



8 April 2013

Attention: Mr Musa Mahlatji

The Air Quality Manager  
Sedibeng District Municipality  
Corner Leslie & Beaconsfield Streets  
Vereeniging  
1939

Dear Mr Mahlatji

**APPLICATION FOR VARIATION OF CONDITION 7.5 (ELECTRIC ARC FURNACE) OF  
ATMOSPHERIC EMISSION LICENCE NO: AEL 0003/SDM/2012 IN TERMS OF SECTION  
46(1)(d), READ TOGETHER WITH SECTION 59(1)(a) OF THE NATIONAL  
ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004**

**1. INTRODUCTION**

We refer to our discussions with the Sedibeng District Municipality ("the **Municipality**") on the 26<sup>th</sup> and 28<sup>th</sup> of February 2013 in terms whereof we notified the Municipality of the effects of the fire which damaged parts of the Plant ("the **Incident**") and implications of the damage for the Plant's production output.

We also refer to the meeting that was held on an urgent basis on the 5<sup>th</sup> of April 2013 between ourselves, the Municipality, the Department of Trade and Industry as well as the National Department of Environmental Affairs in terms whereof the nature of the complications of the current situation were canvassed and discussed.

As you are aware, Arcelor Mittal South Africa Limited's ("**AMSA**") iron and steel manufacturing works ("**Works**") at its Vanderbijlpark Plant ("the **Plant**"), is licensed under the National Environmental Management: Air Quality Act<sup>1</sup> ("**Air Quality Act**"), amongst others.

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<sup>1</sup> 39 of 2004.

atmospheric emission licence issued to AMSA for the Plant under reference AEL0003/SDM/2012 ("AEL"), read together with section 59(1)(a) for exemption from the required public participation process. The AEL is attached as Annex "A".

Section 46(1)(d) provides that a licensing authority may vary an AEL at the written request of the licence holder.<sup>2</sup> The Air Quality Act provides that a variation may include the removal, substitution or an amendment of a condition or requirement in an AEL.<sup>3</sup> The competent authority to implement the atmospheric emission licensing system is metropolitan and district municipalities<sup>4</sup> and your municipality is therefore authorised to grant this request for a variation.

In terms of section 46(3), a licensing authority, if it receives a request from the holder of a licence in terms of subsection 46(1)(d), must require the holder of the licence to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the public if -

- (a) the variation of the licence will authorise an increase in the environmental impact regulated by the licence;
- (b) the variation of the licence will authorise an increase in atmospheric emissions.
- (c) Has not, for any reason, been the subject of an authorisation in terms of any other legislation and public consultation.

For the reasons set out in this document, AMSA believes that the variation of the licence will neither authorise an increase in the environmental impact regulated by the licence nor will the the variation of the licence authorise an increase in atmospheric emissions. If however, the municipality is of the opinion (based on the facts provided as part of this application) that the application should be brought to the attention of the relevant interested and affected parties, AMSA believes that a limited period of a week's notice, is reasonable for reasons as set out in this document.

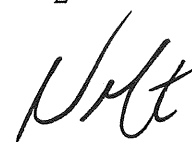
In addition, AMSA requests the municipality to consider an exemption from the public participation process in terms of section 59(1)(a) of the Air Quality Act, based on the same reasons as mentioned in this document, alternatively, providing for a limited public participation process in terms of section 59(1)(a) of the Air Quality Act. Due to the urgency of the matter and in order to try and expedite the process, an exemption request in terms of section 59 of the Air

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<sup>2</sup> Section 46(1)(d) of Air Quality Act.

<sup>3</sup> Section 46(2) of Air Quality Act.

<sup>4</sup> Section 36(2) of Air Quality Act



Quality Act was submitted to the Deputy Minister of Water and Environmental Affairs on the 5<sup>th</sup> of March 2013, based on the fact that the Minister has the authority in terms of section 59 of the Air Quality Act to grant an exemption. A copy of the request is annexed hereto marked as Annexure "B".

At the meeting of the 5<sup>th</sup> of April 2013 it was indicated by your municipality that the powers in terms of section 59 of the Air Quality Act have since been delegated to your municipality and that your offices received the delegation on the 5<sup>th</sup> of April 2013 in order to deal with this matter, and to be able to make an informed decision based on both sections 46(1)(d) and 59(1)(a) of the Air Quality Act.

