



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 476 Cape Town 24 February 2005 **No. 27318**

## THE PRESIDENCY

No. 163

24 February 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 39 of 2004: National Environment Management: Air Quality Act, 2004.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

*(English text signed by the President.)  
(Assented to 19 February 2005.)*

# ACT

To reform the law regulating air quality in order to protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development; to provide for national norms and standards regulating air quality monitoring, management and control by all spheres of government; for specific air quality measures; and for matters incidental thereto.

## PREAMBLE

WHEREAS the quality of ambient air in many areas of the Republic is not conducive to a healthy environment for the people living in those areas let alone promoting their social and economic advancement;

And whereas the burden of health impacts associated with polluted ambient air falls most heavily on the poor;

And whereas air pollution carries a high social, economic and environmental cost that is seldom borne by the polluter;

And whereas atmospheric emissions of ozone-depleting substances, greenhouse gases and other substances have deleterious effects on the environment both locally and globally;

And whereas everyone has the constitutional right to an environment that is not harmful to their health or well-being;

And whereas everyone has the constitutional right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

And whereas minimisation of pollution through vigorous control, cleaner technologies and cleaner production practices is key to ensuring that air quality is improved;

And whereas additional legislation is necessary to strengthen the Government's strategies for the protection of the environment and, more specifically, the enhancement of the quality of ambient air, in order to secure an environment that is not harmful to the health or well-being of people,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,  
as follows: —

## TABLE OF CONTENTS

|                 |  |    |
|-----------------|--|----|
| <i>Sections</i> | <b>CHAPTER 1</b>   | 5  |
|                 | <b>INTERPRETATION AND FUNDAMENTAL PRINCIPLES</b>   |    |
| 1.              | Definitions  |    |
| 2.              | Object of Act  |    |
| 3.              | General duty of State  |    |
| 4.              | Application of Act   | 10 |
| 5.              | Application of National Environmental Management Act                                     |    |
| 6.              | Conflicts with other legislation   |    |
|                 | <b>CHAPTER 2</b>   |    |
|                 | <b>NATIONAL FRAMEWORK AND NATIONAL, PROVINCIAL AND LOCAL STANDARDS</b>                   | 15 |
|                 | <i>Part 1: National framework</i>  |    |
| 7.              | Establishment  |    |
| 8.              | National monitoring and information management standards                                 |    |
|                 | <i>Part 2: National, provincial and local ambient air quality and emission standards</i> |    |
| 9.              | National standards   | 20 |
| 10.             | Provincial standards   |    |
| 11.             | Local standards  |    |
|                 | <i>Part 3: General</i>   |    |
| 12.             | Ambient air quality and emission measurements  |    |
|                 | <b>CHAPTER 3</b>   | 25 |
|                 | <b>INSTITUTIONAL AND PLANNING MATTERS</b>  |    |
| 13.             | National Air Quality Advisory Committee  |    |
| 14.             | Appointment of air quality officers  |    |
| 15.             | Air quality management plans   |    |
| 16.             | Contents of air quality management plans   | 30 |
| 17.             | Reporting on implementation of air quality management plans                              |    |
|                 | <b>CHAPTER 4</b>   |    |
|                 | <b>AIR QUALITY MANAGEMENT MEASURES</b>   |    |
|                 | <i>Part 1: Priority areas</i>  |    |
| 18.             | Declaration of priority areas  | 35 |
| 19.             | Management of priority areas   |    |
| 20.             | Regulations for implementing and enforcing priority area air quality management plans    |    |
|                 | <i>Part 2: Listing of activities resulting in atmospheric emissions</i>                  |    |
| 21.             | Listing of activities  | 40 |
| 22.             | Consequences of listing  |    |

**Part 3: Controlled emitters**

- 23. Controlled emitters
- 24. Standards for controlled emitters
- 25. Consequences of declaration

**Part 4: Controlled fuels**

5

- 26. Controlled fuels
- 27. Use and prohibition of controlled fuels
- 28. Consequences of declaration

**Part 5: Other measures**

- 29. Pollution prevention plans 10
- 30. Atmospheric impact reports
- 31. Recognition programmes

**Part 6: Measures in respect of dust, noise and offensive odours**

- 32. Control of dust
- 33. Rehabilitation when mining operations cease 15
- 34. Control of noise
- 35. Control of offensive odours

**CHAPTER 5****LICENSING OF LISTED ACTIVITIES**

- 36. Licensing authority 20
- 37. Application for atmospheric emission licences
- 38. Procedure for licence applications
- 39. Factors to be taken into account by licensing authorities
- 40. Decisions of licensing authority
- 41. Successful applications 25
- 42. Issuing of atmospheric emission licences
- 43. Contents of provisional atmospheric emission licences and atmospheric emission licences
- 44. Transfer of provisional atmospheric emission licences and atmospheric emission licences 30
- 45. Review of provisional atmospheric emission licences and atmospheric emission licences
- 46. Variation of provisional atmospheric emission licences and atmospheric emission licences
- 47. Renewal of provisional atmospheric emission licences and atmospheric emission licences 35
- 48. Emission control officers
- 49. Criteria for fit and proper persons

**CHAPTER 6****INTERNATIONAL AIR QUALITY MANAGEMENT**

40

- 50. Transboundary air pollution

**CHAPTER 7****OFFENCES AND PENALTIES**

- 51. Offences
- 52. Penalties 45

**CHAPTER 8****GENERAL MATTERS***Part 1: Regulations*

- |   |   |
|---|---|
| 53. Regulations by Minister                         |   |
| 54. Regulations by MECs responsible for air quality | 5 |
| 55. General   |   |

*Part 2: Consultative process*

- |                          |  |
|--------------------------|--|
| 56. Consultation         |  |
| 57. Public participation |  |

*Part 3: Delegations and exemptions* 10

- |                 |  |
|-----------------|--|
| 58. Delegations |  |
| 59. Exemptions  |  |

**CHAPTER 9****MISCELLANEOUS**

- |   |    |
|---|----|
| 60. Repeal of legislation   | 15 |
| 61. Transitional arrangements in respect of registration certificates issued in terms of Atmospheric Pollution Prevention Act |    |
| 62. Transitional provision regarding listed activities  |    |
| 63. Transitional provision regarding ambient air quality standards  |    |
| 64. Short title and commencement  | 20 |

**SCHEDULE 1****SCHEDULE 2****CHAPTER 1****INTERPRETATION AND FUNDAMENTAL PRINCIPLES****Definitions** 25

1. (1) In this Act, unless the context indicates otherwise—
- “**air pollution**” means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances;
- “**air quality management plan**” means a plan referred to in section 15; 30
- “**air quality officer**” means an officer appointed in terms of section 14 as an air quality officer;
- “**ambient air**” excludes air regulated by the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- “**atmospheric emission**” or “**emission**” means any emission or entrainment 35  
process emanating from a point, non-point or mobile source that results in air pollution;
- “**atmospheric emission licence**” means an atmospheric emission licence contemplated in Chapter 5;
- “**Atmospheric Pollution Prevention Act**” means the Atmospheric Pollution 40  
Prevention Act, 1965 (Act No. 45 of 1965);
- “**controlled emitter**” means any appliance or activity declared as a controlled emitter in terms of section 23;
- “**Department**” means the Department of Environmental Affairs and Tourism;
- “**environment**” has the meaning assigned to it section I of the National 45  
Environmental Management Act;
- “**Environment Conservation Act**” means the Environment Conservation Act, 1989 (Act No. 73 of 1989);
- “**Gazette**” when used in relation to—

