MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA

LSA 234243

APPEAL DECISION

APPEAL AGAINST THE REFUSAL DECISION OF THE NATIONAL AIR QUALITY OFFICER ISSUED TO SASOL SOUTH AFRICA LTD, SECUNDA OPERATIONS.

Sasol South Africa Ltd	Appellant
Just Share	Interested and Affected Party (IA&P)
The National Air Quality Officer	Competent Authority

Appeal: This appeal was lodged by Sasol South Africa Ltd (Sasol/ the appellant), against the decision of the National Air Quality Officer ("NAQO") of the Department of Forestry, Fisheries and the Environment ("the Department"), taken on 11 July 2023, indicating that the National Air Quality Officer is not empowered to grant an application for an alternative limit for Sulphur Dioxide (SO_2) where a once-off postponement has already been granted for the Secunda Synfuel Operations, in terms of the Section 21 of the National Environmental Management: Air Quality 2004,(Act No 39 of 2004)(NEMAQA).

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1. BACKGROUND AND APPEAL

1.1. The appellant is the owner and operator of two petrochemical facilities, one in Secunda and one in Sasolburg (the steam plants). At the Secunda facility, coal is converted into liquid through a process that requires steam and it is the emissions produced by this steam plant that forms the basis of this appeal.[1]

1.2. The appellant's steam facilities are required to comply with the Minimum Emission Standards as set out in the Regulations 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/ Section 21 Notice), published in Government Notice No.893, Gazette No. 37054 dated 22 November 2013 (as amended), which was published in terms of Section 21 of the National Environmental Management: Air Quality 2004 (Act No 39 of 2004) (NEMAQA) as amended.

1.3. The Listed Activities provide that new and existing facilities that could not meet the prescribed MES within the legislated timeframes could apply for the postponement of the compliance timeframes to the National Air Quality Officer (NAQO) within the Department of Forestry, Fisheries and the Environment (the Department). Moreover, any entity that undertakes a Listed Activity requires an atmospheric emission license (AEL) to conduct such Listed Activity.

1.4. In September 2014, the appellant applied to the NAQO for a postponement of compliance timeframes in respect of, inter alia, the SO_2 emissions at its steam plants because there was no feasible technology available to it to enable it to comply with the then new plant standards of 500 mg/Nm3 by 1 April 2020.[2]

[1] NECA Forum Report, paragraphs 5.1.1. and 5.1.2, page 16 of 84
[2] Ibid, paragraph 5.3.3 to 5.3.3, page 19 of 84

1.5. On 23 February 2015, the NAQO granted the appellant's application for postponement and suspension of compliance timeframes with the Minimum Emission Standards (MES) for new plant standards for sulphur dioxide (SO_2) in respect of the boilers in its steam plant for a period of 10 years. This application was granted in terms of Paragraph 12A of the Listed Activities, and in terms thereof the appellant was required to comply with the new plant standard for SO_2 emissions from its boilers by 31 March 2025.[3]

1.6. In March 2019, the appellant lodged another application for the postponement of compliance timeframes for new plant standards in respect of particulate matter (PM) and nitrogen oxide (NOx) for the steam plants. This application was granted on 20 November 2019.[4]

1.7. On 23 April 2019, the appellant was granted an Atmospheric Emission Licence (AEL) under the NEMAQA, for listed activities conducted at its Secunda facility.

1.8. On 29 June 2022, the appellant again applied to the NAQO and the Nkangala District Authority in terms of paragraph 12A of the Listed Activities for an alternative load-based emission limit for SO_2 emissions from the boilers in its steam plants. The appellant requested the following:[5]

- To be regulated by a load-based emission limit (the mass and the rate of the pollutant emissions) for SO_2 instead of a concentration limit (the mass of pollutant per cubic meter of air emitted) as of 1 April 2025 when the current postponement comes to an end;
- Should its application be approved, the Secunda Operations' steam plants will be able to operate lawfully on load-based limits from 1 April 2025 whilst implementing the integrated GHG and SO_2 reduction roadmap;
- The aim of enabling a 4% load reduction in SO_2 before April 2025 will be enabled with the bulk of the intended reduction to be realised in 2030 (total of 30%), which is more

[3] Ibid
[4] Ibid
[5] Ibid, Paragraph 5.2.2. to 5.2.2.5, pages 18 and 19 of 84

significant than the 15% reduction to be realised via a concentration-based limit; and

- Load reductions in other pollutants will also be enabled, significantly increasing the Secunda operations' contribution to ambient air quality improvement.

1.9. On 11 July 2023, the NAQO issued her decision in respect of the appellant's application for a load-based emission standard.

1.10. The NAQO's decision, is summarised in the table below as follows:[6]

S21 Category and appliances	**Postponement Sought**	**Proposed Emission Limit**	**Emission Standards**			**Decision**
			Minimum Emission Standards (mg/Nm3)			
Subcategory 1.1: Solid Fuel Combustion Installations Steam Plant Point sources: Main Stack West (Unit 43) &	1 April 2025 – 31 March 2030	**503 t/d**	Pollutant	**2015**	**2020**	Alternative sulphur dioxide limit for steam plants in terms of paragraph 12A is refused.
			SO_2	3500	1000	
Main Stack East (Unit 243)	1 April 2030 – onwards	**365 t/d**	SO_2	3500	1000	The requirement to comply with the minimum emission standards of 1000 mg/Nm3 for new plant from 01 April 2025 remains in place.

[6] Ibid, Pages 17 and 18 of 84

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1.11. The NAQO provided the following reasons for her refusal decision:

1.11.1. Paragraph 12A(a) stipulates that a plant applying for an alternative emission standard must already be in compliance with other emission standards. The appellant's application failed on this basis because its Secunda steam plants are not compliant with "other emission standards" as they are currently operating in terms of a postponement granted for compliance with PM and NOx emission standards.

1.11.2. The appellant failed to demonstrate previous reduction, measures and direct investments implemented towards compliance with SO_2 emission limits.

1.11.3. The appellant failed to show that there is material compliance with the National Ambient Air Quality Standards (NAAQS) for SO_2 in the affected ambient atmosphere in the light of it being located within the Highveld Priority Area - an area where the NAAQS for SO_2 and PM are frequently exceeded.

1.11.4. The load-based emission limit is only required post 1 April 2025 when the current postponement for SO_2 lapses. As such, a consideration of any deviation from the MES after the 31 March 2025 compliance deadline, would be contrary to the purpose of the Section 21 Notice and the empowering legislation.

1.11.5. Granting such an indulgence would enable a deviation from compliance timeframes in perpetuity which would be contrary to the mechanisms provided for in the Section 21 Notice, to progressively bring all emitters into compliance with the MES by 2025.

1.11.6. The NAQO is not empowered to grant an application for an alternative limit where a once-off postponement has already been granted. The use of the word "once-off" in paragraph 11A of the Section 21 Notice envisages an applicant only being granted an indulgence of this sort once. Indeed, to permit such indulgence into perpetuity would defeat the objective of NEMAQA.

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1.12. On 31 July 2023, the Directorate: Appeals and Legal Review (Appeals Directorate), within the Department, received an appeal from the appellant, lodged in terms of section 43 (1) of the NEMA, read with the National Appeal Regulations 2014 (2014 Appeal Regulations), against the NAQO's refusal decision.

1.13. The Appeals Directorate received a responding statement to the appellant's appeal from Just Share in its capacity as an interested and affected party (the I&AP), and from the NAQO in her capacity as the competent authority (CA).

1.14. The appellant's appeal is premised on the following grounds of appeal:

1.14.1. The integrated solution is the Best Practical Environmental Option (BPEO);

1.14.2. The requirements of paragraph 12A (a) were met;

1.14.3. Paragraph 12A is not confined to 31 March 2025;

1.14.4. Requirements of paragraph 12A (b) were met;

1.14.5. The requirements of Paragraph12A(c) were met;

1.14.6. A load-based limit is permitted;

1.14.7. Achieving MES Compliance with load limit.

1.15. I established a consultative forum in terms of section 3A of the National Environmental Management Act, Act 107 of 1998 (NEMA) as amended, namely the National Environmental Consultative and Advisory (NECA) Forum, to deal with the various issues arising from the appeals lodged against certain decisions that were taken by the NAQO in relation to the NEMAQA Listed Activities or Section 21 MES. The purpose of the consultative forum is to deal with the various issues arising from these appeals and to allow appellants, stakeholders and other I&APs an opportunity to make representations and comments on issues pertaining to compliance and/or non-compliance with MES and the decisions of the NAQO with regard thereto. The role of the Forum is to, inter alia, understand and consider the legal, environmental, societal and economic implications of granting or refusing the appeal, in the light of all the information before it. This implies that the Forum needed to give due consideration, not only to the submissions of the appellant which formed the basis of its

appeal, but also to those submitted by any interested and affected parties.

1.16. On 12 August 2023, I referred this appeal to the NECA Forum in terms of Regulation 6 of the National Appeal Regulations, 2014, to provide me with their recommendations on the technical and legal aspects arising in relation thereto.

1.17. On 19 February 2024, the NECA Forum submitted their report in respect of this appeal, setting out the issues and concerns raised, the forum's findings in respect of the issues, and their recommendations. I have considered the findings of the NECA Forum in my deliberations on this appeal, and I refer extensively thereto.

1.18. I have structured this appeal decision as follows:

1.18.1. I will first set out a summary of the grounds of appeal submitted by the appellant, and the responses of the I&AP and the NAQO to each of these grounds of appeal.