In support of the request, this document sets out:

- The law applicable to the request for variation;
- Background information to the request for variation;
- The impacts of the application for variation, including environmental and socio-economic considerations; and
- How AMSA proposes to conduct a limited public participation process, if applicable.

## **2. BACKGROUND TO THE VARIATION APPLICATION**

The Incident has resulted in damage to the Plant and the shutdown of some operations pending various repairs to be effected. The shutdowns have included the cessation of the Basic Oxygen Furnaces ("BOFs"), which are integral to the iron conversion process required for the production of steel sold by AMSA to the local market. This has led to a complete stoppage of the Plant's steel production capacity and AMSA is currently in the process to recover such operations. The socio-economic impacts due to the stoppage of the Plant's steel production capacity are significant to AMSA, our employees and our downstream clients, as discussed in more detail below.

In an attempt to address the socio-economic impacts of the Incident, AMSA has diverted steel from our Saldanha plant to the Plant and has placed orders to source steel from other Arcelor Mittal plants around the world, but significant steel shortage will remain. The lead time to divert and source the required steel will delay further steel production and certain steel products may take a significant time period to reach the market.



In the interim, the only viable measure effectively to address the steel shortage is the temporary re-start of the Plant's Electric Arc Furnaces ("EAFs"), which can be used to convert iron inputs into steel products until the effect of the BOF stoppage is mitigated.

For the EAFs to be re-commissioned for a limited period of time, it may be argued that a variation of the conditions of the AEL would be required. In particular, condition 7.5 of the AEL requires AMSA to install a secondary dust extraction system. In order to successfully phase in the completion of such a secondary dust extraction system, the AEL sets out the following milestones as part of condition 7.5 within which certain aspects of the installation of such a dust extraction system needs to be achieved by AMSA:

- Submission of final technical scope to authorities – 31<sup>st</sup> of July 2012;
- Order placement – 30<sup>th</sup> of November 2012;
- Commencement of construction – 28<sup>th</sup> of February 2013;
- Completion of construction and commencement of commissioning – 28<sup>th</sup> of February 2015;
- Plant operational – 31<sup>st</sup> of March 2015.

Due to uncertainties of the feasibility of a new dust extraction system, together with the impact of the rising costs of electricity, AMSA decided to temporarily mothball the EAF in April 2012. AMSA proceeded with the submission of the final technical scope to the municipality during July 2012 in compliance with the first milestone as stipulated in the AEL but the EAF was mothballed on the 16<sup>th</sup> of October 2012 after it became clear that the installation of the secondary dust extraction system together with the rising costs of electricity will not be feasible. As a result, AMSA did not place any orders during November 2012 and also did not commence with construction on the 28<sup>th</sup> of February 2013. AMSA now requests that the milestones of the 30<sup>th</sup> of November 2012 (placement of orders) and the 28 February 2013 (commencement of construction) be postponed for 3 months from date of the granting of the postponement due to the change in circumstances.

AMSA will also further discuss the impacts of the proposed postponement in further detail below to indicate that under the circumstances the temporary re-start the EAFs is justified, as it will address the Plant's steel output crisis and the socio-economic impacts caused by the Incident.

### **3. IMPACTS OF THE VARIATION APPLICATION**

#### **3.1 Socio-economic impacts of the Incident**



### 3.1.1 Downstream Clients

AMSA sold 3.3 million tonnes of flat steel products during the 2012 calendar year. Seventy per cent of the flat steel products were produced at the Plant. The flat steel is supplied directly or indirectly into various market segments of the South African economy, including:

- Tube and pipe segment;
- Machinery and equipment segment;
- Furniture and appliance segment;
- Energy and mining segment;
- Construction segment; and
- Automotive segment.

AMSA was informed that many of its clients' steel inventory levels in these market segments are already depleted or relatively low. A summary of some of the clients' steel inventory levels on or before 5 April 2013 is attached as Annex "C".

It is likely that some of our clients have and will have to halt their productions if AMSA is not able to address the steel shortage and this will in turn have a knock-on impact on their clients and the aggregate market sector. The impacts will include the delay of some critical infrastructure projects, such as the Kusile Power Station and other renewable energy projects currently undertaken by our clients in the construction market segment. The downturn in our clients' production already had negative consequences on their employees, who suffered the impacts of short time and temporary layoffs. The temporary re-commissioning of the EAFs would relieve the current situation.