- (a) the Minister, means the *Government Gazette*; and
- (b) the MEC, means the *Provincial Gazette* of the province concerned;
- “**greenhouse gas**” means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes carbon dioxide, methane and nitrous oxide: 5
- “**licensing authority**” means an authority referred to in section 36(1), (2), (3) or (4) responsible for implementing the licensing system set out in Chapter 5;
- “**listed activity**” means any activity listed in terms of section 21;
- “**MEC**” means the member of the Executive Council of a province who is responsible for air quality management in the province; 10
- “**Minister**” means the Minister of Environmental Affairs and Tourism;
- “**mobile source**” means a single identifiable source of atmospheric emission which does not emanate from a fixed location;
- “**municipality**” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 15
- “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- “**National Environmental Management Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- “**national framework**” means the framework established in terms of section 7(1); 20
- “**non-point source**” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;
- “**offensive odour**” means any smell which is considered to be malodorous or a nuisance to a reasonable person; 25
- “**organ of state**” has the meaning assigned to it in section 239 of the Constitution;
- “**ozone-depleting substance**” means a substance having chemical or physical properties which, by its release into the atmosphere, can cause a depletion of the stratospheric ozone layer; 30
- “**point source**” means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;
- “**pollution**” has the meaning assigned to it in section 1 of the National Environmental Management Act;
- “**priority area**” means an area declared as such in terms of section 18; 35
- “**priority area air quality management plan**” means a plan referred to in section 19;
- “**provisional atmospheric emission licence**” means a provisional atmospheric emission licence contemplated in Chapter 5;
- “**this Act**” includes— 40
- (a) the national framework;
- (b) any regulation made in terms of this Act; and
- (c) any other subordinate legislation issued in terms of this Act.
- (2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended. 45

## Object of Act

2. The object of this Act is—
- (a) to protect the environment by providing reasonable measures for— 50
- (i) the protection and enhancement of the quality of air in the Republic;
- (ii) the prevention of air pollution and ecological degradation; and
- (iii) securing ecologically sustainable development while promoting justifiable economic and social development; and
- (b) generally to give effect to section 24(b) of the Constitution in order to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people. 55

**General duty of State**

- 3.** In fulfilling the rights contained in section 24 of the Constitution, the State —
- (a) through the organs of state applying this Act, must seek to protect and enhance the quality of air in the Republic; and
  - (b) must apply this Act in a manner that will achieve the progressive realisation of those rights. 5

**Application of Act**

- 4.** (1) This Act also applies to the exclusive economic zone and continental shelf of the Republic referred to in sections 7 and 8, respectively, of the Maritime Zones Act, 1994 (Act No. 15 of 1994). 10
- (2) This Act binds all organs of state—
- (a) in the national and local spheres of government; and
  - (b) in the provincial sphere of government, subject to section 146 of the Constitution.

**Application of National Environmental Management Act** 15

- 5.** (1) This Act must be read with any applicable provisions of the National Environmental Management Act.
- (2) The interpretation and application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act. 20

**Conflicts with other legislation**

- 6.** (1) In the event of any conflict between a section of this Act and—
- (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
  - (b) a municipal by-law, the section of this Act prevails. 25
- (2) In the event of any conflict between subordinate legislation issued in terms of this Act and—
- (a) an Act of Parliament, the Act of Parliament prevails;
  - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and 30
  - (c) a municipal by-law, the subordinate legislation issued in terms of this Act prevails.
- (3) For the proper application of subsection (2)(b) the Minister must, in terms of section 146(6) of the Constitution, submit all subordinate legislation issued in terms of this Act and which affects provinces to the National Council of Provinces for approval. 35

**CHAPTER 2****NATIONAL FRAMEWORK AND NATIONAL, PROVINCIAL AND LOCAL STANDARDS***Part 1: National framework***Establishment** 40

- 7.** (1) The Minister must, within two years of the date on which this section took effect, by notice in the *Gazette*, establish a national framework for achieving the object of this Act, which must include—
- (a) mechanisms, systems and procedures to attain compliance with ambient air quality standards; 45
  - (b) mechanisms, systems and procedures to give effect to the Republic's obligations in terms of international agreements;
  - (c) national norms and standards for the control of emissions from point and non-point sources;
  - (d) national norms and standards for air quality monitoring; 50
  - (e) national norms and standards for air quality management planning;

**Act No. 39,2004**NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT, 2004

- (f) national norms and standards for air quality information management; and  
 (g) any other matter which the Minister considers necessary for achieving the object of this Act.
- (2) National norms and standards established in terms of subsection (1) must be aimed at ensuring— 5
- (a) opportunities for public participation in the protection and enhancement of air quality;  
 (b) public access to air quality information;  
 (c) the prevention of air pollution and degradation of air quality;  
 (d) the reduction of discharges likely to impair air quality, including the reduction of air pollution at source; 10  
 (e) the promotion of efficient and effective air quality management;  
 (f) effective air quality monitoring;  
 (g) regular reporting on air quality; and  
 (h) compliance with the Republic's obligations in terms of international agreements. 15
- (3) The national framework —
- (a) binds all organs of state in all spheres of government; and  
 (b) may assign and delineate responsibilities for the implementation of this Act amongst— 20
- (i) the different spheres of government; and  
 (ii) different organs of state.
- (4) An organ of state must give effect to the national framework when exercising a power or performing a duty in terms of this Act or any other legislation regulating air quality management. 25
- (5) The national framework —
- (a) may differentiate between different geographical areas;  
 (b) may provide for the phasing in of its provisions;  
 (c) may be amended; and  
 (d) must be reviewed by the Minister at intervals of not more than five years. 30
- (6) (a) Before publishing the national framework, or any amendment to the framework, the Minister must follow a consultative process in accordance with sections 56 and 57.  
 (b) Paragraph (a) need not be complied with if the framework is amended in a non-substantive way. 35

**National monitoring and information management standards**

- 8.** The national framework must establish national standards for—
- (a) municipalities to monitor —
- (i) ambient air quality; and  
 (ii) point, non-point and mobile source emissions; 40
- (b) provinces to monitor —
- (i) ambient air quality; and  
 (ii) the performance of municipalities in implementing this Act; and
- (c) the collection and management of data necessary to assess — 45
- (i) compliance with this Act;  
 (ii) compliance with ambient air quality and emission standards;  
 (iii) the performance of organs of state in respect of air quality management plans and priority area air quality management plans;  
 (iv) the impact of, and compliance with, air quality management plans and priority area air quality management plans; 50  
 (v) compliance with the Republic's obligations in terms of international agreements; and  
 (vi) access to information by the public.



Act No. 39.2004 NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT. 2004

**Part 2: National, provincial and local ambient air quality and emission standards**

**National standards**

- 9.** (1) The Minister, by notice in the *Gazette* —
- (a) must identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment or which the Minister reasonably believes present such a threat; and 5
  - (b) must, in respect of each of those substances or mixtures of substances, establish national standards for ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; and 10
  - (c) may, in respect of each of those substances or mixtures of substances, establish national standards for emissions from point, non-point or mobile sources.
- (2) Section 7(3)(a), (4), (5) and (6), with the necessary changes as the context may require, apply to a notice published in terms of this section. 15

**Provincial standards**

- 10.** (1) The MEC may, by notice in the *Gazette* —
- (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the province or which the MEC reasonably believes present such a threat; and 20
  - (b) in respect of each of those substances or mixtures of substances, establish provincial standards for—
    - (i) ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; or 25
    - (ii) emissions from point, non-point or mobile sources in the province or in any geographical area within the province.
- (2) If national standards have been established in terms of section 9 for any particular substance or mixture of substances, the MEC may not alter any such national standards except by establishing stricter standards for the province or for any geographical area within the province. 30
- (3) A notice issued under this section may—
- (a) differentiate between different geographical areas within the province;
  - (b) provide for the phasing in of its provisions; and 35
  - (c) be amended.
- (4) (a) Before publishing a notice in terms of this section, or any amendment to the notice, the MEC must follow a consultative process in accordance with sections 56 and 57.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive way. 40

**Local standards**

- 11.** (1) A municipality may in terms of a by-law—
- (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the municipality or which the municipality reasonably believes present such a threat; and 45
  - (b) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point, non-point or mobile sources in the municipality. 50
- (2) If national or provincial standards have been established in terms of section 9 or 10 for any particular substance or mixture of substances, a municipality may not alter any such national or provincial standards except by establishing stricter standards for the municipality or any part of the municipality.
- (3) A notice issued under this section may— 55
- (a) provide for the phasing in of its provisions; and
  - (b) be amended.