1.18.2. I will thereafter set out the issues that I considered in my determination of this appeal:

- **Balancing factors per the relevant legislative framework**
- **Steps taken by Sasol to come into compliance with the MES**
- **Interpretation of paragraph 12 A of the Postponement or Suspension of Compliance Time-frame;**

1.18.3. I will thereafter set out my evaluation and assessment of each ground of appeal in turn.

1.18.4. I will finally provide my decision on this appeal.

2. GROUNDS OF APPEAL, RESPONSES AND COMMENTS

Ground 1: The Integrated Solution Is the Best Practical Environmental Option ("BPEO")

2.1. The appellant makes the following submissions in relation to the first ground of appeal:

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2.1.1. The best practicable environmental option (BPEO) is defined in NEMA as the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term (section 1 of NEMA).

2.1.2. The proposed integrated emission reduction solution is the BPEO for the following reasons:

2.1.2.1. The appellant plays a central role in the South African economy and finds itself in unique circumstances, requiring an integrated solution.

2.1.2.2. The integrated emission reduction solution has the capability to achieve the objectives of the NEMAQA and NEMA by enhancing air quality.

2.1.2.3. The BPEO is the standard that licensing authorities must apply in terms of section 39(c) of the NEMAQA when considering applications for Air Emission Licences (AEL).

2.1.2.4. The implementation of the integrated emission reduction solution depends on the appellant being regulated by an alternative emission load for SO_2 from the boilers at its steam plants instead of a concentration limit (the mass of pollutant emitted per cubic metre of air) as provided for in the special arrangement in respect of subcategory 1.1.(a) (iv) of the MES.

2.1.2.5. The NAQO did not give any, or any adequate consideration of the BPEO principle when considering the application.

2.1.3. The appellant relies on the following factors or issues to justify its abovementioned stance:

2.1.3.1. Subsections 5(1) and 5(2) of National Environmental Management: Air Quality Act (Act No. 39 of 2004) (NEMAQA) both call for a broader interpretation of paragraph 12A, that is in line with the principles of NEMA. As such, it (the appellant) requests that the NAQO consider that environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and must take into account the effects of decisions on all aspects of the environment and

all people in the environment by pursuing the selection of the BPEO (section 2(4) and section 2(4)(b) of NEMA sets out what is deemed to be the BPEO).

2.1.3.2. The BPEO standard must be applied in the consideration of AELs (section 39 (c) of the NEMAQA) as held in Earthlife Africa Johannesburg ("Earthlife Africa") v Minister of Environmental Affairs and others. In this case, Thabametsi Power Company (Pty) Ltd (Thabametsi), was granted authorisation to construct a coal fired power station set to operate until 2061. Earthlife Africa unsuccessfully appealed against the granting of the environmental authorisation and subsequently sought a review the decision that was taken to grant the authorisation and the appeal decision to uphold the granting of the EA.

2.1.3.3. The grounds of review relied on were that "there was material non-compliance with the mandatory preconditions of section 24O(1) of NEMA which requires the consideration of all relevant factors in reaching a decision on environmental authorisation, including the climate change impact of the proposed coal-fired station; that the absence of a climate change impact assessment rendered both the impugned decisions irrational and unreasonable; and that the Minister committed material errors of law in reaching her decision."

2.1.3.4. The court held that section 39(b) of NEMAQA provides that when considering an application for an AEL, the licensing authority must take into account, inter alia, the pollution being or likely to be caused by the carrying out of the listed activity and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions, cultural heritage and ambient air quality. Likewise, in terms of section 39(c) of NEMAQA, the licensing authority must take into account the BPEOs available to prevent, control, abate or mitigate that pollution and to protect the environment from harm as a result of that pollution. Section 1 of NEMAQA defines "pollution" as having the meaning assigned to it in section 1 of NEMA, which defines it to include any change in the environment caused by substances emitted from any activity where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such

an effect in the future.

2.1.3.5. Chapter 5 of the National Development Plan 2030 (NDP) expressly commits to ensuring environmental sustainability and an equitable transition to a low carbon economy and the NDP assists with finding the balance between the imperative to protect the environment and the imperative to protect social development and upliftment.

2.1.3.6. As such, its (the applicant's) application for an alternative limit seeks to achieve the balance of keeping the Secunda facility supporting the local economy, while at the same time reducing emissions and transitioning to a lower carbon company.

2.1.4. The report compiled by Infotox which evaluated the health risk associated with the appellant's requested alternative emission load limit (both the interim reduction of 4% from 1 April 2025 as well as the ultimate reduction of 30% from 1 April 2030 onwards), in comparison with the health risks associated with a scenario where the steam plants comply with the MES for SO_2 emissions. In this regard, the study indicated that all the emissions scenarios will result in lower concentrations of PM and SO_2 in the communities. Therefore, all the scenarios show the risk of illness and mortality being lowered.

2.2. The I&AP makes the following submissions in response to the first grounds of appeal:

2.2.1. The appellant has chosen the "BPEO" as the NEMA Principle which the Minister must have particular regard to but in doing so, a number of other principles are being ignored, such as "the precautionary principle", the "preventative principle" and the "polluter pays principle" which, if applied, Just Share states "would militate against granting the Appellant's proposed alternative load-based limit – when such application is properly represented and understood".

2.2.2. The appellant's claim that its "Integrated Solution Is The Best Practicable Environmental Option" is entirely spurious and far from bringing environmental benefits (SO_2 emissions reductions) that are comparable to compliance with the MES, its scheme would result in

more than double the emissions.

2.2.3. Alternative limits cannot be granted without timeframes, as such, paragraph 12A flows from paragraph 12, which specifically states that it is applicable to paragraphs 11A.

2.2.4. Any interpretation of paragraph 12A which permits the granting of applications that are not time constrained, not related to any postponement application and/ or govern periods beyond 31 March 2025, are unlawful.

2.2.5. Furthermore, the granting of such an application would clearly undermine the purpose of the 2018 amendments to the List of Activities, which was to put an end to "rolling postponements" and make clear that: all facilities had to comply with the 2020/new plants MES by 31 March 2025 (assuming they had obtained a postponement until that date); unless: they had met the requirements for and obtained a once-off suspension of compliance, in which event the facility could comply with 2015/existing plant MES until it was decommissioned by the date in its detailed decommissioning schedule (no later than 30 March 2030). Upholding such a request would effectively amount to granting exemptions from the MES, which are legally impermissible.

2.2.6. Any reading of paragraph 12A that allows for additional leniency, which extends beyond 31 March 2025 towards facilities that cannot comply with the MES would render paragraphs 11A and 11D superfluous. Even if the appellant's application was allowed in terms of paragraph 12A, Sasol still fails to meet the requirements of paragraph 12A as it is not in compliance with new plant limits nor its AEL limits for any of the other pollutants.

2.3. The NAQO makes the following submissions in response the first grounds of appeal:

2.3.1. The NEMA principles as set out in section 2 of the Act were taken into consideration in evaluating the application in terms of Paragraph 12A of the Section 21 Notice, and in interpreting Paragraph 12A itself. The NAQO considered all the said principles to guide the

interpretation, administration and implementation of Paragraph 12A of the Section 21 Notice. Of particular consideration was the principle that sustainable development requires the consideration of, inter alia, a risk-averse and cautious approach, which takes into account the limits of current knowledge about the consequences of decisions and actions.

2.3.2. While the appellant continues to provide strategic contributions to the economy, due consideration must also be given to the environmental impact of the operations.

2.3.3. Since the first postponement in 2015, consideration has not been given to the impact on the receiving environment in the here and now. For the NAQO to grant such indulgence would, in effect, enable a deviation from compliance timeframes into perpetuity.

2.3.4. Section 39 in full provides that: "When considering an application for an atmospheric emission licence, the licensing authority must take into account all relevant matters, including-

2.3.4.1. Any applicable minimum standards set for ambient air and point source emissions that have been determined in terms of this Act;

2.3.4.2. The pollution being or likely to be caused by the carrying out of the listed activity applied for and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions, cultural heritage and ambient air quality;

2.3.4.3. The best practicable environmental options available that could be taken- (i) to prevent, control, abate or mitigate that pollution; and (ii) to protect the environment, including health, social conditions, economic conditions, cultural heritage and ambient air quality, from harm as a result of that pollution;

2.3.4.4. Section 24 of the National Environmental Management Act and any applicable environmental impact assessment done, the decision taken on the application of the environmental authorisation, and any applicable notice issued or regulation made pursuant to that section.

2.3.5. The licencing authority must take into consideration all relevant matters including all the requirements contained in section 39 of the NEMAQA. All of the said provisions must be given the same weight in considering an AEL application, and no one factor can been given more gravitas than another. The NAQO took into consideration all relevant matters and all the provisions under section 39, in making a decision on the postponement application.

2.3.6. The decision was based on the fact that the appellant failed to fulfil the requirements of 12A of the Section 21 Notice of the AQA as stated in the NAQO's decision and as per the reasons provided in the decision.

2.3.7. While the appellant continues to present the facility's strategic contributions to the economy, due consideration must also be afforded to the environmental impact of the operations.

2.3.8. The appellant is further prioritising GHG reduction measures over compliance with MES. The applicant applied for a SO_2 postponement long before 2021. The SO_2 emission reduction solution should have been implemented long before 2020.

2.3.9. The appellant assumes the baseline emission of 526 t/d, but in Annexure N, this value is presented as 95% percentile. The appellant acknowledges that the plant will not be operating at this level for 95% of the time. It is incorrect to use a ceiling value as a baseline. This means the 4% and the 30% emission reduction are superficial because the baseline is incorrect.