### 3.1.2 AMSA Employees

The AMSA Vanderbijlpark operations are a significant source of local employment in the Vaal Triangle Area. Before the Incident, AMSA employed 4740 permanent employees and 1691 contractors at the Plant. The Plant's annual salary expenditure for the 2012 calendar year amounted to R 1.2 billion for our own employees and R 57 million for other hired personnel.

We are committed to limiting the impacts of the Incident on our employees and contractors and are currently engaging the relevant unions in this regard. However we have already been forced to take steps to implement short time and it is likely that other measures, including temporary lay-



offs, will be required if the EAFs cannot urgently be re-commissioned to mitigate the projected 410 000 tonne reduction in steel production at the Plant.

### 3.1.3 AMSA Socio-economic Programmes

AMSA is a key contributor to the industrial and community development of the Vaal Triangle Area. We are involved in a number of socio-economic upliftment programmes and corporate social investment ("CSI") projects that benefit the local communities. In 2012, we spent R150 million on training programmes and budgeted a further R72.9 million for other CSI projects over the same period. We are currently involved in a re-roofing project which will remove asbestos from 800 homes in the Boipatong community. The project, in partnership with the local municipality, has already created 30 jobs and stands to benefit a significant amount of people within the surrounding communities.

The temporary re-start of the EAFs in order to mitigate the projected 410 000 tonne loss in our steel output production will contribute greatly to our ability to meet our planned socio-economic upliftment and CSI initiatives.

## 3.2 Environmental Impacts

### 3.2.1 Commitment to reducing air emission impacts

AMSA is mindful of the fact that our Plant operations are situated in the Vaal Triangle Priority Area. The Plant's air emissions and our business decisions must therefore take cognisance of any potential environmental impacts on an already sensitive region.

We have implemented a number of measures to reduce fugitive emissions at the Plant, which have been successful. Moreover, we commissioned a dedusting unit at the Sinter Plant in the second half of last year at a total cost of R250m, resulting in a significant reduction of emissions. Our projections are that during 2013 an absolute particulate emission reduction of 78% will be achieved compared to a 2005 baseline at the Plant.

### 3.2.2 Impact of the EAF's relating to AEL.

Due to the nature of the emissions from the EAF operations, it is very difficult to assess their impact. In terms of the AEL however, the re-start of the EAF's will not affect the status quo, since the AEL authorises the EAF's to be operated until end February 2015 without a secondary dust extraction system. This application requests a postponement of three months of the construction commencement date from the date of variation of the AEL.

In view of the above, AMSA is of the opinion that no public participation is required in terms of section 46(3).

#### 4. APPROPRIATE PUBLIC PARTICIPATION FOR THE VARIATION APPLICATION

As stated above, the Air Quality Act provides that the licence holder (upon application of a variation in terms of section 46(1)(d)) must undertake a public participation process if the variation of the AEL:

1. Will authorise an increase in the environmental impact regulated by the AEL;
2. Will authorise an increase in atmospheric emissions; and
3. Has not, for any reason, been the subject of an authorisation in terms of any other legislation and public consultation.<sup>5</sup>

For the reasons as stated above, AMSA is of the opinion that the postponement of the specific milestones as provided for in terms of the AEL, does not require a public participation process due to the fact that the temporary re-start of the EAFs will be within the time period set in the AEL for such plant to be operational.

If however, the municipality is still of the opinion that the postponement of the specific milestones still warrants a public participation process, AMSA is of the opinion that a limited period of one week's notice will suffice, based on the following:

The Air Quality Act stipulates that the public participation process must include the publication of a notice in at least two newspapers circulating in the area in which the AEL activities which are the subject of the request for variation will be carried out. The notice must *inter alia* describe the purpose and nature of the variation request; give particulars of the listed activity and state a "reasonable" period within which written representations on or objections to the request may be submitted, and the address or place where representations or objections must be submitted.<sup>6</sup>

The Air Quality Act does not explicitly provide what a "reasonable" period is. From the Air Quality Act it is apparent that this should be determined by:

- The principles of the Act and the National Environmental Management Act<sup>7</sup> ("NEMA"), and

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<sup>5</sup> Section 46(3) of Air Quality Act.