(4) Before a municipality passes a by-law referred to in subsection (1), it must follow a consultative process in terms of Chapter 4 of the Municipal Systems Act.

### *Part 3: General*

#### **Ambient air quality and emission measurements**

**12.** For the purpose of this Chapter, the Minister must prescribe the manner in which— 5

- (a) ambient air quality measurements must be carried out;
- (b) measurements of emissions from point, non-point or mobile sources must be carried out; and
- (c) the form in which such measurements must be reported and the organs of state to whom such measurements must be reported. 10

## **CHAPTER 3**

### **INSTITUTIONAL AND PLANNING MATTERS**

#### **National Air Quality Advisory Committee**

**13.** (1) The Minister may establish a National Air Quality Advisory Committee as a subcommittee of the National Environmental Advisory Forum, established in terms of the National Environmental Management Act, to advise the Minister on the implementation of this Act. 15

(2) When establishing the Committee, the Minister—

- (a) must determine the composition of the Committee, including the appointment, tenure and termination of service of members of the Committee; 20
- (b) must determine the conditions of appointment of members of the Committee;
- (c) must determine the functions and functioning of the Committee; and
- (d) may determine any other matter relating to the Committee.

#### **Appointment of air quality officers** 25

**14.** (1) The Minister must designate an officer in the Department as the national air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the national government.

(2) The MEC must designate an officer in the provincial administration as the provincial air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the province. 30

(3) Each municipality must designate an air quality officer from its administration to be responsible for co-ordinating matters pertaining to air quality management in the municipality.

(4) (a) An air quality officer must perform the duties or exercise the powers assigned or delegated to that officer in terms of this Act. 35

(b) An air quality officer may delegate a power or assign a duty to an official in the service of that officer's administration, subject to such limitations or conditions as may be prescribed by the Minister.

(5) Air quality officers must co-ordinate their activities in such a manner as may be set out in the national framework or prescribed by the Minister. 40

#### **Air quality management plans**

**15.** (1) Each national department or province responsible for preparing an environmental implementation plan or environmental management plan in terms of Chapter 3 of the National Environmental Management Act must include in that plan an air quality management plan. 45

(2) Each municipality must include in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act, an air quality management plan.

**Contents of air quality management plans**

- 16.** (1) An air quality management plan must—
- (a) within the domain of the relevant national department, province or municipality. seek—
    - (i) to give effect, in respect of air quality, to Chapter 3 of the National Environmental Management Act to the extent that that Chapter is applicable to it; 5
    - (ii) to improve air quality;
    - (iii) to identify and reduce the negative impact on human health and the environment of poor air quality; 10
    - (iv) to address the effects of emissions from the use of fossil fuels in residential applications;
    - (v) to address the effects of emissions from industrial sources;
    - (vi) to address the effects of emissions from any point or non-point source of air pollution other than those contemplated in subparagraph (iii) or (iv); 15
    - (vii) to implement the Republic's obligations in respect of international agreements; and
    - (viii) to give effect to best practice in air quality management;
  - (b) describe how the relevant national department, province or municipality will give effect to its air quality management plan; and 20
  - (c) comply with such other requirements as may be prescribed by the Minister.

**Reporting on implementation of air quality management plans**

- 17.** The annual report which an organ of state must submit in terms of section 16(1)(b) of the National Environmental Management Act must contain information on the implementation of its air quality management plan, including information on— 25
- (a) air quality management initiatives undertaken by it during the reporting period;
  - (b) the level of its compliance with ambient air quality standards;
  - (c) measures taken by it to secure compliance with those standards;
  - (d) its compliance with any priority area air quality management plans applicable to it; and 30
  - (e) its air quality monitoring activities.

**CHAPTER 4****AIR QUALITY MANAGEMENT MEASURES****Part I: Priority areas** 35**Declaration of priority areas**

- 18.** (1) The Minister or MEC may, by notice in the *Gazette*, declare an area as a priority area if the Minister or MEC reasonably believes that—
- (a) ambient air quality standards are being, or may be, exceeded in the area, or any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and 40
  - (b) the area requires specific air quality management action to rectify the situation.
- (2) The Minister may act under subsection (1), if— 45
- (a) the negative impact on air quality in the area—
    - (i) affects the national interest; or
    - (ii) is contributing, or is likely to contribute, to air pollution in another country;
  - (b) the area extends beyond provincial boundaries; or
  - (c) the area falls within a province and the province requests the Minister to declare the area as a priority area. 50
- (3) The MECs of two or more adjoining provinces may by joint action in terms of subsection (1) declare an area falling within those provinces as a priority area,

Act No. 39,2004

NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT. 2004

(4) Before publishing a notice in terms of subsection (1), the Minister or the relevant MEC or MECs must follow a consultative process in accordance with sections 56 and 57.

(5) The Minister or MEC may, by notice in the *Gazette*, withdraw the declaration of an area as a priority area if the area is in compliance with ambient air quality standards for a period of at least two years.

**Management of priority areas**

19. (1) If the Minister has in terms of section 18 declared an area as a priority area, the national air quality officer must—

(a) after consulting the air quality officers of any affected province and municipality, prepare a priority area air quality management plan for the area; and 10

(b) within six months of the declaration of the area, or such longer period as the Minister may specify, submit the plan to the Minister for approval.

(2) If the MEC has in terms of section 18 declared an area as a priority area, the air quality officer of the relevant province must— 15

(a) after consulting the national air quality officer and the air quality officer of any affected municipality, prepare a priority area air quality management plan for the area; and

(b) within six months of the declaration of the area, or such longer period as the MEC may specify, submit the plan to the MEC for approval. 20

(3) If the MECs in two or more adjoining provinces have by joint action in terms of section 18 declared an area as a priority area, the air quality officers of the relevant provinces must jointly—

(a) after consulting the national air quality officer and the air quality officers of the affected municipalities, prepare a priority area air quality management plan for the area; and 25

(b) within six months of the declaration of the area, or such longer period as the relevant MECs may specify, submit the plan to the MECs for approval.

(4) Before approving a priority area air quality management plan, the Minister or the relevant MEC or MECs— 30

(a) must follow a consultative process in accordance with sections 56 and 57;

(b) may require the relevant air quality officer to amend the plan within a period determined by the Minister or the relevant MEC or MECs.

(5) (a) The Minister or the relevant MEC or MECs must publish an approved plan in the *Gazette* within 90 days of approval. 35

(b) The approved plan takes effect from the date of its publication.

(6) A priority area air quality management plan must—

(a) be aimed at co-ordinating air quality management in the area;

(b) address issues related to air quality in the area; and 40

(c) provide for the implementation of the plan by a committee representing relevant role-players.

(7) A priority area air quality management plan lapses when the declaration of the area as a priority area is withdrawn in terms of section 18(5).

**Regulations for implementing and enforcing priority area air quality management plans 45**

20. The Minister or MEC may prescribe regulations necessary for implementing and enforcing approved priority area air quality management plans, including—

(a) funding arrangements;

(b) measures to facilitate compliance with such plans; 50

(c) penalties for any contravention of or any failure to comply with such plans; and

(d) regular review of such plans.

