

Annexure 7

Michelle Koyama

From: Michelle Koyama
Sent: 25 August 2020 15:01
To: tkhumalo@environment.gov.za; Appeals@environment.gov.za; Michael Nemangaya; MRakgogo@environment.gov.za
Cc: Seshni Govender; Malcolm Roods; Wilson, Terrence T; Robyn Hugo (rhugo@cer.org.za); Nicole Loser (nloser@cer.org.za); Dimakatso Mary Sefatsa; Khumo Lesele
Subject: URGENT: AMSA MES postponement application - request for reasons and internal appeal
Attachments: CER Letter to DEA re AMSA MES 21.07.2020.pdf; RE: AMSA MES postponement application - request for reasons and internal appeal

Tracking:	Recipient	Delivery	Read
	tkhumalo@environment.gov.za		
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	Seshni Govender		
	Malcolm Roods		
	Wilson, Terrence T		
	Robyn Hugo (rhugo@cer.org.za)	Delivered: 25/08/2020 15:01	
	Nicole Loser (nloser@cer.org.za)	Delivered: 25/08/2020 15:01	
	Dimakatso Mary Sefatsa	Delivered: 25/08/2020 15:01	Read: 25/08/2020 15:02
	Khumo Lesele	Delivered: 25/08/2020 15:01	Read: 25/08/2020 16:13
	Nicole Loser		Read: 25/08/2020 17:34

Good day

We refer to our correspondence dated 21 July 2020 (attached), in relation to which no response has been received from the Department. We confirm our instructions to appeal the decision to grant AMSA's MES application, and reiterate our clients' request for the documents and information sought in our 21 July 2020 correspondence.

We refer also to the attached email to us from AMSA's Environmental Assessment Practitioner dated 11 August 2020, which includes an email they sent on 1 July 2020 to interested and affected parties (I&APs).

We are instructed to point out that the attached notification to I&APs does not comply with sections 4.1 and 4.2 of the 2015 Appeal Regulations Guidelines 2015 (Appeal Guidelines) under the National Environmental Management Act (NEMA), nor with the Promotion of Administrative Justice Act, 2000 (PAJA), in that it does not: 1) notify the I&APs of the reasons for the decision; 2) inform the I&APs of their right to submit an appeal, and the manner in which to submit the appeal; nor does it 3) inform the I&APs of their right to request reasons for the decision, in terms of PAJA.

The [Guidelines on the Administration of Appeals](#), 2015 (Appeal Guidelines) by the Department (which are nearly identical to the procedure referred to in the Environmental Impact Assessment Regulations 2014, and referred to in our previous correspondence), state that:

“4.1 On having reached a decision on an application, the Department must, in writing and within 2 days, notify the applicant of the outcome of the decision, give reasons for the decision, and draw the attention of the applicant to the fact that an appeal may be lodged against the decision.

4.2 The applicant must, in writing, **within 12 days after the date the decision** was made by the Department: •notify the registered I&APs of the outcome of the decision, •**provide the Department’s reasons for the decision**, •draw the attention of all registered I&APs to the manner in which they can access a copy of the decision (note: it is recommended that a copy of the Department’s decision be attached to the notice), and •**draw their attention to the fact that an appeal may be lodged against the decision, and the manner in which to lodge an appeal against the decision**”

A decision of this nature, in relation to compliance with minimum emission standards by the heavily polluting facilities of AMSA, materially and adversely affects the rights of surrounding communities in Vanderbijlpark, including those of our client the Vaal Environmental Justice Alliance (VEJA). As such, section 3(2) of PAJA is clearly applicable. It states that, in order for administrative action to be procedurally fair, the administrator must give persons affected:

- adequate notice of the nature and purpose of the proposed administrative action;
- a reasonable opportunity to make representations;
- a clear statement of the administrative action;
- adequate notice of any right of review or internal appeal, where applicable; and
- adequate notice of the right to request reasons in terms of section 5.

PAJA section 5 also states that the decision-maker should provide adequate reasons for the decision; failing which, for the purpose of judicial review proceedings, the action will be deemed to have been taken without good reason. We therefore confirm the obligation under section 5(1) PAJA to provide reasons for this decision (in addition to the requirement of the Appeal Regulations) and hereby reiterate our request reasons in terms of section 5(1) PAJA as well.

In light of the above, and as per our previous letter, we request that the EAP and the decision-maker inform all I&APs of the decision, with adequate reasons, and advise them of their rights to appeal and request reasons to ensure procedurally fair administrative action, to place our clients in a position to submit an appeal. You will recall that as part of the written reasons, we requested all 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 a quarterly report and roadmap for compliance with the alternative limits, as well as the SO2 offset programme referred to in the decision.

Our clients’ rights remain reserved.

We look forward to hearing from you urgently.

Kind regards

Michelle Koyama

Attorney

Centre for Environmental Rights NPC

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