



# forestry, fisheries & the environment

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

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**Reference:** Eskom/postponements  
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**Ms. Deidre Herbst**  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive, Sunninghill  
Sandton

**Email:** [HerbstDL@eskom.co.za](mailto:HerbstDL@eskom.co.za)

Dear Ms. Herbst,

## **RE: APPLICATION FOR POSTPONEMENT/SUSPENSION OF COMPLIANCE TIME-FRAMES RELATING TO THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004 MINIMUM EMISSION STANDARDS FOR ESKOM HOLDINGS SOC LTD**

The above-mentioned applications have reference.

The decisions on Eskom applications for postponement, alternative limits and suspension of compliance timeframes with the Minimum Emission Standards (MES) in terms of Section 21 of the Air Quality Act are based on the requirements of the current legal framework (GNR 1207 of 31 October 2018) which provide for applications for postponement, suspension and alternative limits.

Existing facilities may apply for a once-off postponement of compliance timeframes for new plant standards. A postponement if granted will be for a period not exceeding 5 years and no postponement would be valid beyond 31 March 2025. It is thus not possible in the current legal framework to issue postponement decisions beyond 31 March 2025. Thus positive postponement decisions were only issued for applications where there are plans in place to comply with the Minimum Emission Standards (MES) and the decisions are valid until 31 March 2025.

Existing facilities that will be decommissioned by 2030 may apply for a once-off suspension of compliance timeframes with new plant standards for a period not beyond 2030. An application must be accompanied by a clear decommissioning schedule. Existing facilities that will be granted a suspension of compliance timeframes shall comply with existing plant standards during the suspension period until they are decommissioned. Eskom applied for suspension of compliance with Minimum Emission Standards (MES) for plants scheduled for decommissioning by 2030. Positive decisions were granted for these applications with the condition that Eskom submits the detailed decommissioning plans within a year of issuance of the suspension decisions.

Also, according to the legislation, an existing facility may also submit an application regarding a new plant standard to the National Air Quality Officer (NAQO) for consideration, if the facility is in compliance with other emission limits but cannot comply with a particular pollutant or pollutants. The said application must demonstrate previous reductions in emissions of the pollutant or pollutants being applied for, measures and direct investments



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implemented towards compliance with the relevant new plant standards. Further, the National Air Quality Officer (NAQO), after consultation with the licensing authority may grant alternative limit or emission load if there is material compliance with the national ambient air quality standard for pollutant or pollutants applied for or the atmospheric Impact report does not show a material increase in health risk where there is no ambient air quality standard.

Eskom applied for alternative limits for Particulate Matter (PM) for the stations that are located within the national priority areas where PM concentration levels are in non-compliance with the national standards. Therefore, it would be illegal to issue alternative limits for PM for power stations located in priority areas where there is non-compliance with PM standards. Further, Eskom failed to demonstrate previous investments for the reduction of NO<sub>x</sub> and SO<sub>2</sub> emissions in the same power stations thus making this provision inapplicable for the facilities.

The Minimum Emission Standards (MES) were first published in 2010 and Eskom has made minimal effort to fully comply with the standards. The NAQO does not have the prerogative to issue decisions that are outside the current legal provisions or are in non-compliance with the law. In this regard, Eskom is advised to make a request to the Ministers of the Departments they listed in a letter to the NAQO dated 30 March 2021, for consideration of all the other factors that are outside the Department of Forestry, Fisheries and the Environment (DFFE) mandate, such as insufficient water, gypsum and financial costs of implementing the decisions; closure of seven (7) stations; and associated 19 000MW of supply to the national grid. The NAQO and Atmospheric Emission Licensing Authorities can only to issue decisions that are legally defensible within the applicable legal framework and conditions given therein.

Thank you for understanding and for co-operation in matters regarding your applications.

Yours sincerely,



**Dr Thuli N. Khumalo**  
**Department of Forestry, Fisheries and the Environment**  
**Designation: National Air Quality Officer**  
**Date: 30 October 2021**

**CC – Atmospheric Emission Licensing Authorities**