**Part 2: Listing of activities resulting in atmospheric emissions****Listing of activities**

- 21.** (1) The Minister must, or the MEC may, by notice in the *Gazette*—
- (a) publish a list of activities which result in atmospheric emissions and which the Minister or MEC reasonably believes have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage; and 5
  - (b) when necessary, amend the list by—
    - (i) adding to the list activities in addition to those contemplated in paragraph (a); 10
    - (ii) removing activities from the list; or
    - (iii) making other changes to particulars on the list.
- (2) A list published by the Minister applies nationally and a list published by the MEC applies to the relevant province only.
- (3) A notice referred to in subsection (1)— 15
- (a) must establish minimum emission standards in respect of a substance or mixture of substances resulting from a listed activity and identified in the notice, including —
    - (i) the permissible amount, volume, emission rate or concentration of that substance or mixture of substances that may be emitted; and 20
    - (ii) the manner in which measurements of such emissions must be carried out;
  - (b) may contain transitional and other special arrangements in respect of activities which are carried out at the time of their listing; and
  - (c) must determine the date on which the notice takes effect. 25
- (4) (a) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must follow a consultative process in accordance with sections 56 and 57.
- (b) Paragraph (a) need not be complied with if the notice is amended in a non-substantive way. 30

**Consequences of listing**

- 22.** No person may without a provisional atmospheric emission licence or an atmospheric emission licence conduct an activity—
- (a) listed on the national list anywhere in the Republic; or
  - (b) listed on the list applicable in a province anywhere in that province. 35

**Part 3: Controlled emitters****Controlled emitters**

- 23.** (1) The Minister or MEC may, by notice in the *Gazette*, declare any appliance or activity, or any appliance or activity falling within a specified category, as a controlled emitter if such appliance or activity, or appliances or activities falling within such category, result in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health or the environment or which the Minister or MEC reasonably believes presents such a threat. 40
- (2) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must— 45
- (a) follow a consultative process in accordance with sections 56 and 57;
  - (b) apply the precautionary principle contained in section 2(4)(a)(vii) of the National Environmental Management Act;
  - (c) take into account the Republic's obligations in terms of any applicable international agreement; and 50
  - (d) consider—
    - (i) any sound scientific information; and
    - (ii) any risk assessments.
- (3) Subsection (2) need not be complied with if the notice is amended in a non-substantive way. 55

**Standards for controlled emitters**

**24.** (1) A notice contemplated in section 23(1) must establish emission standards, which must include standards setting the permissible amount, volume, emission rate or concentration of any specified substance or mixture of substances that may be emitted from the controlled emitter. 5

(2) The Minister must prescribe the manner in which measurements of emissions from controlled emitters must be carried out.

**Consequences of declaration**

**25.** (1) No person may manufacture, sell or use any appliance or conduct an activity declared as a controlled emitter unless that appliance or activity complies with the standards established in terms of section 24. 10

(2) Subsection (1) applies—

(a) nationwide in respect of an appliance or activity declared by the Minister; or

(b) in a relevant province only in respect of an appliance or activity declared by the MEC responsible for air quality in that province. 15

**Part 4: Controlled fuels****Controlled fuels**

**26.** (1) The Minister or MEC may, by notice in the *Gazette*, declare a substance or mixture of substances which, when used as a fuel in a combustion process, result in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health or the environment or which the Minister or MEC reasonably believes present such a threat, as a controlled fuel. 20

(2) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must—

(a) follow a consultative process in accordance with sections 56 and 57; 25

(b) apply the precautionary principle contained in section 2(4)(a)(vii) of the National Environmental Management Act;

(c) take into account the Republic's obligations in terms of any applicable international agreement; and

(d) consider— 30

(i) any sound scientific information; and

(ii) any risk assessments.

(3) Subsection (2) need not be complied with if the notice is amended in a non-substantive way.

**Use and prohibition of controlled fuels** 35

**27.** A notice contemplated in section 26(1) may—

(a) establish standards for the use of the controlled fuel in combustion processes;

(b) establish standards for the manufacture or sale of the controlled fuel;

(c) establish specifications, including maximum or minimum levels or concentrations of the constituents of substances or mixtures of substances, for the composition of controlled fuels; 40

(d) prohibit the manufacture, sale or use of the controlled fuel;

(e) differentiate between different geographical areas;

(f) provide for the phasing in of its provisions; and

(g) be amended. 45

Act No. 39, 2004 NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT, 2004

### Consequences of declaration

- 28.** (1) No person may manufacture, sell or use a controlled fuel unless that manufacture, sale or use complies with the standards established in terms of section 27.
- (2) No person may manufacture, sell or use a prohibited controlled fuel unless that manufacture, sale or use complies with any conditions of manufacture, sale or use established in terms of section 27. 5
- (3) Subsections (1) and (2) apply—
- (a) nationwide in respect of a substance or mixture of substances declared by the Minister; or
- (b) in a relevant province only in respect of a substance or mixture of substances declared by the MEC responsible for air quality in that province. 10

### *Part 5: Other measures*

#### Pollution prevention plans

- 29.** (1) The Minister or MEC may, by notice in the *Gazette* —
- (a) declare any substance contributing to air pollution as a priority air pollutant; 15  
and
- (b) require persons falling within a category specified in the notice to prepare, submit to the Minister or MEC for approval, and implement pollution prevention plans in respect of a substance declared as a priority air pollutant in terms of paragraph (a). 20
- (2) The Minister or MEC may, by written notice to a person conducting a listed activity which involves the emission of a substance declared as a priority air pollutant, require that person to prepare, submit to the Minister or MEC for approval and implement a pollution prevention plan, whether or not that person falls within a category specified in terms of subsection (1)(b). 25
- (3) Pollution prevention plans must comply with such requirements as may be prescribed by the Minister or MEC.

#### Atmospheric impact reports

- 30.** An air quality officer may require any person to submit to the air quality officer an atmospheric impact report in a prescribed form if— 30
- (a) the air quality officer reasonably suspects that the person has on one or more occasions contravened or failed to comply with this Act or any conditions of a licence and that such contravention or failure has had, or may have, a detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, or has contributed to the degradation of ambient air quality; or 35
- (b) a review of a provisional atmospheric emission licence or an atmospheric emission licence is undertaken in terms of section 45.

#### Recognition programmes

- 31.** An air quality officer may establish a programme for the public recognition of significant achievements in the area of pollution prevention. 40

**Part 6: Measures in respect of dust, noise and offensive odours****Control of dust**

- 32.** The Minister or MEC may prescribe—
- (a) measures for the control of dust in specified places or areas, either in general or by specified machinery or in specified instances; 5
  - (b) steps that must be taken to prevent nuisance by dust; or
  - (c) other measures aimed at the control of dust.

**Rehabilitation when mining operations cease**

- 33.** If it is determined that a mine, having regard to its known ore reserves, is likely to cease mining operations within a period of five years, the owner of that mine must promptly notify the Minister in writing— 10
- (a) of the likely cessation of those mining operations; and
  - (b) of any plans that are in place or in contemplation for—
    - (i) the rehabilitation of the area where the mining operations were conducted after mining operations have stopped; and 15
    - (ii) the prevention of pollution of the atmosphere by dust after those operations have stopped.

