

NEM:AQA Amendment To
Subcategory 1.1 Of The MES:
As Clear As Mud

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NACA Seminar

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Subcategory 1.1 Prior To 22 May 2019

- SO₂ for: new plant – 500mg/Nm³
 existing plant – 3500mg/Nm³
- Special arrangement (iii): existing plants shall comply with a new plant emission limit of 1000mg/Nm³ for SO₂.

On 22 May 2019:

- GN686 Notice of intention to amend the MES
- 30 days to comment (i.e. 21 June 2019)
- Proposed amendment: by the addition of subcategory 1.1:
 - Special arrangement (iii) for: existing plants shall comply with a new plant emission limit of 1000mg/Nm³ for SO₂.

Also On 22 May 2019:

- GN689 Amendment of the MES
- Amendment: Deletion of special arrangement (iii) for subcategory 1.1: existing plants shall comply with a new plant emission limit of 1000mg/Nm³ for SO₂.

Subcategory 1.1 After 22 May 2019

- SO₂ for: new plant – 500mg/Nm³
 existing plant – 3500mg/Nm³
- No special arrangement (iii)
- On 1 April 2020 existing plant must achieve 500mg/Nm³ for SO₂

- The Trustees For The Time Being Of Groundwork Trust v Minister of Environmental Affairs Case No. 24571/19, Gauteng High Court
- Application to declare unlawful special arrangement (iii) of subcategory 1.1
- The objection: No opportunity afforded to the public to submit meaningful representations or objections to the inclusion of special arrangement (iii) in subcategory 1.1 as required by Section 57(2)(b) of AQA

The (Possible) Way Forward

- Currently existing plant must achieve 500mg/Nm³ for subcategory 1.1 by 1 April 2020 (or obtain a postponement or an alternative emission limit)
- After 21 June 2019, special arrangement (iii) may be reinstated, or not
- If it is Groundwork may take the amendment on review on the basis that it unlawfully doubles the SO₂ standard.
- Likely basis: this would leave South Africa considerably more lenient than other developing countries
- Solution: expect and plan for the worst, or if not feasible, apply for postponement or alternative limit or apply for court relief

Thank You