



Proposed AQA Amendments: High Noon for Postponements and the End of the Road for Old Plant?

30 August 2018
NACA Air Quality Seminar

by Ian Sampson, Partner
Shepstone & Wylie Attorney's
Environmental & Sustainability Law Department
Tel: (011) 290 2540 / (031) 575 7205
Cell: 082 775 3720
Email: sampson@wylie.co.za

Welcome From Our Environmental Law Team



Ian Sampson



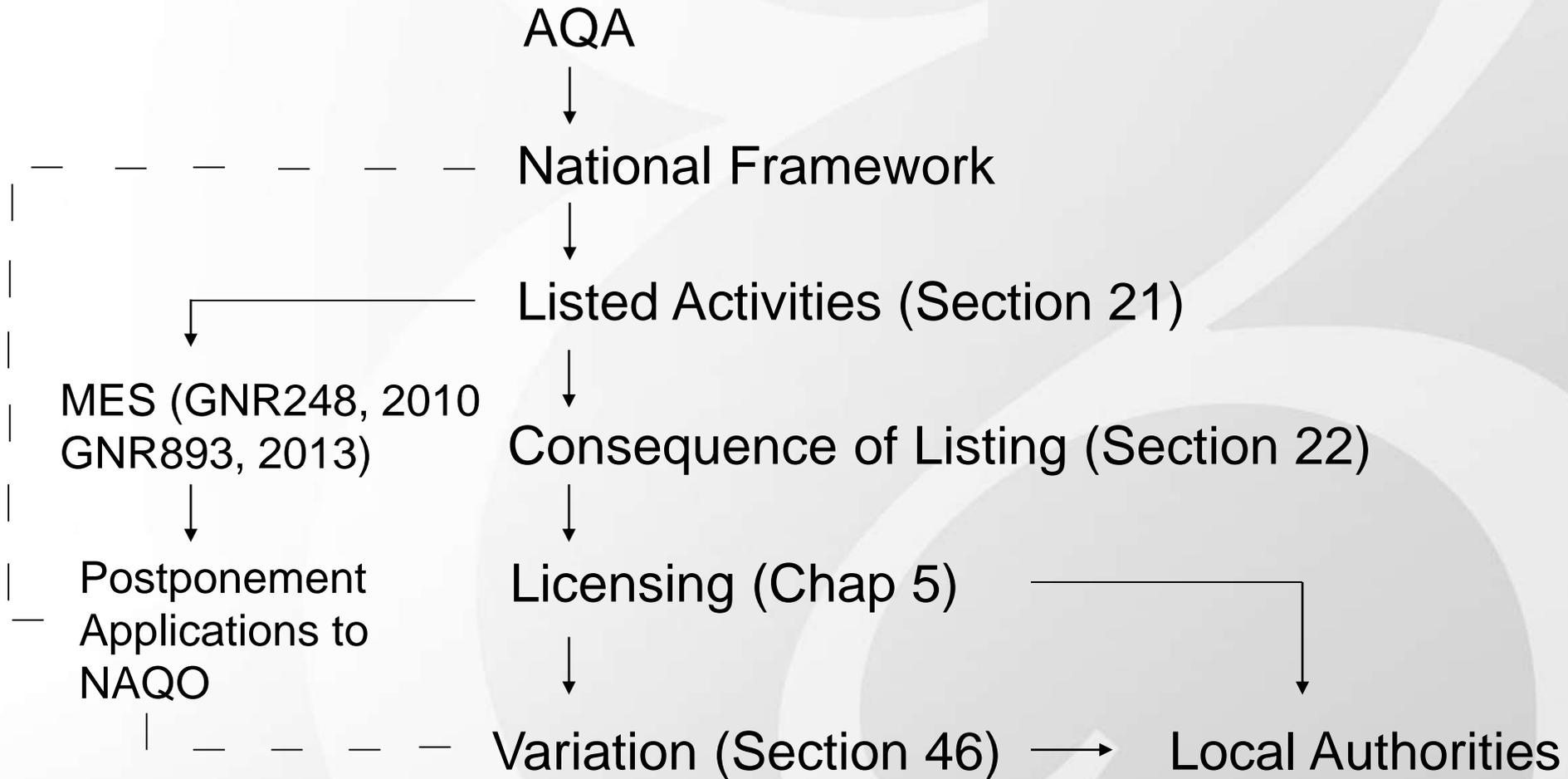
Siyabonga Mkhize



Ayanda Msimang

- National Environmental Management: Air Quality Act 39 of 2004 (“AQA”)
- Notice Of Intention To Amend The List Of Activities Which Result In Atmospheric Emission Which Have Or May Have A Significant Detrimental Effect On The Environment, Including Health, Social Conditions, Economic Conditions, Ecological Conditions Or Cultural Heritage GN516, GG41659 of 25 May 2018 (“Draft MES”)
- Notice Of Intention To Amend The 2012 National Framework For Air Quality Management In The Republic Of South Africa GN518, GG41650 of 25 May 2018 (“Draft Framework”)

Postponement Framework



Why Postponements?