**Control of noise**

- 34.** (1) The Minister may prescribe essential national standards—
- (a) for the control of noise, either in general or by specified machinery or activities or in specified places or areas; or 20
  - (b) for determining—
    - (i) a definition of noise; and
    - (ii) the maximum levels of noise.
- (2) When controlling noise the provincial and local spheres of government are bound by any prescribed national standards. 25

**Control of offensive odours**

- 35.** (1) The Minister or MEC may prescribe measures for the control of offensive odours emanating from specified activities.
- (2) The occupier of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises. 30

**CHAPTER 5****LICENSING OF LISTED ACTIVITIES****Licensing authority**

- 36.** (1) Metropolitan and district municipalities are charged with implementing the atmospheric emission licensing system referred to in section 22, and must for this purpose perform the functions of licensing authority as set out in this Chapter and other provisions of this Act, subject to subsections (2), (3) and (4). 35
- (2) If a metropolitan or district municipality has delegated its functions of licensing authority to a provincial organ of state in terms of section 238 of the Constitution, that provincial organ of state must for the purposes of this Act be regarded as the licensing authority in the area of that municipality. 40
- (3) If the MEC has in terms of section 139 of the Constitution intervened in a metropolitan or district municipality on the ground that that municipality cannot or does not fulfil its obligations as licensing authority in terms of this Act, a provincial organ of state designated by the MEC must for the duration of the intervention be regarded as the licensing authority in the area of that municipality. 45
- (4) If a municipality applies for an atmospheric emission licence, a provincial organ of state designated by the MEC must be regarded as the licensing authority for the purpose of— 50



- (a) that application; and
- (b) the implementation of this Act in relation to any licence that may be issued to the municipality.

### Application for atmospheric emission licences

**37.** (1) A person must apply for an atmospheric emission licence by lodging with the licensing authority of the area in which the listed activity is or is to be carried out. an application in the form required by the licensing authority. 5

(2) An application for an atmospheric emission licence must be accompanied by—

- (a) the prescribed processing fee; and
- (b) such documentation and information as may be required by the licensing authority. 10

### Procedure for licence applications

**38.** (1) The licensing authority—

- (a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with other information, in addition to the information contained in or submitted in connection with the application; 15
- (b) may conduct its own investigation on the likely effect of the proposed licence on air quality;
- (c) may invite written comments from any organ of state which has an interest in the matter; and 20
- (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.

(2) Section 24 of the National Environmental Management Act and section 22 of the Environment Conservation Act apply to all applications for atmospheric emission licences, and both an applicant and the licensing authority must comply with those sections and any applicable notice issued or regulation made in relation to those sections. 25

(3) (a) An applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public. 30

(b) Such steps must include the publication of a notice in at least two newspapers circulating in the area in which the listed activity applied for is or is to be carried out—

- (i) describing the nature and purpose of the licence applied for;
- (ii) giving particulars of the listed activity, including the place where it is or is to be carried out; 35
- (iii) stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
- (iv) containing such other particulars as the licensing authority may require.

### Factors to be taken into account by licensing authorities 40

**39.** When considering an application for an atmospheric emission licence, the licensing authority must take into account all relevant matters, including—

- (a) any applicable minimum standards set for ambient air and point source emissions that have been determined in terms of this Act;
- (b) 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; 45
- (c) the best practicable environmental options available that could be taken—
  - (i) to prevent, control, abate or mitigate that pollution; and 50
  - (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;
- (d) section 24 of the National Environmental Management Act and section 22 of the Environment Conservation Act and any applicable notice issued or regulation made pursuant to those sections; 55
- (e) any relevant tradable emission scheme;

- (f) whether the applicant is a fit and proper person as contemplated in section 49;
- (g) the applicant's submissions;
- (h) any submissions from organs of state, interested persons and the public; and
- (i) any guidelines issued by the Minister or MEC relating to the performance by licensing authorities of their functions.

5

### Decisions of licensing authority

- 40.** (1) The licensing authority may—
- (a) grant an application; or
  - (b) refuse an application.
- (2) Any decision by a licensing authority to grant an application must be consistent with—
- (a) this Act and any other applicable national or provincial legislation;
  - (b) any applicable national or provincial environmental management policies;
  - (c) section 24 of the National Environmental Management Act and section 22 of the Environment Conservation Act and any applicable notice issued or regulation made pursuant to those sections;
  - (d) the national environmental management principles set out in section 2 of the National Environmental Management Act;
  - (e) any transitional and other special arrangements contemplated in section 21(3)(b);
  - (f) any minimum standards for atmospheric emissions of identified substances or mixtures of substances as contemplated in section 21(3);
  - (g) any applicable pollution prevention plan contemplated in section 29;
  - (h) the objectives of any applicable air quality management plan; and
  - (i) any ambient air quality or emission standards that have been determined in terms of this Act.
- (3) If an authorisation notice is issued in terms of section 24 of the National Environmental Management Act or section 22 of the Environment Conservation Act in respect of an application, the licensing authority must decide the application within 60 days of the date on which the notice has been issued.
- (4) After a licensing authority has reached a decision in respect of a licence application, it must within 30 days—
- (a) notify the applicant of the decision, and give written reasons if the application was unsuccessful;
  - (b) in a manner determined by the licensing authority, notify any persons who have objected to the application; and
  - (c) at the request of any person contemplated in paragraph (b), give written reasons for its decision or make public its reasons.

10

15

20

25

30

35

### Successful applications

- 41.** (1) If an application for an atmospheric emission licence has been granted in terms of section 40(1)(a), the licensing authority must first issue a provisional atmospheric emission licence to enable the commissioning of the listed activity.
- (2) A provisional atmospheric emission licence is subject to such conditions and requirements—
- (a) as the licensing authority may determine; and
  - (b) as the Minister or MEC has prescribed for listed activities of the kind in question.

40

45

### Issuing of atmospheric emission licences

- 42.** (1) The holder of a provisional atmospheric emission licence is entitled to an atmospheric emission licence when the commissioned facility has been in full compliance with the conditions and requirements of the provisional atmospheric emission licence for a period of at least six months.
- (2) An atmospheric emission licence is subject to such conditions and requirements—
- (a) as are specified in terms of section 43;
  - (b) as the licensing authority may determine; and
  - (c) as the Minister or MEC has prescribed for listed activities of the kind in question.

50

55

**Contents of provisional atmospheric emission licences and atmospheric emission licences**

- 43.** (1) A provisional atmospheric emission licence and an atmospheric emission licence must specify—
- (a) the activity in respect of which it is issued; 5
  - (b) the premises in respect of which it is issued;
  - (c) the person to whom it is issued;
  - (d) the period for which the licence is issued;
  - (e) the name of the licensing authority;
  - (f) the periods at which the licence may be reviewed; 10
  - (g) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere—
    - (i) under normal working conditions; and
    - (ii) under normal start-up, maintenance and shut-down conditions;
  - (h) any other operating requirements relating to atmospheric discharges, including non-point source or fugitive emissions; 15
  - (i) point source emission measurement and reporting requirements;
  - (j) on-site ambient air quality measurement and reporting requirements;
  - (k) penalties for non-compliance;
  - (l) greenhouse gas emission measurement and reporting requirements; and 20
  - (m) any other matters which are necessary for the protection or enforcement of air quality.
- (2) A licence may—
- (a) specify conditions in respect of odour and noise;
  - (b) require the holder of the licence to comply with all lawful requirements of an environmental management inspector carrying out his or her duties in terms of the National Environmental Management Act, including a requirement that the holder of the licence must, on request, submit to the inspector a certified statement indicating—
    - (i) the extent to which the conditions and requirements of the licence have or have not been complied with; 30
    - (ii) particulars of any failure to comply with any of those conditions or requirements;
    - (iii) the reasons for any failure to comply with any of those conditions or requirements; and 35
    - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure.