2.3.10. Turning down two boilers will not necessarily reduce PM and NOx emissions. The PM and NOx emissions are not directly affected by the reduction in coal use. The emissions of these pollutants are mainly controlled by the abatement equipment. If the efficiency of the abatement equipment is compromised, the emissions will definitely increase.

2.3.11. The Infotox health study on the evaluation of health risk associated with alternative emission load limit is acknowledged. It should however be noted that causality associations in air

pollution is very complex and is dependent on a number of factors. The health endpoints are primarily based on meeting the causality criteria, which might be a bit tricky especially in the type of approach Infotox used.

Ground 2: The Requirements of Paragraph 12A (a) Were Met

2.4. The appellant makes the following submissions in respect of the second ground of appeal:

2.4.1. The NAQO found that the application did not meet the requirements of paragraph 12A(a). The NAQO, in applying the requirements of paragraph 12A(a), stated that because the appellant does not currently comply with the new plant standards specified in the MES for PM and NOx at the boiler plants, it (the appellant) does not meet the requirement of paragraph 12A(a) to be in "compliance with other emission standards". The NAQO added that this was because the plants were operating in terms of a postponement for compliance with the new plant emission standards for PM and NOx.

2.4.2. The NAQO misconstrued the intention and purpose of paragraph 12A, as she does not take into account that the fundamental principles underlying the MES is to enable effective solutions to improve ambient air quality. It (the appellant) demonstrated, in Annexure N, that it will be able to meet new plant standards for PM and NOx by 1 April 2025, which is the date from which the load-based limit for SO_2 is sought.

2.4.3. Further it (the appellant) is operating lawfully by meeting the PM and NOx postponement standards which have been incorporated into its AEL and it is on track to meet the existing plant emission standards by the time the postponement expires. The test in paragraph 12A(a) is not whether an applicant meets "other emission standards" on the date of the application, but rather whether it will do so on the date from which it seeks the dispensation for the pollutant for which it cannot meet the new plant standard.

2.4.4. The NAQO makes an error, in that the purpose of Clause 12A is to enable a party for an

alternative standard from the point at which that party cannot meet the new plant standards for one of its pollutants, in Sasol's case 1 April 2025. The NAQO considered incorrectly that a party cannot apply for the paragraph 12A dispensation if it is to extend beyond 31 March 2025.

2.4.5. It (the appellant) is operating the boilers at its steam plants in accordance with its AEL and the emission limits specified therein until 31 March 2025, and therefore, on the date of the application, it was, and it still is, complying with the "other emission standards" referred to in clause 12A(a) of the Section 21 Notice.

2.4.6. The NAQO in its contention that the appellant did not meet the requirements in Clause 12A(a), adopted an interpretation that with respect, has the effect of undermining the very objective of Clause 12A and the measures provided for in the MES to allow an alternative limit.

2.4.7 Its application meets the requirements of paragraph 12A(a) as it complies with other emission standards as set out in section 51(3) of the NEMAQA, which is that the facility should not exceed the emission limits set out in its AEL.

2.5. In response to this ground of appeal, the I&AP provides the following comments:

2.5.1. No applications that will result in MES non-compliance beyond 31 March 2025 are legally permissible. Any reading of paragraph 12A that allows for additional leniency that extends beyond 31 March 2025 towards facilities that cannot comply with the MES would render paragraphs 11A and 11D superfluous. Even if the appellant's application was allowed in terms of paragraph 12A, Sasol still fails to meet the requirements of paragraph 12A as it is not in compliance with new plant limits nor its AEL limits for any of the other pollutants.

2.5.2. The appellant's claim that it is 98% compliant with the AEL limits for the three pollutants is questionable. However, as the NAQO points out, paragraph 12A(a) refers to "other

emissions standards" and not the current AEL limits. Both PM and NOx emissions would clearly be non-compliant with their respective 2020 MES standards.

2.6. The NAQO comments as follows:

2.6.1. Paragraph 12A(a) is presented in the present tense, therefore future compliance may not be used as evidence for any decision. On the appellant's own history and performance, its commitments to meet the 2020 MES made in 2015 are being reneged upon. The appellant is currently not in compliance with the MES by virtue of operating under a postponement and there is no guarantee that it will be in compliance with the MES for the affected pollutants at the end of the postponement period. As such, the paragraph 12A requirement for compliance with other emissions standards cannot be met.

2.6.2. The appellant's application was rejected on the basis of its failure to fulfil the paragraph 12A requirements.

Ground 3: Paragraph 12A is not Confined to 31 March 2025

2.7. The appellant submits as follows:

2.7.1. The NAQO argues that paragraph 12A only allows for the granting of alternative limits or loads which are to apply up until 31 March 2025. The NAQO also argues that the appellant, through its application, was seeking to extend the postponement already granted to it.

2.7.2. The NAQO specifically states: "It is noted from Sasol Secunda's letter dated 6 April 2023 that the load-based emission limit is required only from 1 April 2025 when the current postponement for sulphur dioxide lapses. In this regard, be advised that it is the department's view that to consider any deviation from the MES, including by an alternative emission limit, after the 31 March 2025 compliance deadline, would be contrary to the purpose of the

Section 21 Notice and the empowering legislation. To grant such indulgence would, in effect, enable a deviation from compliance timeframes into perpetuity."

2.7.3. Paragraph 12A regulates alternative limits or emission loads whereas paragraphs 11A and 11B regulate postponements. If they didn't serve different functions/purposes, there would be no need to introduce paragraph 12A as part of an amendment to the MES.

2.7.4. Paragraph 12A can only be interpreted to accommodate situations at any time, before or after 31 March 2025, where the holder of an AEL may require dispensation from a pollutant MES standard in circumstances where it is able to comply with the standards for other pollutants it emits; the alternative being that it would have to shut the process down.

2.7.5. There is no time limitation specified under Paragraph 12A, and there is no link between paragraph 11A and paragraph 12A applications under the MES. This view is supported by the 2017 National Framework for Air Quality Management in the Republic of South Africa, where it distinguishes between applications for once-off postponements limited to 31 March 2025, and applications for alternative emission limits or loads, for which no time limitation is indicated.

2.8. In response to this ground of appeal, the I&AP states that:

2.8.1. It agrees with the NAQO that no applications in terms of paragraph 12A are permissible beyond 31 March 2025. In fact, no applications for non-compliance with the MES post 31 March 2025 are permissible in terms of any provision in the List of Activities.

2.9. The NAQO comments on this ground of appeal as follows:

2.9.1. No applications in terms of paragraph 12A are permissible beyond 31 March 2025. Furthermore the NAQO is not empowered to grant an application for an alternative limit where a once-off postponement has already been granted. The use of the word "once-off" in

paragraph (11A) of the Section 21 Notice envisages an applicant only being granted an indulgence of this sort once. Indeed, to permit such indulgence in perpetuity would defeat the objective of NEMAQA.

Ground 4: The Requirements of Paragraph 12A (b) were met

2.10. The appellant submits that:

2.10.1. It demonstrated previous reduction measures and direct investments implemented towards compliance.

2.10.2. To date, it has spent R246 million (2023 present value) and dedicated almost 200 human resources on measures towards enabling compliance with the new plant standard for SO_2 emissions from the boilers.

2.10.3. It also conducted numerous technical studies over a period of 17 years, with the primary objective of enabling the reduction of SO_2 emissions from its pulverised coal fired boilers. This was and remains part of an overall objective to improve its SO_2 footprint.

2.10.4. In addition to the above measures, it spent over R5 billion (2023 present value) on direct investments, including its phase one offsetting implementation program aimed at reducing SO_2 and PM in the ambient air and receiving environment. This is a condition of the postponement decision that relates to SO_2 emissions from the steam plants.

2.10.5. It (the appellant) has also spent in the order of R11 billion on the different elements of energy efficiency improvement. The reduction in SO_2 emissions is clearly seen from 2016, with the exception of 2020, which is considered an outlier due to COVID-19, and is aligned with improved energy efficiency reporting for the Secunda facility.

2.10.6. The Secunda Operation has installed gas-fired turbines (2011) at its facility, resulting in an additional reduction of approximately 13 000 tonnes of SO_2 emissions in the airshed. The appellant's rolling capital plan includes approximately R1.2 billion which allows the appellant to redirect bio sludge water from its incinerators to be reused in its processes. This will result in the decommissioning of the facility's bio sludge incinerators and in a reduction of 40 to 70 tonnes of SO_2 per year from early 2025 onwards.

2.10.7. This proves that they demonstrated a reduction in SO_2 emissions at the facility through direct investments, both at the boiler plants and within the rest of the facility.

2.10.8. Paragraph 12A(b) must have a broader interpretation to mean that it applies to the reduction in SO_2 emissions from the entire facility and not only at the steam plants alone. In this regard, the NAQO was required to ask whether there has been a reduction in emission at the facility.

2.10.9. If there was such a reduction, which the appellant submits there was, then paragraph 12A(b) has been complied with and the NAQO was wrong in finding that it had not been.

2.10.10. The focus must be on whether there was a previous reduction in SO_2 in ambient air from the facility as opposed to a particular plant which, it submits, gives better effect to the objectives of the AQA.

2.11. In response to this ground of appeal, the I&AP states as follows:

2.11.1. The Appellant has not demonstrated that it has made any direct investments in implementing SO_2 abatement measures. At best it has spent some capital on studies into various options without implementing any.

2.11.2. Provision 12A(b) requires direct investments of this nature, and this requirement has not been met by the appellant.

2.12. The NAQO comments on this ground of appeal as follows:

2.12.1. The appellant did not provide any direct measures that were implemented at the steam plant. It should be noted that direct investment relates to investment effected at the affected plant to bring it into compliance with the MES.