From 1 April 2010 – New Plant to comply with new plant standards



From 1 April 2010 – Existing plant to meet existing plant standards



From 1 April 2020 – Existing Plant to comply with New Plant Standards



How to Apply for Postponements?

- Air Pollution Impact Assessment (see GNR747, 2013)
- Motivation Report (justification and reasons)
- Public Participation



NAQO.....National Framework



Decision.....Amended AEL

Framework: Guideline or Directions?

Current: (a) Can apply provided AAQS in the area are in compliance and will remain compliant if postponement granted.

(b) For postponement application to be positively considered, the following conditions must be met –

- Air pollution impact assessment by an expert
- Demonstration that the facility's current and proposed air emissions are not causing and will not cause any adverse impacts on the surrounding environment
- Public participation
- Reasonable requirements of NAQO
- Apply at least one year before the compliance date

Draft Framework, 2018

Postponement application will be considered if the following conditions are met:

- AIR submitted and a demonstration that emissions are not causing direct adverse impacts
- Public participation
- Application submitted on or before 31 March 2019
- AAQA are compliant in the area
- Other requirements specified by NAQO

Draft Framework 2018

It should be noted that the year 2020 marks 10 years since the publication of the 2010 AQA Section 21 notice (listed activities and minimum emission standards). Therefore, sufficient time has been afforded to industry toward compliance with the initial MES by 2020. In upholding the objectives of AQA, the Department provides certainty regarding postponement or suspension of compliance timeframes in the following order:

- Existing facilities may apply for a once-off postponement of compliance timeframes for new plant standards. A postponement if granted will be for a period not exceeding 5 years and no postponement would be valid beyond 31 March 2025;
- Existing facilities that will be decommissioned by 2030 may apply for a once-off suspension of compliance timeframes with new plant standards for a period not beyond 2030. An application must be accompanied by a clear decommissioning schedule and no such application shall be considered after 31 March 2019;

Draft Framework 2018

- Existing facilities that will be granted a suspension of compliance timeframes shall comply with existing plant standards during the suspension period until they are decommissioned; and
- No postponement of compliance timeframes or a suspension of compliance timeframes shall be granted for existing plant standards.

Draft MES 2018

(11A) An existing facility's application contemplated in paragraph (11) may be made for a once-off postponement of the compliance timeframes with new plant standards.

(11B) A postponement of compliance timeframes may only be granted for a period not exceeding five years, and not postponement of compliance timeframes will be valid beyond 31 March 2025.

(11C) An existing facility to be decommissioned by 2030 may apply for a once-off suspension of compliance timeframes with new plant standards for a period not beyond 2030.

(11D) A once-off suspension application of compliance timeframes with new plant standard contemplated in paragraph (11C) must be accompanied by a clear decommissioning schedule.

Draft MES 2018

(11E) A once-off suspension application of compliance timeframes with new plant standards contemplated in paragraph (11C) shall not be accepted after 31 March 2019.

(11F) An existing facility granted a once-off suspension of compliance timeframes with new plant standards shall comply with existing plant standards during the suspension period until the existing plant is decommissioned.

(11G) No postponement of compliance timeframes with existing plant standard or a suspension of compliance timeframe with existing plant standard shall be granted.

Analysis Point 1: Ten Years To Comply

- “Given the potential economic implications of emission standards, and mindful that emission standard setting in South Africa was not based on a comprehensive sector-based CBA (at least not for the initial group of Listed Activity)”, postponements are allowed
- In fact no CBA
- Government has had at least 10 years to perform a CBA
- No idea if MES are reasonable or achievable



Analysis Point 2: AAQS

- Can you apply for postponement in a priority area? (Yes)
- Should it be granted? (No)
- Have they been granted in a priority area? (Yes)

Analysis Point 3: Implications

- Only one more postponement available
- It may not be granted for 5 years
- If existing plant cannot meet existing plant standards during postponement period, it will be non compliant
- If there is no BAT for existing plant to meet new plant standards by 2020, it should not be granted a postponement
- If existing plant can't meet new plant standards by 2025, it must decommission

Suggestions

- Perform a CBA
- Grandfathering
- Shut Down

Thank You