**Transfer of provisional atmospheric emission licences and atmospheric emission licences**

- 44.** (1) If ownership of an activity for which a provisional atmospheric emission licence or an atmospheric emission licence was issued is transferred, the licence may, with the permission of a licensing authority, be transferred by the holder of the licence to the new owner of the activity. 40
- (2) (a) A person applying for permission for the transfer of a licence must lodge the application with the licensing authority of the area in which the listed activity is carried out. 45
- (b) The application must be in the form required by the licensing authority.
- (3) An application for the transfer of a licence must be accompanied by—
- (a) the prescribed processing fee; and
  - (b) such documentation and information as may be required by the licensing authority. 50
- (4) (a) An applicant must take appropriate steps to bring the application for the transfer of an atmospheric emission licence to the attention of interested persons and the public.

(b) Such steps must include the publication of a notice in at least two newspapers circulating in the area in which the listed activity applied for is carried out—

- (i) describing the reasons for the transfer of an atmospheric emission licence;
- (ii) giving particulars of the listed activity, including the place where it is carried out; 5
- (iii) stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
- (iv) containing such other particulars as the licensing authority may require.

(5) When considering an application for the transfer of a licence, the licensing authority must take into account all relevant matters, including whether the person to whom the licence is to be transferred is a fit and proper person as contemplated in section 49. 10

#### **Review of provisional atmospheric emission licences and atmospheric emission licences** 15

45. (1) A licensing authority must review a provisional atmospheric emission licence or an atmospheric emission licence at intervals specified in the licence, or when circumstances demand that a review is necessary.

(2) The licensing authority must inform the licence holder and the relevant provincial air quality officer, in writing, of any proposed review and the reason for such review. 20

(3) For purposes of the review, an air quality officer may require the licence holder to compile and submit an atmospheric impact report contemplated in section 30.

#### **Variation of provisional atmospheric emission licences and atmospheric emission licences**

46. (1) A licensing authority may, by written notice to the holder of a provisional atmospheric emission licence or an atmospheric emission licence, vary the licence— 25

- (a) if it is necessary or desirable to prevent deterioration of ambient air quality;
- (b) if it is necessary or desirable for the purposes of achieving ambient air quality standards;
- (c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands; 30
- (d) at the written request of the holder of the licence;
- (e) if it is transferred to another person in terms of section 44; or
- (f) if it is reviewed in terms of section 45. 3.5

(2) The variation of a licence includes—

- (a) the attaching of an additional condition or requirement to the licence;
- (b) the substitution of a condition or requirement;
- (c) the removal of a condition or requirement; or
- (d) the amendment of a condition or requirement. 40

(3) If a licensing authority receives a request from the holder of a licence in terms of subsection (1)(d), the licensing authority 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; 4.5
- (b) the variation of the licence will authorise an increase in atmospheric emissions; and
- (c) the proposed variation has not, for any reason, been the subject of an authorisation in terms of any other legislation and public consultation. 50

(4) Steps in terms of subsection (3) must include the publication of a notice in at least two newspapers circulating in the area in which the listed activity authorised by the licence is, or will be, carried out—

- (a) describing the nature and purpose of the request;
- (b) giving particulars of the listed activity, including the place where it is or will be carried out; 5.5
- (c) stating 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; and

Act No. 39,2004 NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT. 2004

(d) containing such other particulars as the licensing authority may require.

(5) Sections 38 and 40, read with the necessary changes as the context may require, apply to the variation of a licence.

**Renewal of provisional atmospheric emission licences and atmospheric emission licences**

47. (1) A provisional atmospheric emission licence or an atmospheric emission licence may, on application by the holder of the licence, be renewed by a licensing authority.

(2) The holder of a licence must before the expiry date of the licence apply for the renewal of the licence to the licensing authority of the area in which the listed activity is carried out, by lodging to the licensing authority an application in the form required by the licensing authority. 10

(3) An application for the renewal of a licence must be accompanied by—

- (a) the prescribed processing fee;
- (b) proof that the relevant provincial air quality officer has been notified of the application; and 15
- (c) such documentation and information as may be required by the licensing authority.

(4) The holder of a provisional atmospheric emission licence may not apply for the renewal of the provisional licence more than once. 20

(5) Sections 38, 40 and 43, read with the necessary changes as the context may require, apply to an application for the renewal of a licence.

**Emission control officers**

48. (1) An air quality officer may require the holder of a provisional atmospheric emission licence or an atmospheric emission licence to designate an emission control officer, having regard to the size and nature of the listed activity for which the licence was granted. 25

(2) An emission control officer must have requisite air quality management competence in respect of the listed activity in question, and must—

- (a) work towards the development and introduction of cleaner production technologies and practices; 30
- (b) take all reasonable steps to ensure compliance by the holder of the licence with the licence conditions and requirements; and
- (c) promptly report any non-compliance with any licence conditions or requirements to the licensing authority through the most effective means reasonably available. 35

(3) Nothing in this section affects the obligations and liability of the holder of a licence to comply with the conditions and requirements of the licence.

**Criteria for fit and proper persons**

49. In order to determine whether a person is a fit and proper person for the purposes of an application in terms of this Chapter, a licensing authority must take into account all relevant facts, including whether— 40

- (a) that person has contravened or failed to comply with this Act, the Atmospheric Pollution Prevention Act or any other legislation applicable to air quality;
- (b) that person has held a provisional atmospheric emission licence, an atmospheric emission licence or other authority that has been suspended or revoked; 45
- (c) that person has been a director or senior manager who is or was a director or manager of a company or firm to whom paragraph (a) or (b) applies; and
- (d) the management of the listed activity which is the subject of the application will or will not be in the hands of a technically competent person. 50

**CHAPTER 6****INTERNATIONAL AIR QUALITY MANAGEMENT****Transboundary air pollution**

- 50.** (1) The Minister may investigate any situation which creates, or may reasonably be anticipated to contribute to— 5
- (a) air pollution across the Republic's boundaries; or
  - (b) air pollution that violates, or is likely to violate, an international agreement binding on the Republic in relation to the prevention, control or correction of pollution.
- (2) If the investigation contemplated in subsection (1) reveals that the release of a substance into the air from a source in the Republic may have a significant detrimental impact on air quality, the environment or health in a country other than the Republic, the Minister may prescribe measures to prevent, control or correct the releases within the Republic. 10
- (3) Before publishing regulations under subsection (2), the Minister must consult with— 15
- (a) the Cabinet member responsible for foreign affairs; and
  - (b) the MEC concerned.
- (4) Regulations contemplated in subsection (2) may include provisions regarding— 20
- (a) the quantity or concentration of the substance that may be released into the air;
  - (b) the manner in which and conditions under which the substance may be released into the air, either alone or in combination with any other substance;
  - (c) the maintenance of records for the administration of any regulation made under this section;
  - (d) the conduct of sampling, analyses, tests, measurements or monitoring of the substance and the submission of the results to the Minister; and 25
  - (e) the conditions, test procedures and laboratory practices to be followed for conducting sampling, analyses, tests, measurements or monitoring of the substance.
- (5) The Minister may, through the Cabinet member responsible for foreign affairs, advise the government of any country that would be affected by or benefit from the regulation before it is published. 30

**CHAPTER 7****OFFENCES AND PENALTIES****Offences** 35

- 51.** (1) A person is guilty of an offence if that person —
- (a) contravenes a provision of section 22, 25 or 35(2);
  - (b) fails to submit or to implement a pollution prevention plan as required by section 29(1)(b) or (2);
  - (c) fails to submit an atmospheric impact report required in terms of section 30; 40
  - (d) fails to notify the Minister as required by section 33;
  - (e) contravenes or fails to comply with a condition or requirement of an atmospheric emission licence;
  - (f) supplies false or misleading information in any application for an atmospheric emission licence, or for the transfer, variation or renewal of such a licence; 45
  - (g) supplies false or misleading information to an air quality officer;
  - (h) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of section 59.
- (2) A person operating a controlled emitter is guilty of an offence if the emissions from that controlled emitter do not comply with the standards established under section 24(1). 50
- (3) A person performing a listed activity is guilty of an offence if air pollutants at concentrations above the emission limits, specified in an atmospheric emission licence, are emitted as a result of that activity.

