



## **environment, forestry & fisheries**

**Department: Environment, Forestry  
and Fisheries  
REPUBLIC OF SOUTH AFRICA**

**Reference: LSA 19775**

### **DECISION PERTAINING TO THE REQUEST FOR CONDONATION**

**REQUEST FOR CONDONATION FOR THE LATE FILING OF THE APPEAL AGAINST THE  
DECISION TO GRANT ARCELORMITTAL SOUTH AFRICA, A SUSPENSION TO COMPLY WITH  
- THE MINIMUM EMISSION STANDARDS AND ALTERNATIVE LIMITS IN RESPECT OF VARIOUS  
POLLUTANTS, SITUATED IN VANDERBIJLPARK, IN GAUTENG PROVINCE**

#### **1. INTRODUCTION**

- 1.1 This is a request for condonation for the late filing of an appeal against the decision of the National Air Quality Officer (NAQO) within the Department of Environment, Forestry and Fisheries (the Department) to grant ArcelorMittal South Africa (AMSA) (the applicant), a suspension to comply with the Minimum Emission Standards (MES) and alternative limits in respect of various pollutants on 23 March 2020.

#### **2. BACKGROUND AND REQUEST FOR CONDONATION**

- 2.1 On 23 March 2020, the NAQO of the Department approved the postponement application lodged by the applicant, for compliance with the MES and alternative limits in respect of various pollutants.
- 2.2 MES are regulated in terms of section 21 of the National Environmental Management: Air Quality Act, 2004 (NEMAQA), read together with the Regulation of 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 (Listed Activities).

- 2.3 Subsequent to NAQO's decision to grant the aforementioned postponement, the Centre for Environmental Rights, acting on behalf of Vaal Environmental Justice Alliance and Groundwork (the appellants), as registered and interested parties (I&APs) were notified of the aforesaid decision on 21 July 2020.
- 2.4 Considering regulation 4(1)(a) of the National Appeal Regulations, 2014, as amended (2014 Appeal Regulations), the due date for submission of appeals was 11 August 2020.
- 2.5 On 15 September 2020, the Directorate: Appeals and Legal Review (Appeals Directorate) within the Department received an appeal from the Centre for Environmental Rights, on behalf of the appellants. This appeal was lodged in terms of section 43(1) of the National Environmental Management Act (NEMA), read together with regulation 4 of the 2014 Appeal Regulations.
- 2.6 The above appeal was lodged approximately one month and four days outside the timeframe prescribed by regulation 4(1) of the 2014 Appeal Regulations, hence it was accompanied by the request for condonation for the late filing thereof.
- 2.7 In motivating the request for condonation, the appellant states that the appeal was submitted late because NAQO provided them with reasons for the postponement decision on 26 August 2020. In essence when they were notified of the decision, there were no written reasons for the decision thereof.
- 2.8 MacRobert Attorneys acting on behalf of the applicant, submitted a letter dated 05 October 2020, in which they note the appellant's condonation request. The applicant states that unless and until such condonation request has been granted, no valid appeal is pending against the decision. The applicant further submits that the appellants have taken more than six weeks to submit their lengthy appeal and the application for condonation. As a result, the applicant states that they would need an indulgence to fully respond to the appeal.

### **3. LEGISLATIVE FRAMEWORK GOVERNING THE REQUEST FOR CONDONATION**

3.1 In terms of section 47C of NEMA, the Minister has the legal authority, subject to explicit limits to grant an extension or condonation for the submission of an appeal which is out of time. The power and duties enshrined in section 47C relating to the legal authority to extend or condone a failure by a person to comply with a period in terms of the Appeal Regulations have been sub-delegated to the Director of the Appeals Directorate.

3.2 Section 47C of NEMA provides as follows:

*"The Minister or an MEC may extend, or condone a failure by a person to comply with, a period in terms of this Act or a specific environmental management Act, except a period that binds the Minister or MEC".*

3.3 Further to this regulation 4(1) of the Appeal Regulations provides as follows:

*"An appellant must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:*

- (a) the date that the notification of the decision for an application for an environmental authorization or a waste management licence was sent to the registered interested and affected parties by the applicant; or*
- (b) the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority, in the case of decisions other than those referred to in paragraph (a)".*

#### 4. DECISION

- 4.1 In reaching my decision on the request for condonation for the late filing of the appeal, it should be noted that I have not responded to each and every statement set out by the appellant and/or the applicant, and that where a particular statement is not directly addressed, the absence of any response thereof should not be interpreted to mean that I agree with or abide by the statement made.
- 4.2 Having duly considered the reasons advanced by the appellants in their request for condonation as well as responses thereto by the applicant, I am of the view that it would not be in the interests of justice to refuse condonation in this matter, for the following reasons:
- 4.2.1 The appellants have furnished me with a reasonable explanation for the delay. According to section 5 of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), the appellants are entitled to be furnished with written reasons for the decision taken. Only until such time as the appellants had the reasons for the decision were they in the position to formulate their grounds of appeal; and
- 4.2.2 The applicant did not object to the granting of condonation, nor cite any prejudice that would be suffered as a result of condoning the late filing of the appeal. They merely expressed concerns regarding the length of time taken by the appellants to lodge the appeal, and further requested sufficient time to submit responding statement in respect of the appeal.
- 4.3 In view of the foregoing, the late filing of the appeal by the appellant is accordingly condoned.
- 4.4 Having ruled in favour of condonation request, the applicant is afforded the opportunity to submit responding statement in respect of the appeal, within 20 calendar days from date of signature hereof.



ADV. MOKETE RAKGOGO

DIRECTOR: APPEALS AND LEGAL REVIEW

DATE: 26/10/2020