Ground 5: The Requirements of Paragraph12A(c) were met

2.13. The appellant makes the following submissions under this ground of appeal:

2.13.1. The NAQO gave the following as a further reason for refusing the application:
"Paragraph (12A)(c)(i) of the Section 21 Notice states that for a favourable decision in terms of paragraph (12A) to be taken there must be material compliance for sulphur dioxide with the national ambient air quality standards in the affected ambient atmosphere. As you are aware, Sasol Secunda operations are located within the Highveld Priority Area, an area wherein the national ambient air quality standards for sulphur dioxide and particulate matter are frequently exceeded. Accordingly, there is no material compliance with the national ambient air quality standards in Secunda and for this reason alone, Sasol Secunda's application is refused".

2.13.2. It (the appellant) disagrees with the above reasoning and it states that while its Secunda facility is located in the Highveld Priority Area (HPA), the Department's 2022 State of the Air Report confirms that there is material compliance for SO_2 with the national ambient air quality standard not only within the HPA but across the country and that there is material compliance in both the local area and the HPA, for the pollutant for which the application was made.

2.14. The I&AP provides the following response to this ground of appeal:

2.14.1. No applications that will result in MES non-compliance beyond 31 March 2025 are legally permissible. In addition, non-compliance with National Ambient Air Quality Standards

(NAAQS) is a justifiable ground for withdrawing a postponement.

2.14.2. Even if the applicant's averment is correct that there is material compliance with SO_2 Ambient Air Quality Standards (AAQS) in the HPA, there is a substantial body of data showing non-compliance with ambient PM standards. This is relevant because SO_2 is a significant contributor to secondary PM2.5 ambient concentrations.

2.15. The NAQO comments as follows on this ground of appeal:

2.15.1. The reference to the DFFE 2022 State of the Air Report, which indicates SO_2 compliance across various regions is noted. However, it is crucial to emphasize that the main concern, particularly in the Highveld Priority Area (HPA) and other areas, lies in particulate matter pollution (PM2.5 and PM10), which poses significant health and environmental risks. This is acknowledged by the appellant. Scientific evidence shows that SO_2 emissions contribute substantially to the formation of sulphate aerosols, exacerbating the PM2.5 problem. There is therefore a need for a comprehensive approach to address both SO_2 emissions and their contribution to particulate matter pollution.

Ground 6: A Load-based Limit is permitted

2.16. The appellant submits as follows:

2.16.1. The NAQO argues that a load-based limit, whilst included as an option in the MES, does not conform with the concentration-based limits prescribed in the MES, and can accordingly not be considered.

2.16.2. It (the appellant) strongly disagrees with the NAQO's claim and, in its view, paragraph 12A permits a load-based limit as it has been provided for as an alternative to the prescribed concentration-based limits in the MES, where the circumstances justify it. The drafters would not have included it in the MES if there was no intention for it be selected as an alternative.

It should further be noted that the load-based limit is a plant standard as well.

2.17. The I&AP responds that whilst it is so that paragraph 12A refers to an alternative emission load, and that a concentration-based limit could also be expressed as a load-based limit, the appellant's alternative emission load is not correlated with the MES limit. Its alternative emission load will result in double the SO_2 emissions that compliance with the prescribed concentration based SO_2 MES limit would.

2.18. In response to this ground of appeal, the NAQO comments that she maintains all the conditions contained in the decision.

Ground 7 : Achieving MES Compliance With The Load Limit

2.19. The appellant submits as follows:

2.19.1. The NAQO failed to adequately distinguish between alternative emission limits under paragraph 12A, and once-off postponements under paragraph 11A, but concludes that granting an alternative limit would be tantamount to granting an indulgence into perpetuity. The only reasonable interpretation is that, in appropriate circumstances, a load-based limit may be granted repeatedly and both before and after 2025.

2.19.2. It should further be noted that its application does not seek an indulgence from compliance with the MES but rather that it provides motivation for the implementation of a solution that will likely achieve a MES concentration- based limit for SO_2.

2.19.3. In summary the application seeks to demonstrate, firstly, that the requested emission load of 365 t/d SO_2 to apply indefinitely from 01 April 2030 onwards, will result in similar or better (greater) improvement in ambient concentrations of SO_2 and, secondly, that significant improvements in PM and NOx emissions load (ranging between 5% and 19% for PM and 11% and 22% for NOx) will also be realised as a direct consequence of the implementation

of the integrated emission reduction solution.

2.20. The I&AP responds that:

2.20.1. It should be noted that paragraph 12A is part of and must be read together with the postponement requirements. It governs the emission limits that will apply during the postponement.

2.20.2. It (the I&AP) understands paragraph 11A to refer to the timeframe of the postponement (which cannot be longer than 31 March 2025), and paragraph 12A to refer to the emission limits that will be applied during this postponement period. Timeframes for the postponement and emission limits applicable during that timeframe cannot exist independently of one another.

2.20.3. It strongly disputes that a "solution" will "achieve at least the equivalent to, but probably better, than the MES concentrations limit for SO_2 for its steam plants. This approach will result in double the SO_2 emissions when compared with the MES. It will also not result in additional PM and NOx emissions reductions when compared with the MES.

2.21. The NAQO comments as follows:

2.21.1. Paragraph 12A of the section 21 Notice falls under the heading Postponement or suspension of compliance timeframes in the Notice. An application in terms of paragraph 12A is also a postponement application.

2.21.2. It (the appellant) assumes the baseline emission of 526 t/d, however in Annexure N to the appeal, this value is presented as 95% percentile. The appellant acknowledges that the plant will not be operating at this level for 95% of the time.

APPEAL AGAINST THE REFUSAL DECISION OF THE NATIONAL AIR QUALITY OFFICER ISSUED TO SASOL SOUTH AFRICA LTD, SECUNDA OPERATIONS.

3. EVALUATION (REASONS FOR DECISION)

3.1. I have been guided in my assessment of this appeal by the recommendations of the NECA Forum as contained in their "Report in Respect of Sasol South Africa Limited: Secunda Operations ("Sasol") Submitted to the Minister of Forestry, Fisheries and the Environment: Minister Barbara Creecy by the National Environmental Consultative and Advisory Forum" dated 19 February 2024 (the NECA Forum Report).

3.2. I have already set out in paragraph 1.15 above, the objective and purpose of the NECA Forum, and I will therefore not repeat same here.

3.3. In addition to the NECA Forum report, I have applied my mind to my legislative mandate and to balancing the wide range of socio-economic and ecological matters arising from this appeal.

Balancing Factors: Socio Economic and Ecological

3.4. I am cognisant that I must, in exercising my appeal powers, give effect to the purpose and purport of the applicable legislative framework, which includes, among other, the provisions of section 24 of the Constitution, the NEMA principles and the object and purpose of the NEMAQA. At the forefront of my consideration of this appeal is the need to balance the social, economic and environmental rights of everyone.[7] I am mindful of the complex socio-economic, ecological and health impacts that need to be balanced when considering the application to which this appeal relates. I therefore referred this appeal to the NECA Forum to advise me on all aspects of this appeal, including the legal and technical issues arising therein.

[7] Ibid, Para 11.81 Pages 79 to 81 of 84

3.5. In my consideration of this appeal, I paid heed to the submissions made by the NAQO and the I&AP regarding the potential negative health impacts associated with the appellant's non-compliance with the MES. This is an issue that I consider with the utmost seriousness. At the same time, I am aware that in the current economic climate, the country is plagued by high unemployment and poverty rates. It is not in dispute that the appellant provides strategic contributions to the country's economy.

3.6. On this aspect, I have had regard to the appellant's submission that "*Sasol's approach to reducing its emissions is challenged by socio-economic constraints stemming from high unemployment, poverty, extreme inequality and lacklustre economic growth and investment. As such, its integrated emission reduction solution is informed by the interests and needs of multiple stakeholders.*"[8]

3.7. This does not mean that I condone that the appellant continues operating under a postponement of the MES new plant standards or corresponding limit. I concur with the NECA Forum's recommendation that the appellant must ensure that it plays an integral role in improving ambient air quality and decarbonizing, in line with South Africa's commitments. In addition, I share the NAQO and I&AP's concern that the appellant has had many years within which to comply with the MES, which it has failed to do.

3.8. Like the NECA Forum, I also share the concern raised by the NAQO and the I&AP regarding the health risks associated with the occasional but very high exceedances of SO_2. To mitigate against the health risks, the NECA Forum has recommended the additional measure of an accompanying concentration limit of 1400mg/Nm3 for the appellant's SO_2 emissions, which is substantially below existing plant standards, but still a feasible target according to the appellant's own projections.

[8] Ibid, Para 5.3.11, Page 21 of 84

3.9. In its conclusion to its report the NECA Forum records that *"[i]n its application and the documentation relating to this appeal, Sasol has sought to motivate for load-based alternative limits as part of an 'integrated solution' to reduce local air pollutants and greenhouse gases.*

Sasol submits that its integrated solution will result in a long-term gain in the form of significantly reduced SO_2 emissions as well as reductions in respect of NOx, PM and greenhouse gas emissions. As its implementation gains traction, and from 1 April 2030 onwards, it can comply with a load-based limit of 365 t/d. According to Sasol, this will equate to a 30% reduction in the load of SO_2 emissions which, in the Forum's view is a positive outcome, appearing to align with the level of emission reduction efforts required under the MES new plant standards, which Sasol must be held to comply with.