**Penalties**

**52.** (1) A person convicted of an offence referred to in section 51 is liable to a fine, or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment.

- (2) A fine contemplated in subsection (1)— 5
- (a) may not exceed an amount prescribed in terms of legislation regulating maximum fines for criminal offences; and
  - (b) must be determined with due consideration of—
    - (i) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment; 10
    - (ii) the monetary or other benefits which accrued to the convicted person through the commission of the offence; and
    - (iii) the extent of the convicted person's contribution to the overall pollution load of the area under normal working conditions.

**CHAPTER 8**

15

**GENERAL MATTERS***Part 1: Regulations***Regulations by Minister**

**53.** The Minister may make regulations that are not in conflict with this Act, regarding — 20

- (a) any matter necessary to give effect to the Republic's obligations in terms of an international agreement relating to air quality;
- (b) matters relating to environmental management co-operation agreements, to the extent that those agreements affect air quality;
- (c) emissions, including the prohibition of specific emissions, from point, non-point and mobile sources of emissions, including motor vehicles; 25
- (d) open fires and incinerators;
- (e) ozone-depleting substances;
- (f) codes of practice;
- (g) records and returns; 30
- (h) labelling;
- (i) trading schemes;
- (j) powers and duties of air quality officers;
- (k) appeals against decisions of officials in the performance of their functions in terms of the regulations; 35
- (l) incentives to encourage change in behaviour towards air pollution by all sectors in society;
- (m) requirements in respect of monitoring;
- (n) the avoidance or reduction of harmful effects on air quality from activities not otherwise regulated in terms of this Act; 40
- (o) any matter that may or must be prescribed in terms of this Act; or
- (p) any other matter necessary for the implementation or application of this Act.

**Regulations by MECs responsible for air quality**

**54.** The MEC may make regulations for the province concerned, not inconsistent with this Act, in respect of any matter for which the MEC may or must make regulations in terms of this Act, including a matter referred to in section 53(c) to (p). 45

**General**

- 55.** (1) Regulations made in terms of this Act may—
- (a) restrict or prohibit any act, either absolutely or conditionally;
  - (b) apply—
    - (i) generally to the Republic or a province, as the case may be, or only in a specified area or category of areas; or 5
    - (ii) generally to all persons or only to a specified category of persons;
  - (c) differentiate between different—
    - (i) areas or categories of areas; or
    - (ii) persons or categories of persons; and 10
  - (d) incorporate by reference any code of practice or any national or international standard relating to air quality.
- (2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to— 15
- (a) imprisonment for a period not exceeding five years;
  - (b) an appropriate fine; or
  - (c) both a fine and imprisonment.
- (3) (a) Before publishing any regulation made in terms of this Act, or any amendment to the regulations, the Minister or MEC must follow a consultative process in accordance with sections 56 and 57. 20
- (b) Paragraph (a) need not be complied with if the regulations are amended in a non-substantive way.

**Part 2: Consultative process****Consultation**

25

- 56.** (1) Before exercising a power which, in terms this Act, must be exercised in accordance with this section and section 57, the Minister or MEC must follow such consultative process as may be appropriate in the circumstances.
- (2) When conducting the consultations contemplated in subsection (1), the Minister must— 30
- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
  - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the MEC responsible for air quality in each province that will be affected by the exercise of the power; and 35
  - (c) allow public participation in the process in accordance with section 57.
- (3) When conducting the consultations contemplated in subsection (1), the MEC must—
- (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the power; 40
  - (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the Minister and all other national organs of state that will be affected by the exercise of the power; and
  - (c) allow public participation in the process in accordance with section 57.



Act No. 39.2004 NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT. 2004

### Public participation

57. (1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC must give notice of the proposed exercise of the relevant power—
- (a) in the *Gazette*; and 5
  - (b) in at least one newspaper distributed nationally or, if the exercise of the power will affect only a specific area, in at least one newspaper distributed in that area.
- (2) The notice must—
- (a) invite members of the public to submit to the Minister or MEC, within 30 days 10 of publication of the notice in the *Gazette*, written representations on or objections to the proposed exercise of the power; and
  - (b) contain sufficient information to enable members of the public to submit meaningful representations or objections.
- (3) The Minister or MEC may in appropriate circumstances allow any interested 15 person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.
- (4) The Minister or MEC must give due consideration to all representations or objections received or presented before exercising the power concerned.

### *Part 3: Delegations and exemptions* 20

#### Delegations

58. (1) The Minister or MEC, as the case may be, may delegate or assign to an official in their respective departments—
- (a) any power or duty of the Minister or MEC contained in this Act, excluding the 25 power to publish or amend a regulation in terms of section 53 or 54 or a notice in terms of section 7(1), 9(1), 10(1), 18(1), 21(1), 23(1) or 29(1); or
  - (b) any power or duty reasonably necessary to assist the Minister or MEC in exercising a power or performing a duty of the Minister or MEC.
- (2) The Minister or MEC must regularly review and, if necessary, amend or withdraw a delegation or assignment under subsection (1). 30
- (3) A delegation or assignment to an official under subsection (1)—
- (a) is subject to such limitations and conditions as the Minister or MEC may impose;
  - (b) may either be to a specific individual or to the holder of a specific post in the 35 relevant department;
  - (c) may authorise that official to subdelegate or further assign, in writing, the power or duty concerned to another official in the department, or to the holder of a specific post in the department; and
  - (d) does not divest the Minister or MEC of the responsibility concerning the 40 exercise of the delegated power or the performance of the assigned duty.
- (4) The Minister or MEC may confirm, vary or revoke any decision taken by an official as a result of a delegation or subdelegation in terms of this section, subject to any rights that may have become vested as a consequence of the decision.

**Exemptions**

- 59.** (1) (a) Any person or organ of state may, in writing, apply for exemption from the application of a provision of this Act to the Minister.
- (b) No exemption from a provision of section 9, 22 or 25 may be granted in terms of paragraph (a). 5
- (2) An application in terms of subsection (1) must be accompanied by reasons.
- (3) (a) The Minister may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.
- (6) The steps contemplated in paragraph (a) must include the publication of a notice 10  
in at least two newspapers circulating nationally—
- (i) giving reasons for the application; and
- (ii) containing such other particulars concerning the application as the Minister may require.
- (4) The Minister may— 15
- (a) from time to time review any exemption granted in terms of this section; and
- (b) on good grounds withdraw any exemption.
- (5) The Minister may on such conditions and limitations determined by the Minister delegate any of the powers contained in this section to—
- (a) the MEC responsible for air quality in a province; or 20
- (6) a metropolitan or district municipality.

**CHAPTER 9****MISCELLANEOUS****Repeal of legislation**

- 60.** (1) The legislation mentioned in the Table in Schedule 1 is hereby repealed or 25  
amended to the extent set out in the third column of the Table, subject to subsections (2)  
and (3) of this section and section 61.
- (2) Anything done or deemed to have been done under a provision repealed by  
subsection (1) and which can be done in terms of a provision of this Act must be 30  
regarded as having been done under that provision of this Act.
- (3) Anything done or deemed to have been done under a provision repealed by  
subsection (1) and which can be done in terms of the constitutional or statutory powers  
of a municipality, remains in force in the area of a municipality until repealed by the  
municipality of that area.

