

## Background to Sasol Limited’s approach to compliance with the sulphur dioxide (SO<sub>2</sub>) Minimum Emission Standards

1. Section 21 of the National Environmental Management: Air Quality Act, 2004 (AQA) obliges the Minister of Forestry, Fisheries and the Environment (“the Minister”) to publish a list of activities which result in atmospheric emissions and which she “reasonably believes have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage”. The list must also establish minimum emission standards (MES) in respect of a substance or mixture of substances resulting from a listed activity identified in the notice, including—
  - the permissible amount, volume, emission rate or concentration of that substance or mixture of substances that may be emitted; and
  - the manner in which measurements of such emissions must be carried out.
2. In other words, the List of Activities and MES aim to protect the environment and human health from toxic pollutants by limiting industrial emissions.
3. In terms of section 21 of AQA, the then Minister published the first List of activities which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, 2013 (“the List of Activities”), with associated MES, in March 2010.
4. The List of Activities and MES were set following a multi-year, multi-stakeholder process in which Sasol was an active and vocal participant. It requires so-called “existing plants” to comply with one set of MES by April 2015 (“existing plant MES”), and with stricter MES by April 2020 (“new plant MES”).
5. “Solid fuel combustion installations used primarily for steam raising or electricity generation” are amongst the activities listed, with associated MES. These include coal-fired power stations and coal boilers, for which MES are set for particulate matter, sulphur dioxide (SO<sub>2</sub>) and oxides of nitrogen. The relevant new plant SO<sub>2</sub> MES were originally set at 500mg/Nm<sup>3</sup> (milligrams per cubic metre).
6. Although the 2020 MES are referred to as “new plant” MES, these are significantly weaker than MES even in other developing countries. This despite the fact that air quality is exceptionally poor in various parts of the country, and results in significant adverse health impacts. Eskom and Sasol are by far the biggest contributors to poor air quality in South Africa.
7. Three “priority areas” have been declared as requiring particular intervention to reduce air pollution: the Vaal Triangle Airshed Priority Area, the Highveld Priority Area (HPA) and the Waterberg Bojanala Priority Area. In March 2022, the High Court recognised, in the *Deadly Air*





decision, that the poor air quality in the Mpumalanga Highveld region breaches residents' constitutional right to an environment that is not harmful to their health and well-being. It ordered the Minister to make regulations to implement and enforce the HPA's air quality management plan. To support this relief, the applicants in the court case – groundWork and the Vukani Environmental Movement – *provided evidence that Eskom's then 12 coal-fired power plants, Sasol's Secunda operations and Sasol and Total's Natref refinery were responsible for by far the bulk of the air pollution.*

### Sasol and Eskom apply for exemption from compliance

8. Despite their active involvement in setting the MES, in 2013, once the MES's first compliance deadline was nearing, both Eskom and Sasol initially sought to be completely exempt from the MES. The then Minister refused this request, reiterating that, as Sasol was well aware, it was not legally permissible to grant MES exemptions, but that postponements were possible. Subsequent to that failed attempt, and instead of making the investments required to meet the standards, both entities have brought multiple applications to the NAQO to delay MES compliance. Most of these applications have been granted.

### Sasol withdraws legal challenge after postponement granted

9. In May 2014, whilst its first such application was pending, Sasol brought a court application seeking to set aside the majority of the MES in their entirety. The respondents were the then Minister and the then NAQO - who was, of course, also the decision-maker in the pending MES application.
10. This application was vigorously opposed by the then NAQO, who, in her October 2014 answering affidavit, called Sasol out for its "opportunistic" and "misleading" application. She also referenced its "apparently deliberate obfuscation of the whole concept of [MES]", and said:

*Achieving ambient air quality standards...is not an exercise in economics nor is it a matter for negotiation with [Sasol]: the fundamental right may not be infringed ... and their argument or defence, that they are infringing that environmental right because it costs too much to adapt their existing plants and bring them up to standard, must be rejected out of hand. Their very idea that our fundamental rights are only valid if they are regarded as being afforded by those undermining these rights is ludicrous.*

11. When the NAQO granted Sasol's pending application to postpone MES compliance in February 2015 – including a postponement of the SO<sub>2</sub> new plant MES until April 2025 - Sasol withdrew its court application.

### Already weak SO<sub>2</sub> standards further weakened with no public participation

12. In October 2018, then acting Minister Hanekom published a standard of 1000mg/Nm<sup>3</sup> for coal boilers – half as weak as the previous standard. He did so without inviting public comment, as required by AQA. Interested and affected parties addressed correspondence to Minister



Hanekom and Minister Mokonyane seeking the urgent withdrawal of this unlawful notice, to no avail.

13. Also in the October 2018 amendments to the List of Activities, it was made clear that, *inter alia*:
  - No further postponements of 2015/existing plant MES would be granted; and
  - Only one postponement is permitted of 2020/"new plant" MES, and no such postponement will be valid beyond 31 March 2025.
14. In December 2018, Minister Mokonyane announced her intention to appoint an "SO<sub>2</sub> expert panel". This panel was established in September 2019 to "provide strategic and technical guidance towards effective management of SO<sub>2</sub> emissions from old and existing plants".
15. In May 2019, following unsuccessful efforts to resolve the issue of the unlawfully-doubled SO<sub>2</sub> MES without litigation, environmental justice group groundWork was forced to approach the court to seek aside the unlawful notice. In May 2019, Minister Mokonyane withdrew the notice and gave the public 30 days to comment on the same proposal to weaken the SO<sub>2</sub> standard.
16. At the time, Sasol's atmospheric emission licence (AEL) permitted it to comply with a 2000 mg/Nm<sup>3</sup> SO<sub>2</sub> MES limit - double the weakened limit - from April 2020 until April 2025. In January 2020, Sasol expressed the view that 1000mg/Nm<sup>3</sup> for SO<sub>2</sub> MES was a "reasonable" standard which Sasol could achieve with "significant effort."
17. Despite evidence of significant health impacts of this doubled standard, the Minister published the new standard of 1000 mg/Nm<sup>3</sup> for implementation in March 2020.
18. SA's SO<sub>2</sub> MES are weak, compared even to other developing countries. The revised standards for SO<sub>2</sub> are now approximately 10 times weaker than the equivalent standards in India and about 28 times weaker than the standards in China.

### **DFFE keeps expert panel findings secret**

19. The expert panel submitted its final report to DFFE in July 2021. Despite requests and despite the clear public interest in the panel's recommendations, these have not been made public by DFFE, nor has any public explanation been given as to whether the panel's recommendations are being followed and why.