In the interim, from 2025 to 2030, Sasol is only able to slightly reduce its total SO_2 emissions, by about 4%. Whilst this level is slightly below load limits corresponding with existing plant standards, it significantly exceeds load limits corresponding with new plant standards."

3.10. I have taken heed of the Forum's recommendation that while it has interrogated the appellant's *"projected benefits and accepts the calculations as correct, the Forum retains doubts regarding Sasol's ability to achieve the said benefits in the timeframes given. For this reason, a condition of Sasol's indulgence should be that it timeously implements its integrated solution to achieve the emission reduction outcomes that correspond with the MES."*

3.11. It is important that I record that in balancing these socio-economic, ecological and health impact considerations (which do not represent an exhaustive list), I have not lost sight of the need to ensure that the outcome of this matter is for the benefit of present and future generations.

Steps taken by Sasol to come into compliance with the MES

3.12. I re-iterate that I do not condone that the appellant continues operating under a

postponement of the MES new plant standards or corresponding limit, particularly as the appellant has had many years within which to comply with the MES, which it has failed to do. Notwithstanding the strategic role that the appellant plays within the country's economy, it also plays an integral role in relation to the environment. I therefore deem it relevant to this appeal, to consider the steps that the appellant has taken towards meeting its emission obligations. This is recorded in the NECA Forum report as follows:[9]

"5.3.12. In its appeal submission, Sasol emphasised that since the MES were developed, it has been supportive of the objectives of the NEMAQA and the need to improve air quality. It states that it has invested heavily at its facility to reduce emissions and asserts that the proposed integrated emission reduction solution will, by 2030, allow it to meet the objective of a concentration-based limit, as set out in the MES. Sasol notes the following in this regard:

5.3.12.1. Sasol has commenced with several projects at its Secunda, The Sasolburg and Natref facilities, which were implemented to comply with the MES.

5.3.12.2. It has spent more than R7 billion over the last 5 years on emission reduction projects and, as such, has already achieved MES compliance with 98% of its emission sources at these operations.

5.3.12.3. By 2025, it will have spent a further R4 billion and will be compliant with new plant standards for all sources, except for SO_2 emissions from the boilers at the steam plants at the facility, which it intends addressing through the integrated emission reduction solution.

5.3.12.4. It is committed to achieving the objectives of the NEMAQA and to contributing to South Africa meeting its national GHG reduction target.

5.3.13. In 2021, Sasol confirmed that it would not be able, through coal beneficiation, to meet the concentration-based emission limit of 1000mg/Nm^3 for SO_2 by April 2025. Coal beneficiation was also identified by Sasol as being an unviable compliance solution on the basis of its significant negative cross-media environmental impacts.

5.3.14. Sasol has committed to reducing its dependence on coal as part of its decarbonisation journey.

[9] Ibid, paragraphs 5.3.12 to 5.3.19, Pages 21 to 24 of 84

Integrated Emission Reduction Solution

5.3.15. Sasol argues that due to the size and complexity of the facility, emission reduction requires a holistic and progressive approach that is sustainable and will have positive environmental and socio-economic results. It notes in its AEL, how complex its operations are, "which records 14 activities undertaken at the facility, from 34 processes, from 136-unit processes and 249-point sources." Sasol argues that this is why its solution should be an "integrated one."

5.3.16. Sasol's Integrated Emission Reduction Solution comprises of varying aspects including but not limited to:

5.3.16.1. ***a reduced SO_2 load and corresponding limit:*** *"the implementation of the integrated reduction solution depends on Sasol being regulated on an alternative emission load for SO_2, instead of the concentration limit provided for in the special arrangement to Subcategory 1.1. (a) (iv) of the MES. The NAQO previously granted Sasol a postponement from compliance with the new plant standard for SO_2 until 31 March 2025. Therefore, the application for an alternative emission load for SO_2 emissions from the boilers at the steam plants is to govern such emissions from April 2025 onwards only. Two limits have been requested. This approach will yield double the reduction in the load of SO_2 emitted (30%) and achieve an effective reduction of SO_2 on the ambient concentration which is similar to (within the localised airshed) and even greater (away from the localised airshed) than what would be achieved through compliance with the concentration limit equivalent load in the MES."*

5.3.16.2. ***turning down the boilers****: "The integrated emission reduction involves the turning down, through boiler capacity-reduction, including reduced coal use, of boilers. This will result not only in the reduction of SO_2 emissions, but also in a positive impact on the reduction of GHGs and other pollutants emitted from the boilers."*

5.3.16.3. ***alternative clean energy development****: "The facility will still require electricity and other energy to continue to operate and produce products. Consequently, to turn down the boilers, Sasol has identified alternative energy sources. These include, amongst others, bringing in renewable energy, energy efficiency projects and the introduction of incremental volumes of additional natural gas."*

*5.3.16.4. **GHG reduction**: "Sasol 's main sources of GHG emissions are gasification and utility production in the form of electricity and steam. Consequently, Sasol has in its proposal defined a clear roadmap and goal to reduce our scope 1 and 2 GHG emissions by 30% by 2030 and, in doing so, contribute to South Africa achieving its NOC. The 30% reduction is in line with the ~27% proportional requirement estimated for Sasol. Consequently, work by the Presidential Climate Commission reflects that with Sasol's GHG reduction target, South Africa would be able to achieve the lower end of the NOC, a key requirement for further financial support for low-carbon endeavours into the future."*

5.3.17. Sasol notes that the implementation of the Integrated Emission Reduction Solution will also enable reductions in PM (PM, PM2.5 and PM10) emissions of between 5% and 19% and reductions in NOx emissions of between 11% and 22%.

5.3.18. In addition to the above, Sasol has emphasised the following challenges or potential challenges it faces, in its appeal:

5.3.18.1. That the MES is regulated on a concentration and not a load basis. Being regulated on a load basis will enable SO2 emissions from the boilers to be reduced by over 130 tons per day, resulting in a 30% emission load reduction by 2030.

5.3.18.2. The integrated emission reduction solution will only be able to be implemented in 2030.

5.3.18.3. Sasol's approach to reducing its emissions is challenged by socio-economic constraints stemming from high unemployment, poverty, extreme inequality and lacklustre economic growth and investment. As such, its integrated emission reduction solution is informed by the interests and needs of multiple stakeholders.

5.3.18.4. Sasol noted that the disadvantages from the use of coal beneficiation far outweighed the benefits.

5.3.19. Lastly, Sasol submits that, as can be seen from its application, its integrated emission reduction solution enjoys support from the community."

Interpretation of paragraph 12 A of the Postponement or Suspension of Compliance Timeframe

APPEAL AGAINST THE REFUSAL DECISION OF THE NATIONAL AIR QUALITY OFFICER ISSUED TO SASOL SOUTH AFRICA LTD, SECUNDA OPERATIONS.

3.13. At the core of this appeal, is the interpretation of the provisions relating to the Postponement or Suspension of Compliance Timeframe as set out in the Listed Activities (also referred to as the Section 21 Notice). The issues arising for determination are as follows:

3.13.1. Whether applications in terms of paragraph 12A are permissible beyond 31 March 2025 (cut-off date).

3.13.2. Whether the phrase "*once-off*" in paragraph (11A) of the Section 21 Notice envisages that an applicant only be granted an indulgence of this sort once, such that the applicant is precluded from a further application under paragraph 12 of the Section 21 Notice.

3.13.3. Whether "*direct investments*" in paragraph 12A(b) of the Notice refers only investment effected at the affected plant to bring it into compliance with the MES.

3.14. I therefore deem it appropriate to begin with recording the provisions of these paragraphs, followed by the interpretation thereof.

3.15. The provisions relating to the Postponement or Suspension of Compliance Timeframe are as follows:

"Postponement or Suspension of Compliance Timeframe:
(11) As contemplated in paragraph 5.4.3.5 of the National Framework for Air Quality Management in the Republic of South Africa, published in terms of section 7 of this Act, an application may be made to the National Air Quality Officer for the postponement of the compliance timeframes in paragraphs 9 and 10 for an existing plant.
(11A) an existing plant may apply to the National Air Quality Officer for a once off postponement with the compliance timeframe for minimum emission standards for new plants as contemplated in paragraph 10. A once off postponement with the compliance timeframes for new plant may not exceed a period of five years from the date of issue. No once-off postponement with the compliance timeframe with minimum emission standards for new plant will be valid beyond 31 March 2025.

(11B) an existing plant to be decommissioned by 31 March 2030 may apply to the National Air Quality Officer before 31 March 2019 for a once-off suspension of compliance timeframes with minimum emission standards for new plant. Such an application must be accompanied by a detailed decommissioning schedule no such application shall be accepted by the national equality officer after 31 March 2019.

(11C) an existing plant that has been granted a once-off suspension of the compliance timeframes is completed in paragraph (11B) must comply with minimum emissions standards for existing plant from the date of granting of the application and during the period of suspension until decommissioning.

(11D) no postponement of compliance timeframes or suspension of compliance timeframes shall be granted for compliance with minimum emission standards for existing plant.

(12) the application contemplated in paragraph (11A) and (11B) must include

(a) An Air Pollution Impact Assessment compiled in accordance with the regulations prescribing the format of an Atmospheric Impact Report (as contemplated in section 30 of the Act) by a person registered as a professional engineer or as a professional natural scientist in the appropriate category;

(b) a detailed justification and reasons for the application;

(c) included public participation process undertaken as specified in the national environmental management act and the environmental impact assessment regulations made under section 24(5) of the aforementioned Act.

(12A)(a) an existing plant may submit an application regarding a new plant standard to the National Air Quality Officer for consideration if the plant is in compliance with other emissions standards but cannot comply with a particular pollutant or pollutants.