**Transitional arrangements in respect of registration certificates issued in terms of 35  
Atmospheric Pollution Prevention Act**

- 61.** (1) (a) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, a provisional registration certificate issued in terms of that Act and which was a valid certificate immediately before the date on which section 60 took effect, continues to be valid for a period of two years from that date, subject to paragraph (c). 40
- (b) During the period for which a provisional registration certificate continues to be valid, the provisions of this Act, read with the necessary changes as the context may require, apply in respect of—
- (i) the holder of such a certificate as if that person is the holder of a provisional atmospheric emission licence issued in terms of section 41(1) of this Act for 45  
the activity for which the certificate was issued; and
- (ii) the certificate as if the certificate is a provisional atmospheric emission licence.
- (c) If during the two-year period referred to in paragraph (a)—
- (i) a provisional atmospheric emission licence is issued to the holder of a 50  
provisional registration certificate following a revision in terms of section 45  
or an application for renewal in terms of section 47, the certificate expires on  
the date of issue of the provisional licence; or
- (ii) an atmospheric emission licence is issued to the holder of a provisional 55  
registration certificate in terms of section 42(1), the certificate expires on the  
date of issue of the licence.

(2) (a) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, a registration certificate issued in terms of that Act and which was a valid certificate immediately before the date on which section 60 took effect, continues to be valid for a period of four years from that date, subject to paragraph (d).

(b) During the period for which a registration certificate continues to be valid, the provisions of this Act, read with the necessary changes as the context may require, apply in respect of— 5

(i) the holder of such a certificate as if that person is the holder of an atmospheric emission licence issued in terms of section 42(1) of this Act for the activity for which the certificate was issued; and 10

(ii) the certificate as if the certificate is an atmospheric emission licence.

(c) The holder of a registration certificate must within the first three years of the four-year period referred to in paragraph (a), lodge a renewal application in terms of section 47 with the licensing authority of the area in which the activity for which the certificate was issued is carried out. 15

(d) (i) If the holder of a registration certificate fails to comply with paragraph (c), the certificate expires at the end of the three years referred to in paragraph (c).

(ii) If during the four-year period referred to in paragraph (a) an atmospheric emission licence is issued to the holder of a registration certificate following an application for renewal in terms of paragraph (c), the certificate expires on the date of issue of the licence. 20

(iii) If during the period before the holder of a registration certificate lodges an application for renewal in terms of paragraph (c), an atmospheric emission licence is issued to the holder of the certificate following a revision in terms of section 45, the certificate expires on the date of issue of the licence. In such event compliance with paragraph (c) falls away. 25

(3) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, any application for a registration certificate made in terms of that Act which was not decided when section 60 took effect, must be proceeded with in terms of this Act as if such application was an application for an atmospheric emission licence in terms of section 37. 30

#### **Transitional provision regarding listed activities**

62. Pending the listing of activities by the Minister in terms of section 21, the processes identified in the Second Schedule of the Atmospheric Pollution Prevention Act must for the purposes of this Act be regarded as activities listed by the Minister in terms of that section. 35

#### **Transitional provision regarding ambient air quality standards**

63. Until ambient air quality standards have been established in terms of section 9, 10 or 11, the ambient air quality standards contained in Schedule 2 apply.

#### **Short title and commencement**

40

64. (1) This Act is called the National Environmental Management: Air Quality Act, 2004, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) for different provisions of the Act.

Act No. 39,2004

NATIONAL ENVIRONMENT MANAGEMENT:  
AIR QUALITY ACT, 2004**SCHEDULE 1****(Section 60)****Legislation repealed or amended**

| No. and year of Act | Short title  | Extent of repeal or amendment   |
|---------------------|--|---|
| Act No. 45 of 1965  | Atmospheric Pollution Prevention Act, 1965           | The whole   |
| Act No. 17 of 1973  | Atmospheric Pollution Prevention Amendment Act, 1973 | The whole   |
| Act No. 21 of 1981  | Atmospheric Pollution Prevention Amendment Act, 1981 | The whole   |
| Act No. 15 of 1985  | Atmospheric Pollution Prevention Amendment Act, 1985 | The whole   |
| Act No. 107 of 1998 | National Environmental Management Act, 1998          | <p>The amendment of section 1 by the substitution for the definitions of "specific environmental management Act" and "specific environmental management Acts" of the following definition:</p> <p><u>'specific environmental management Act' means—</u></p> <p><u>(i) the National Environmental Management: Biodiversity Act, 2003;</u></p> <p><u>(ii) the National Environmental Management: Protected Areas Act, 2003;</u></p> <p>or</p> <p><u>(iii) the National Environmental Management: Air Quality Act, 2004,</u></p> <p><u>and includes any regulations or other subordinate legislation made in terms of any of those Acts;".</u></p> |

**SCHEDULE 2****(Section 63)****Ambient air quality standards**

1. Ambient concentrations of ozone (O<sub>3</sub>) may not exceed—
  - (a) an instant peak of 0.25 parts per million measured at 25°C and normal atmospheric pressure; or
  - (b) a one-hour average of 0.12 parts per million measured at 25°C and normal atmospheric pressure.
2. Ambient concentrations of the oxides of nitrogen (NO<sub>x</sub>) may not exceed—
  - (a) an instant peak of 1.4 parts per million measured at 25°C and normal atmospheric pressure;
  - (b) a one-hour average of 0.8 parts per million measured at 25°C and normal atmospheric pressure;
  - (c) a 24-hour average of 0.4 parts per million measured at 25°C and normal atmospheric pressure and the 24-hour limit may not be exceeded more than three times in one year;
  - (d) a one-month average of 0.3 parts per million measured at 25°C and normal atmospheric pressure; or
  - (e) an annual average of 0.2 parts per million measured at 25°C and normal atmospheric pressure.
3. Ambient concentrations of nitrogen dioxide (NO<sub>2</sub>) may not exceed—
  - (a) an instant peak of 0.5 parts per million measured at 25°C and normal atmospheric pressure;
  - (b) a one-hour average of 0.2 parts per million measured at 25°C and normal atmospheric pressure;
  - (c) a 24-hour average of 0.1 parts per million measured at 25°C and normal atmospheric pressure and the 24-hour limit may not be exceeded more than three times in one year;
  - (d) a one-month average of 0.08 parts per million measured at 25°C and normal atmospheric pressure; or
  - (e) an annual average of 0.05 parts per million measured at 25°C and normal atmospheric pressure.
4. Ambient concentrations of sulphur dioxide (SO<sub>2</sub>) may not exceed—
  - (a) a ten-minute average instant peak of 0.191 parts per million measured at 25°C and normal atmospheric pressure;
  - (b) an instant peak of 500 micrograms per cubic meter (µg/m<sup>3</sup>) measured at 25°C and normal atmospheric pressure;
  - (c) a 24-hour average of 0.048 parts per million or 125 micrograms per cubic meter (µg/m<sup>3</sup>) measured at 25°C and normal atmospheric pressure;
  - (d) an annual average of 0.019 parts per million or 50 micrograms per cubic meter (µg/m<sup>3</sup>) measured at 25°C and normal atmospheric pressure.
5. Ambient concentrations of lead (Pb) may not exceed a one-month average of 2.5 micrograms per cubic meter (µg/m<sup>3</sup>).
6. Ambient concentrations of particulate matter with a particle size of less than 10 microns (µ) in size (PM<sub>10</sub>) may not exceed—
  - (a) a 24-hour average of 180 micrograms per cubic meter (µg/m<sup>3</sup>) and the 24-hour limit may not be exceeded more than three times in one year; or
  - (b) an annual average of 60 micrograms per cubic meter (µg/m<sup>3</sup>).
7. Ambient concentrations of total suspended solids may not exceed—
  - (a) a 24-hour average of 300 micrograms per cubic meter (µg/m<sup>3</sup>) and the 24-hour limit may not be exceeded more than three times in one year; or
  - (b) an annual average of 100 micrograms per cubic meter (µg/m<sup>3</sup>).