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URGENT

Dear Sirs and Mesdames

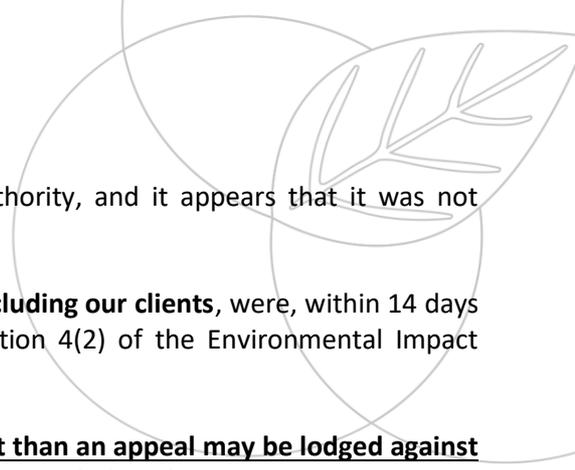
ARCELORMITTAL SA VANDERBIJLPARK STEEL WORK (“AMSA”) MINIMUM EMISSION STANDARDS (MES) DECISION: REQUEST FOR INFORMATION AND REASONS

1. We address you on behalf of our clients, the Vaal Environmental Justice Alliance¹ and groundWork.² We confirm that our clients are registered Interested and Affected Parties (I&APs) in relation to the 8 February 2019 application by ArcelorMittal South Africa (Vanderbijlpark) (AMSA) for the suspension, alternative limits and/or postponement of compliance with the minimum emission standards (MES) in terms of the National Environmental Management: Air Quality Act, 2004 (AQA) and the List of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, 2013 (“the List of Activities”). As I&APs, our clients submitted objections, dated 11 March 2019, to AMSA’s February 2019 application.
2. We refer to the National Air Quality Officer’s decision (which was presumably made in consultation with the Sedibeng District Municipality as the licensing authority, as is required by the List of Activities), dated 23 March 2020, to partly grant AMSA’s application (“the decision”). Upon our request, a copy of the decision was sent to us via email on 1 July 2020, and the aforementioned correspondence is attached for your ease of reference. It appears from the email correspondence, that a copy of the decision in respect of AMSA’s Vanderbijlpark

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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operations was only communicated to AMSA and to the licensing authority, and it appears that it was not communicated to I&APs.

3. In the circumstances, **kindly provide us with evidence that all I&APs, including our clients**, were, within 14 days of the decision, provided with the following, as is required by regulation 4(2) of the Environmental Impact Assessment Regulations, 2014 (“the EIA Regulations”):
 - a. a **copy of the decision**, which draws **the I&APs’ attention to the fact than an appeal may be lodged against the decision in terms of the National Appeals Regulations, 2014 as amended**; and
 - b. **the reasons for the decision**.
4. In addition to the EIA Regulations, sections 33(1) and 33(2) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), read together with sections 3(2) and 5 of the Promotion of Administrative Justice Act, 2000 (PAJA), require that:
 - a. in order for the decision to be deemed procedurally fair, the decision-maker must inform those that are affected by the decision-making of their **right to an internal appeal**, and their **right to request reasons** for its decision; and
 - b. the decision-maker must, upon request, provide **adequate written reasons for its decision** within 90 days after receiving the request for reasons.
5. As such, although this request for reasons is made in terms of PAJA and/or the principle of legality, it is supported by the provisions of EIA Regulations and the National Environmental Management Act, 1998.
6. We are instructed to appeal the decision once we are in possession of adequate information to do so.
7. In order to inform this appeal, **kindly provide us with adequate written reasons, including supporting documentation, for the decision in its totality**. In particular, we are instructed to seek reasons for the decision to allow AMSA to operate with emission limits for hydrogen sulphide (H₂S) that are **weaker than the existing plant MES** contained in sub-categories 3.2 of the List of Activities, **despite paragraph 11D prohibiting postponements or suspensions of compliance timeframes for existing plant MES**. In addition to the reasons and supporting documents, and the evidence requested in paragraph 3 above, and also to inform the appeal, our clients request a quarterly progress report on the compliance of the implementation of AMSA’s roadmap and commitment, as well as the SO₂ offset programme referred to in the decision, which AMSA was required to submit by 1 July 2020.
8. Given the public importance of the MES – which, as you are aware, exist to respect and protect several guaranteed constitutional rights, including section 24(a) of the Constitution – we request that such reasons be provided as soon as possible, and by no later by 4 August 2020. This request for an urgent response is also made due to the timelines for instituting an urgent appeal.
9. In accordance with the applicable legislation outlined above and in the interests of justice, we are instructed that the time period for the appeal will run from the date on which full written reasons for the decision are received.
10. To reiterate and in summary, we hereby request that you provide us in writing with the following:
 - a. confirmation and evidence that all registered I&APs were provided with access to the decision;
 - b. evidence that all registered I&APs were advised of their right to appeal the decision in terms of the National Appeals Regulations, 2014;
 - c. written reasons for the decision, including supporting documentation for the decision; which outline the explanation for why the decision authorises AMSA to operate with a limit that is less stringent than the existing plant standards; and

d. a quarterly report and roadmap for compliance with the alternative limits, as well as the SO₂ offset programme referred to in the decision.

11. We await your urgent response.

12. Our clients' rights are reserved in full.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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