<sup>6</sup> Section 46(4) of Air Quality Act.

<sup>7</sup> 107 of 1998.



- The circumstances of the application.<sup>8</sup>

We believe the relevant NEMA principles that must be considered when determining what is a reasonable public participation period include:

- Environmental management must place people at the forefront of its concern and serve the physical, psychological, developmental, cultural and social interests equitably;
- Sustainable development must be guided by *inter alia* applicable environmental and socio-economic considerations;
- Participation of all interested and affected parties ("**I&APs**") in environmental governance must be promoted;
- Decisions must take into account the interests, needs and values of all I&APs;
- Social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment; and
- Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.<sup>9</sup>

#### 4.1 Circumstances of the Application

It is clear from the principles discussed above that the considerations that should, among other things, determine what will be reasonable for purposes of the public participation process includes the:

- Socio-economic impact of the variation or the absence of the variation to the AEL;
- Environmental impact of the variation should it be granted;
- Relative extent of all impacts;
- Potential material impact, if any, on I&APs; and
- Urgency for the need to limit any adverse impacts.

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<sup>8</sup> The principles as contained in section 38 and 39 of the Air Quality Act.

<sup>9</sup> Section 2 of NEMA.





Under the circumstances we believe the most material considerations for determining a reasonable period would be the:

- Extent to which the variation materially affects I&APs;
- Extent of the environmental impact of the variation, should it be granted;
- Extent of the socio-economic impacts should the variation not be granted;
- Need to balance the extent of the environmental impacts of the proposed variation with the magnitude of its socio-economic impacts; and
- Urgency required to address the Incident's negative impacts.

The socio-economic impacts (caused by the Incident and the projected loss of 410 000 tonnes of steel output at the Plant) for AMSA, our employees, our clients and the market segments we supply are already significant. If the EAFs are not urgently re-commissioned for a limited period of time to mitigate these impacts, the socio-economic impacts will continue to escalate and have far reaching implications, which could detrimentally affect economic growth in the Vaal Triangle Region. These socio-economic impacts will also affect AMSA's ability to contribute to much needed socio-economic upliftment programmes and CSI projects intended to benefit the struggling communities in our surrounding areas.

Under these circumstances, it is clear that urgent action is required to avoid any further socio-economic impacts and it is reasonable to limit the public participation process to ensure the Plant's steel output crisis and the national steel shortage is addressed as soon as possible.

AMSA has already publically, albeit informally, announced its intention to temporary re-start the EAFs to address the dire socio-economic impacts of our steel output capacity at the Vanderbijlpark operations as early as the 6<sup>th</sup> of March 2013. No objections were received from I&APs. We were and are still not opposed to engaging any potential affected parties' who may have concerns regarding the proposed EAFs' operations. A notice will placed in at least one newspaper circulating within the Vanderbijlpark area and provide I&APs the opportunity to submit all comments and representations to the variation application. AMSA is of the opinion that a very limited time period is justified and reasonable, given the urgency to address the escalating and significant socio-economic impacts of the Incident.

In addition, it is requested that an exemption in terms of section 59(1)(a) of the Air Quality Act be considered by the municipality for the same reasons as stated above. Should the municipality still be of the opinion that a public participation process is required even in terms of section 59 of the



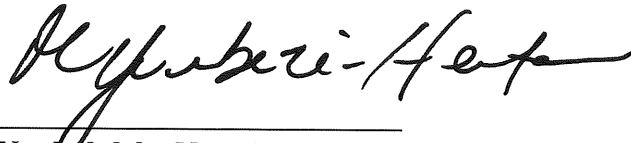
Air Quality Act, the same limited public participation process as described above, is proposed.

## 5. CONCLUSION

In view of the above, AMSA is of the opinion that the proposed postponement of the milestones (placement of orders and commencement of construction) contained in the AEL, will not be a significant change from the objectives and conditions set out in the AEL. It is therefore requested that a postponement of the milestone as contained in the AEL regarding the commencement of construction of a secondary dust extraction system be postponed for a period of three months from date of the granting of the postponement.

Thank you in advance for your time and consideration.

Yours Sincerely



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**Nonkululeko Nyembezi-Heita**  
Chief Executive Officer  
ArcelorMittal South Africa Limited