(b) an application must demonstrate previous reduction in emissions of the said pollutant pollutants, measure direct investments implemented towards compliance with the relevant new plant standards.

(c) The National Air Quality Officer, after consultation with the Licencing Authority, may grant an alternative emission limit or emission load if.

(i) there is material compliance with the national ambient air quality standards in the area for pollutants or pollutants applied for; or

(ii) the atmospheric impact report does not show a material increased health risk with there is no ambient air quality standard.

3.16. I have accepted the NECA Forum's recommendation on the interpretation and application of paragraph 12A of the Listed Activities. I take note that the NECA Forum sought a legal opinion on this issue from Mr Halton Cheadle, an Emeritus Professor of Public Law at the University of Cape Town and an attorney with over 40 years' experience in areas including labour law, constitutional law and administrative law. Professor Cheadle also has extensive experience in legislative drafting and participated in the drafting of the Bill of Rights in the Constitution and several other statutes in South Africa and other jurisdictions.

3.17. Professor Cheadle's opinion, which I have accepted as correct, is as follows:

Proper approach to statutory interpretation

3.17.1. The correct approach to the interpretation of statutes is to be found in the principles expounded in *Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) at paragraph [18]*

"The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the

document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation"

Text, context and purpose

3.17.2. The text of paragraphs 11 to 14 of the Listed Activities contemplate two kinds of application for the temporary suspension of minimum emission standards, namely an application for postponement of the compliance time frame and an application for alternative emission standard if the plant is in compliance with other emission standards but cannot comply with a particular pollutant.

3.17.3. The applications are quite different although they may both provide for the temporary suspension of minimum emission standards. The differences are:

3.17.3.1. The nature of the application for a postponement under paragraph 11A is an application for suspension of one or all of the new plant emission standards applicable to an existing plant during the period of the postponement. Whereas the application for an alternative emission limit under paragraph 12A is in respect of an emission for a particular pollutant in the context of the emitter complying with the other applicable emission standards.

3.17.3.2. The text of paragraph 11A (the application for postponement) expressly states restricts postponements in three ways: it is once-off; it is restricted to a maximum period of 5 years and that no postponement may extend beyond 31 March 2025.

3.17.3.3. The text of paragraph 12A (the application for an alternative emission limit) does not include any of the restrictions contained in paragraph 11A either expressly or by reference.

3.17.3.4. The requirements for the application or grant of a postponement under paragraphs 12 and 13 are quite different from those required for an alternative

emission limit under paragraph 12A.

3.17.3.5. A postponement application under paragraph 12 requires an air pollution impact assessment, a detailed justification for the application and a public participation process, whereas the requirements for an alternative emission limit in terms of paragraph 12A are: the plant must be in compliance with the other emission standards; proof of a reduction in the emissions of the particular pollutant including proof of measures and investments towards compliance; and material compliance with the national ambient air quality standards for the pollutant or, in the absence of such a standard, an Atmospheric Impact Report that does not show a material increased health risk.

3.17.3.6. Paragraphs 11 to 14 of the Listed Activities, other than 12A, are interlocking. Paragraph 12, which sets out the requirements for a postponement application, expressly cross refers to the applications made for postponement in paragraphs 11A and 11B. Paragraph 11D, which permits only postponements in respect of new plant minimum emission standards, refers only to applications for postponement. Paragraph 13, which sets out the approval process, again cross refers to paragraphs 11A and 11B. And paragraph 14 refers back to paragraph 13.

3.17.3.7. Paragraph 12A however stands alone and includes within its terms both the application and the approval process for an alternative emission limit. It does not include any of the limitations expressly stated in paragraphs 11B of 11D.

3.17.4. Accordingly, on a purely textual analysis, other than constituting an additional mechanism to suspend the imposition of the new plant standards under paragraph 10, there is no textual basis for concluding that any of the limitations that apply to postponement applications apply to applications for an alternative emission limit or that an existing plant that has been granted a postponement under paragraph 13 cannot apply for an alternative emission limit in terms paragraph 12A.

3.17.5. It is evident from the statutory context summarised above that although the principal object of imposing minimum emission standards in respect of listed activities by 1 April 2020 under both the 2013 and 2018 Notices, both Notices provide for temporary relief for those existing plants that cannot meet the minimum emission standards in time. Accordingly, the postponement provisions and paragraph 12A have to be interpreted in the light of this purpose.

3.17.6. Nothing in that context or in the light of the purpose of the postponement provisions and paragraph 12A alters the textual interpretation above. The context and purpose however remain particularly important.

3.17.7. On its own wording, paragraph 12A does not specify any time frames for the granting of alternative limits and that would undermine the core purpose of AQA in securing compliance with its minimum emission standards. The courts have long held that "a power is to be implied to do that which is reasonably incidental to what has been expressly authorised" and that such an implication must be drawn if the main purpose of the statute or provision cannot be achieved without it. Although no express time limits have been specified in paragraph 12A, the paragraph cannot be interpreted to permit to the granting of alternative limits in perpetuity. It must be interpreted in the light of the fact that a principal object of AQA is to secure compliance of existing plant in listed activities with the minimum emission standards within the specified time frames.

3.17.8. Accordingly, any grant of an alternative limit by the NAQO must by its very nature be temporary and the period of the grant must be determined by the circumstances of the applicant in particular the extent of the previous reduction in emissions and "*the measures and direct investments implemented towards compliance with the relevant new plant standards*".

3.18. Professor Cheadle concludes that:

3.18.1. "Neither the *once off* limitation nor the *cut off of 31 March 2025* in paragraph 11A apply to paragraph 12A of the Section 21 Notice. Accordingly, nothing in the current wording of paragraph 12A prevents an existing plant from applying for an alternative emission limit after the expiry of the postponement period (31 March 2025).

3.18.2. Since no time limit is expressly or impliedly contained in paragraph 12A, an emitter may apply for an alternative limit beyond 31 March 2025.

3.18.3. The only manner in which such limit may be imposed in respect of 12A is by way of an amendment of the 2013 Notice.

3.18.4. Since paragraph 11D refers specifically to postponement of compliance time frames and not to the grant of alternative emission limits, the restriction to existing plant standard in that paragraph does not apply to the matter at hand.

3.18.5. The text of 12A states that the application is one "regarding a new plant standard" In the context of the national air quality officer granting an "alternative emission limit" which means that it is in respect of that standard and not the minimum emission standards for existing plant standard. Accordingly, paragraph 12A can only authorise a limit that is equal to or above the minimum emission standards for existing plant referred to in paragraph 9.

3.18.6. Although paragraph 12A does not expressly give the NAQO the power to grant the alternative limit on conditions (unlike paragraph 13 which does), it confers a discretion on whether to grant or not grant the alternative limit. Given that the discretion must be exercised in accordance with the purpose of the provision, namely that it is temporary in nature and aimed at securing compliance within minimum emission standards in the shortest practicable time, the National Air Quality Officer may set terms related to time frames and measures to achieve the minimum emission standards within those time frames."

3.19. It is against this background that I now deal with each of the grounds of appeal in turn:

APPEAL AGAINST THE REFUSAL DECISION OF THE NATIONAL AIR QUALITY OFFICER ISSUED TO SASOL SOUTH AFRICA LTD, SECUNDA OPERATIONS.

First Ground of Appeal: The integrated solution is the BPEO

3.20. I note that the NAQO does not dispute the appellant's contention that an alternative emission load for SO_2 from the boilers at its steam plants instead of a concentration limit for its SO_2 emission will result in an integrated emission reduction.

3.21. The issue arising is whether the proposed alternate load based assessment can be considered to be the BPEO, and if so, how much consideration or weight should be given thereto when deciding an application in terms of paragraph 12A.

3.22. In this regard, I have accepted the recommendation of the NECA Forum. I have taken note of Section 2(1) of NEMA which clearly stipulates that the principles captured in that section must be considered "alongside all other appropriate and relevant considerations...".

3.23. Further to this, subsection (4)(b) stipulates that environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the BPEO.

3.24. I have further considered section 39 of NEMAQA, which sets out a list of factors to be considered by the licensing authority and includes the BPEO to:

3.24.1. prevent, control, abate or mitigate the pollution in question; and

3.24.2. protect the environment from harm as a result of the pollution.

3.25. The factors set out in section 39 appear to apply narrowly to the licensing authority's consideration of an application for an atmospheric emission license (AEL). It should however be noted that is not the nature of the application to be considered by the NAQO. I further note that while the NECA Forum accepts that in the interpretation, application and implementation of 12A, the NAQO must be guided by the NEMA principles, the NAQO is

bound by and must apply the criteria of paragraph 12A. In the text of 12A itself, no mention is made of the BPEO principle.

3.26. Nevertheless, in my view, the NAQO could have and should have considered the BPEO principle in her evaluation of the appellants application. This does not mean that NAQO is to excuse any non-compliance with the specific requirements paragraph 12A, in favour of the BPEO principle. In other words, the consideration of the BPEO does not outweigh the requirements set out in paragraph 12A of the Listed Activities.

3.27. I have had regard to the various interactions between the NECA Forum, the I&AP and the appellant. I note that the appellant and the I&AP disagree on the aspect relating to coal beneficiation. On 17 January 2024, during the Forum's engagement with the experts for the parties, the Chairperson of the Forum requested that the appellant provide it (the Forum) with the information on which it (the appellant) bases its conclusion that coal beneficiation is not a feasible option. The appellant responded that by making the detailed documentation in relation to the feasibility of coal beneficiation available to the Forum, it would open the discussion to irrelevant considerations and that the assessment should be limited to the application that it had submitted to the NAQO. The NECA Forum was directed to certain information regarding its investigation of coal beneficiation but in the NECA Forum's view this was sparse and did not provide the type of detail and/or analysis to rebut some of the submissions made by the I&AP.

