. In terms of regulation 4(2)(a) of the Appeal Regulations, an appeal submission must be submitted in writing in the form obtainable from the appeal administrator, and must be accompanied by: a statement setting out the grounds of appeal; supporting documentation which is referred to in the appeal submission; and a statement by the appellant to confirm compliance with regulation 4(1) of the Appeal Regulations.
6. In compliance with regulation 4(2)(iii) of the Appeal Regulations read with regulation 4(1), we hereby confirm that:
- 6.1. this letter, with the attached Grounds of Appeal and supporting documentation, is copied – and will be sent simultaneously – to the National Air Quality Officer (the First Respondent in this Appeal) and to AMSA (the Applicant and Second Respondent in this Appeal);
 - 6.2. we are not in possession of a database of interested and affected parties in relation to the application, nor of the list of relevant organs of state with an interest in the matter, which have been consulted in relation to the application. We have sought, to the best of our ability, to comply with this legal requirement by copying the Environmental Assessment Practitioner for the application process herein. We request that this appeal be furnished to any registered interested and affected parties. Alternatively, you are invited to provide us with the database and contact details, including email addresses, of the registered interested and affected parties, so that we may endeavour to circulate the appeal; and
 - 6.3. we have endeavoured to comply with the 20-day timeframe for the filing of this appeal, although our clients were not duly notified of the decision in accordance with the legal requirements or timeframes of regulation 4(1)(b) of the Appeal Regulations. As stated above, we notified you that we intended to file an appeal of the decision. We received no objections. We have requested condonation, in the grounds of appeal, insofar as it may be necessary, and we submit that it would be in the interests of justice to grant our clients such condonation, for reasons that include: the public interest in this matter and its technical complexity as well as the anticipated environmental and health impacts of the decision.
7. Please acknowledge receipt of this appeal.
8. Our clients’ rights are reserved in full.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



Michelle Koyama

Attorney

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