3.28. I note that in light of this refusal and/or failure to provide detailed information, the NECA Forum states that it is unclear whether the appellant's assertion that its integrated solution is the BPEO rests on the premise that coal beneficiation is not feasible or whether this assertion rests on other key components that, taken together, give rise to the proposition that its integrated solution is the BPEO.

3.29. I note that the NECA Forum accepted and agreed with the I&AP's submission that generally, coal beneficiation is a good option for a plant that seeks to achieve compliance with the SO_2

MES and that there are numerous benefits associated with it. It is noted further that in view of the insufficient information available to it, the NECA Forum concluded that it was not in a position to absolutely confirm the appellant's assertion that its integrated solution is the BPEO.

3.30. Notwithstanding the above, the NECA Forum concludes that it is satisfied that Sasol meets the requirements of a paragraph 12A application. I accept this recommendation of the NECA Forum, which is supported by the NECA's recommendations on the remaining grounds of appeal.

Second Ground: The Requirements of Paragraph 12A(a) Were Met

3.31. Paragraph 12A(a), read with regulation 5.4.3.4. of the 2017 Framework, provides that an existing facility may submit an application to the NAQO for an alternative emission limit in respect of a new plant standard, if the facility complies with other emission limits but cannot comply with the emission limit for a particular pollutant or pollutants.

3.32. Paragraph 12A(a) states in material terms as follows:

"An existing plant may submit an application regarding a new plant standard to the National Air Quality Officer if the plant is in compliance with other emission standards but cannot comply with a particular pollutant or pollutants."

3.33. The NECA Forum considered the manner in which paragraph 12A(a) should be interpreted, from both a textual and legal perspective. I have considered and I accept the NECA Forum's recommendation on this issue.

3.34. On the requirement of *"compliance with other emission standards"*, the NAQO asserts that the appellant "... is not in compliance with the new plant standards for NOx and PM as it is currently operating in terms of a postponement decision." On the other hand the appellant

asserts that "compliance" in paragraph 12A of the Listed Activities merely requires compliance with the provisions of its AEL.

3.35. The Forum sought advice from Professor Cheadle on this aspect of "compliance with other emission standards". Professor Cheadle advised that Paragraph 12A(a) states that *"an existing plant may submit an application regarding a new plant standard to the National Air Quality Officer if the plant is in compliance with other emission standards but cannot comply with a particular pollutant or pollutants*". In his view, the emission standards can only be those that apply to the existing plant at the time of application, namely those contained in the AEL as a result of the once-off postponement granted in terms of paragraph 11A. That is the standard that has to apply in assessing both compliance and non- compliance under this paragraph. In addition, if this paragraph requires compliance with the MES rather than the provisions of an applicant's AEL, the provision would have referred to the MES and not to "other emission standards", as has been done in paragraph 10 and elsewhere throughout the List of Activities.

3.36. In addition, the Forum holds the view that compliance with other emission standards constitutes a condition precedent for the granting of an application in terms of paragraph12A. Read properly, one can only obtain a favourable outcome in respect of a paragraph 12A application if it is in compliance with the emission standards for pollutants other than those to which the application relates.

3.37. Moreover, the Forum notes that the parties' submissions regarding whether or not the appellant will meet the new plant MES for PM and NOx by 2025, are not relevant for the consideration of this ground of appeal.

3.38. From the above, I conclude that the requirement of "*compliance with other emission standards*" in paragraph 12A(a) of the Listed Activities relates to compliance with the applicant's limits as prescribed in the applicant's AEL. I find that NAQO erred in her interpretation of paragraph 12A(a) of the Listed Activities and in concluding that the appellant

was not in compliance with the emission standards for pollutants other than the one forming the subject of its application. It therefore follows that the NAQO erred in finding that the appellant did not qualify for an indulgence in terms of paragraph12A at the time of submission of its application.

3.39. In light of the above, this ground of appeal is upheld.

Third Ground: Paragraph 12A is not confined to 31 March 2025

3.40. I considered, with the utmost seriousness, the NAQO's submission that to allow an application of this nature that goes beyond the 31 March 2025 cut off, would open the doors for paragraph 12A to be used as a mechanism "for perpetual postponements in terms of which emitters circumvent their obligations under NEMA and any other specific environmental management Act, by veiling their postponement applications as alternative emission limit applications."

3.41. However, I am persuaded by the NECA Forum's interpretation of Paragraph 12A, which is supported by Professor Cheadle, namely that none of the limitations in paragraph 11A apply to Paragraph 12A. I accept the NECA Forum's recommendation that paragraph 12A is a stand-alone paragraph, that is in not to be read in conjunction with paragraphs 11, 11A, 11B, 11C,11D, 12, 13 and 14 of the Listed Activities (Section 21 Notice). In other words, the limitations in paragraph 11A that a postponement can only be granted as a once-off indulgence and the 31 March 2025 deadline, do not extend to Paragraph 12A of the Section 21 Notice.

3.42. Therefore, nothing in the wording of paragraph 12A prevents an existing plant from applying for an alternative emission limit after being granted a postponement in terms of paragraph 11A and/or in respect of a period that extends beyond 31 March 2025.

3.43. Similarly, while Paragraph 11B provides that no once-off suspension of compliance timeframes will persist beyond 31 March 2030 for plants scheduled to be decommissioned by that date, Paragraph 12A makes no reference to any limitations.

3.44. This does not mean that an application in terms of Paragraph 12A is simply there for the taking. Paragraph 12A cannot be applied to grant indulgences in perpetuity. The provision is temporary in nature and its objective is to ensure progressive and increasing compliance with the MES. The NAQO would need to exercise her discretion in accordance with the principles of the NEMA and the NEMAQA, to bring emitters into compliance as soon as possible.

3.45. I am cognisant that the purpose of the Section 21 Notice is to bring all emitters into compliance with the MES and that generous time periods were afforded to emitters to make the investments required to comply with the applicable standards. There is however a clear difference between 11A and 12A in how they provide for the temporary suspension of MES in pursuit of the abovementioned goal.

3.46. Having satisfied myself that none of the limitations applicable to Paragraphs 11, 11A, 11B, 11C,11D, 12, 13 and 14 of the Section 21 Notice apply to applications in terms of Paragraph 12A, I am satisfied that nothing in Paragraph 12A precluded the appellant from applying, as it had done, for an alternate emission limit.

3.47. This ground of appeal is upheld.

Fourth Ground: The Requirements of Paragraph 12A(b) were met

3.47.1. The NAQO submits that the appellant did not provide any direct measures relating to investment that were implemented at the affected steam plant to bring it into compliance with the MES.

3.48. The issue arising is whether on a proper interpretation of paragraph 12A(b), "direct investment" must be at the plant for which an application was made. Paragraph 12A(a) speaks to an existing plant (i.e. the steam plant at the appellant's petrochemical facility) submitting an application for an alternative limit. Therefore, the application referred to in paragraph 12A(b) must demonstrate a reduction of the said pollutant and direct investment measures implemented towards compliance with new plant standards, relates to the plant or process applied for and not the facility as a whole.

3.49. I considered the I&AP's submission that "investment" must not only relate to studies and research. I am of the view that if the research and studies relate to the development and implementation of an optimal solution directed towards compliance with the new plant standards at a particular plant, then this investment can be considered to be a direct investment, as contemplated in paragraph 12A(b).

3.50. In addition to the more general investments described in its application, the appellant has provided me with information on appeal regarding its investment in energy efficiency projects at the steam plant. In its appeal, the appellant states that the energy efficiency projects "have resulted in SO_2 reductions at the steam plants within the facility." Section 43 of NEMA confers on me wide powers of appeal such that I may consider new information on appeal. I have accordingly considered this new information and I am satisfied that the appellant has met the requirements of paragraph 12A(b) of the Section 21 Notice.

3.51. This ground of appeal is upheld.

Fifth Ground: The Requirements of Paragraph 12A(c) were met

3.52. At the heart of this ground of appeal is the NAQO's reasoning that:
"Paragraph (12A)(c)(i) of the Section 21 Notice states that for a favourable decision in terms of paragraph (12A) to be taken there must be material compliance for sulphur dioxide with

the national ambient air quality standards in the affected ambient atmosphere. As you are aware, Sasol Secunda operations are located in the Highveld Priority Area, an area wherein the national ambient air quality standards for sulphur dioxide are frequently exceeded. Accordingly, there is no material compliance with the national ambient air quality standards in Secunda and for this reason alone, Sasol Secunda's application is refused."

3.53. I note that the NECA Forum appointed Dr Ramsay, who is an Air Quality Specialist and has a MPhil-PHD atmospheric sciences, political ecology, environmental health, as well as BSc (Hons) MSc Atmospheric Sciences and meteorology, to assess the emission data provided by the parties, and to request any additional data she may require from the South African Air Quality Information System, to ascertain whether the above standards are being met in the area in which proposed facility (Sasol Secunda) is located.

3.54. Dr Ramsay found as follows:

- *"compliance within the allowable number of exceedances at the hourly and daily average, as well as compliance of the annual average across the Secunda ambient air quality monitoring network (six stations) for the period 2018-2020..." and*
- *"There is compliance at the 10 minute interval wrt SO_2 at these three stations. There are exceedances of the NAAQS but compliance at P99 (as required by the regulation)". (sic)*

3.55. Paragraph 12A(c)(i) states that:

"the National Air Quality Officer, after consultation with the Licensing Authority, may grant an alternative emission limit or emission load if –
(a) there is material compliance with the national ambient air quality standards in the area for pollutant or pollutants applied for; or
(b) the Atmospheric Impact Report does not show a material increased health risk where there is no ambient air quality standard."(our emphasis).

3.56. I note the NAQO's concerns surrounding the PM2.5 exceedances in the area under consideration, and the resulting health impacts. However, in order for an applicant to meet the requirements of paragraph 12A(c)(i), they only need to show material compliance with the NAAQS in respect of the pollutant to which its application relates, in this case being SO_2.

3.57. In light of findings of Dr Ramsay, I am of the view that the NAQO's interpretation and application of paragraph 12A(c)(i) was incorrect.

3.58. This ground of appeal is accordingly upheld.

Sixth Ground: A Load-based Limit is Permitted

3.59. The crisp issue for determination under this ground of appeal is whether Paragraph 12A of the Section 21 Notice precludes a load based limit. In my view, the positions taken by the I&AP and the appellant on this issue are to a certain extent aligned. The I&AP comments that a concentration-based limit can be expressed as a load-based limit, but that the appellant's proposed load-based limit is not justified in this matter because the resultant emissions would be twice as high as those of the prescribed concentration-based SO_2 limit. The appellant states that a load-based limit can be permitted as an alternative to the prescribed concentration-based limits in the MES, where the circumstances justify it. In other words, the point of departure for the I&AP and the appellant is on the aspect of whether the appellant's proposed load based limit is justified. In contrast hereto, the NAQO submits that a load-based limit does not conform with the concentration-based limits prescribed in the MES, and can accordingly not be considered.

3.60. On this aspect, I am guided by the recommendation by the NECA Forum, and I note that Paragraph 12A(c) of the Section 21 Notice states:

"The National Air Quality Officer, after consultation with the Licensing Authority, may grant an alternative emission limit or emission load if..."

3.61. I therefore accept the appellant's assertion that a load-based limit is indeed permissible under paragraph 12A of the section 21 Notice. Nevertheless, the I&AP's concern regarding excessively high exceedances and the potential that a load- based limit may render the MES purposeless, are worth considering. On the information presented to me and on the recommendations of the NECA Forum, I am of the view that these concerns can be and should be mitigated through appropriate measures that ensure that the appellant continues to comply with existing plant standards and/or an equivalent load-based limit. In addition, any indulgence granted to the appellant in relation to non-compliance with new plant standards and/or an equivalent load-based limit will be of a temporary nature. As such, the alternative limit granted, while allowing for exceedances of the new plant standards, must clearly establish a limited duration and put in measures for compliance with the existing plant standards or equivalent load based limit.

3.62. This ground of appeal is therefore upheld.

Seventh Ground: Achieving MES Compliance with the Load Limit

3.63. In this ground of appeal, the appellant disputes the NAQO's conclusion that granting an alternative limit in the manner requested would be tantamount to granting an indulgence into perpetuity. The issues raised under this ground of appeal overlap with those raised under the appellant's third ground of appeal.

3.64. I concur with the recommendations of the NECA Forum as set out in paragraph 11.77 of the NECA Report, which are supported by the legal opinion from Professor Cheadle, inter alia, that:

- *"Neither the once off limitation nor the cut off of 31 March 2025 in paragraph 11A apply to paragraph 12A. Accordingly, nothing in the current wording of paragraph 12A*

prevents an existing plant from applying for an alternative emission limit after the expiry of the postponement period...

- *Although no express time limits have been specified in paragraph 12A, the paragraph cannot be interpreted to permit to the granting of alternative limits in perpetuity. It must be interpreted in the light of the fact that a principal object of AQA is to secure compliance of existing plant in listed activities with the minimum emission standards within the specified time frames. That like the applications for postponements of the compliance time frames, the purpose of applications for alternative limits (and probably why they are grouped together) is to give relief to existing plants that cannot meet their minimum emission standards.*
- *Accordingly, any grant an alternative limit by the national air quality officer must by its very nature be temporary and the period of the grant must be determined by the circumstances of the applicant in particular the extent of the previous reduction in emissions and "the measures and direct investments implemented towards compliance with the relevant new plant standards."*

3.65. I therefore find as follows:

3.65.1. Paragraph 12A is a stand-alone provision that is not tied to paragraph 11A; none of the limitations applicable to suspension and postponement applications apply to paragraph 12A and the appellant is entitled submit an application under Paragraph 12A even if it is currently operating under a postponement; and

3.65.2. Although Paragraph 12A of the Section 21 Notice does not impose a time frame within which to grant a right, the NAQO would need to exercise her discretion in accordance with the principles of NEMA and NEMAQA to bring emitters into compliance with the MES as soon as is reasonably possible. This is to ensure that the alternative limits are granted for a limited period within which to come into compliance with the MES and to ensure that the indulgence is not granted in perpetuity.

3.66. I accordingly uphold this ground of appeal.

4. DECISION

4.1. In reaching my decision on this appeal, I have also taken the following into consideration:

4.1.1. The information contained in project file MP/SS-GSDM/20220711;
4.1.2. The Grounds of Appeal submitted by the appellant 31 July 2023
4.1.3. The consolidated Appeal Response Report (ARR) with the grounds of appeal, responding statement and comments;
4.1.4. The I&APs Responding Statement submitted on 17 August 2023;
4.1.5. The NAQO's responding statement submitted on 1 February 2024 ;
4.1.6. The NECA Forum Report dated 19 February 2024;
4.1.7. The objectives and requirements of the relevant legislation, policies and guidelines; and
4.1.8. Relevant case law.

4.2. Having considered and evaluated each of the grounds of appeal in turn, I accept and concur with the recommendation of the NECA Forum that the appellant meets the requirements of a paragraph 12A application. In terms of section 43(6) of NEMA, I have the authority, after considering appeals, to confirm, set aside or vary the decision, or to make any other appropriate decision.

4.3. Having duly considered the abovementioned information, I have decided, in terms of section 43(6) of NEMA, to uphold the appellant's appeal and to set aside the NAQO's refusal decision of 11 July 2023. I replace the NAQO's refusal decision with the following decision:

4.3.1. The appellant is granted the requested load-based limit for SO_2, being 503 t/d from 1 April 2025 to 31 March 2030 subject to the further conditions set out below.

4.3.2. The appellant's SO_2 emissions must be in addition subject to a daily concentration limit which I will determine after the appellant has provided me with the relevant information to justify the limit that it (the appellant) deems appropriate.

4.3.3. The appellant is to furnish me with this written information, via the Acting Director: Appeals: Ms H van Schalkwyk, at Hvanschalkwyk@dffe.gov.za;[10] within 10 days of receipt of this appeal decision.

4.3.4. The Appeals Director must within 3 days of receipt of this information forward it (the information) to the I&AP (Just Share) and to the NAQO, for their consideration and comments. This is to afford the I&AP and the NAQO an opportunity to comment on the information provided.

4.3.5. The I&AP and the NAQO are to submit their written comments on the above information to the Appeal Director, at the email address provided above, within 10 days of receipt of the information.

4.3.6. The Appeal Director must within 3 days of receipt of the written comments from the I&AP and the NAQO, submit the information together with the comments thereon to the NECA Forum to be analysed and assessed by it (the NECA Forum) assisted by Dr Lisa Ramsay, as its technical expert, whereafter a recommendation can be made by the NECA Forum to me regarding the appropriate concentration limits to be imposed on the appellant in respect of its application.

4.3.7. The above decision is subject to the following conditions:

4.3.7.1. The load-based and concentration-based limits to be determined must be incorporated into the appellant's AEL;

4.3.7.2. The appellant's NOx and PM emissions must comply with new plant standards from, at least, 31 March 2025, failing which the alternative limits for SO_2 will be withdrawn;

4.3.7.3. The appellant must continue to implement its integrated solution and must achieve the reductions in emissions of all pollutants as undertaken in its

[10] Please copy in: nnombewu@dffe.gov.za; and fpatel@dffe.gov.za.

application and appeal; and

4.3.7.4. The NAQO must monitor and evaluate the appellant's compliance with its load-based limit from 2025 onwards. In this regard, the appellant currently conducts continuous stack monitoring on the east and west stacks. The appellant must send stack monitoring data (emission concentration and volumetric flow) at a 10-minute resolution to the relevant licensing authority weekly.

4.3.7.5. Additionally, a monthly report must be compiled by the appellant's independent consultant, which should (i) analyse the data and assess compliance with any stipulated concentration standards and (ii) assess compliance with any mass-based standards. This report must be submitted monthly to NAQO to ensure compliance with the stipulated concentration standards.

4.3.7.6. For transparency, this report must be made publicly available on the appellant's website.

4.3.7.7. Any exceedances of the above standards will require a full atmospheric dispersion assessment to determine likely health incidents (with reporting that is in line with the Atmospheric Impact Report Regulations).

4.3.7.8. This appeal decision is held in abeyance pending my final determination of the appropriate concentration-based limits to be applied to the appellant.

4.4. In arriving at my decision on the appeal, I have not responded to every statement set out in the appeal, and where a particular statement is not directly addressed, the absence of any response thereto should not be interpreted to mean that I have not considered that statement, or that I agree with, or abide by the statement made.

4.5. I have also not listed each and every annexure, document or report considered, and the absence of any such annexure, document or report should not be interpreted to mean that I have not considered same, or that I agree with, or abide by the findings made therein.

4.6. In addition, should any party be dissatisfied with any aspect of my decision, they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA).

MS B D CREECY, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 4/4/2024