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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GOVERNMENT NOTICES

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 555

22 April 2003

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, hereby publishes the second draft National Environmental Management Second Amendment Bill, which provides for the further regulation of environmental impact assessments, environmental authorizations, the registration of associations of environmental assessment practitioners and incidental matters. More details are set out in the explanatory memorandum and the attached Bill.

Written comments and inputs are invited from interested parties and the general public, which must be submitted **on or before 30 May 2003** to:

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## **NATIONAL ENVIRONMENTAL MANAGEMENT SECOND AMENDMENT BILL, 2003**

### **EXPLANATORY MEMORANDUM**

The National Environmental Management Act, 1998 (NEMA) provides for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote co-operative governance and procedures for coordinating environmental functions exercised by organs of state.

This amendment to the Act seeks to:

- Provide for the listing of activities that requires an environmental authorization
- Provide for offences when listed activities are undertaken without or in contradiction with an environmental authorization
- Provide for associations of environmental assessment practitioners to be registered
- Provide for cost recovery for services delivered by competent authorities

Section 24 provides for both the Minister and MEC to identify activities or areas in which certain activities may not be undertaken in the absence of an environmental authorization.

**This Bill will provide for the creation of certification authorities for environmental practitioners. This will ensure that proper standards are set and maintained by practitioners and would enhance the quality of reports submitted for approval. Authorities responsible for implementation of chapter 5 of NEMA would be able to charge a fee for services rendered in order to recover costs**

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with a solid line indicate insertions in existing enactments.

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**NATIONAL ENVIRONMENTAL MANAGEMENT SECOND AMENDMENT  
BILL, 2003**

**BILL**

**To amend the National Environmental Management Act, 1998, to further regulate environmental authorisations; to provide for the registration of associations of environmental assessment practitioners; and to provide for incidental matters.**

**Amendment of section 1 of Act 107 of 1998**

1. Section 1 of the National Environmental Management Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by:

- (a) the insertion after the definition of “community” of the following definition:  
“ ‘competent authority’ means, in respect of any listed activity, the organ of state charged by this Act with evaluating the environmental impact of that activity and, where appropriate, granting an environmental authorisation in respect of that activity;”;
- (b) the insertion after the definition of “environment” of the following definition:  
“ ‘environmental authorisation’ means the authorisation by a competent authority of a listed activity in terms of this Act;”;
- (c) the insertion after the definition of “international environmental instrument” of the following definitions:  
“ ‘listed activity’ means an activity identified in terms of section 24(2)(a) – (c);”;  
“ ‘listed area’ means an area identified in terms of section 24(2)(b);”;

- (d) the substitution for the definition of “MEC” of the following definition:  
 “ ‘MEC’ means the Member of the Executive Council to whom the Premier has assigned responsibility for the environment [the performance in the province of the functions entrusted to a MEC by or under such a provision];”;
- (e) the insertion after the definition of “regulation” of the following definition:<sup>1</sup>  
 “ ‘specific environmental management Act’ means –  
 (i) the National Environmental Management: Biodiversity Act, 2003 (Act No... of 2003); and  
 (ii) the National Environmental Management: Protected Areas Act, 2003 (Act No ... of 2003);  
and includes any regulations or other subordinate legislation made in terms of these Acts;”.

#### **Amendment of section 24 of Act 107 of 1998**

2. The following section is hereby substituted for section 24 of the principal Act:

**“24 [Implementation ]Environmental authorisations**

(1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact on [-

- (a) the environment];
- (b) socio-economic conditions; and
- (c) the cultural heritage,]

of listed activities [that require authorisation or permission by law and which may significantly affect the environment,] must be considered, investigated, [and] assessed [prior to their implementation] and reported on to the competent authority [organ of

<sup>1</sup> This definition also appeared in the NEMA Amendment Bill, 2003 (the first NEMA Amendment Bill). It is included here for convenience and to make this Bill understandable but will be deleted if the first NEMA Amendment Bill is passed prior to this Bill being introduced in Parliament or if the two Bills are merged prior to being introduced in Parliament.

state] charged by [law] this Act with granting the relevant environmental authorisation [authorising, permitting, or otherwise allowing the implementation of an activity].

(1A) Listed activities and areas are activities and areas identified by the Minister or MEC in terms of subsection (2)(a) – (c).

(2) The Minister [**may with the concurrence of the MEC**], and every MEC [**may**] with the concurrence of the Minister, may [ in the prescribed manner]—

(a) identify activities which may not [**be**] commence[**d**] without prior environmental authorisation from the competent authority [Minister or MEC];

(b) identify geographical areas based on environmental attributes in which specified activities may not [**be**] commence[**d**] without prior environmental authorisation from the competent authority [Minister or MEC] and [**specify such**] identify any specified activities;

(c) identify existing activities in respect of which an application for an environmental authorisation must be made to the competent authority: [make regulations in accordance with subsections (3) and (4) in respect of such authorisations;]

[(d) **identify existing authorised and permitted activities which must be considered, assessed, evaluated and reported on; and]**

[(e) **prepare compilations of information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every organ of state charged by law with authorising, permitting or otherwise allowing the implementation of a new activity, or with considering, assessing and evaluating an existing activity;]**

Provided that where authorisation for an activity falls under the jurisdiction of another Minister, a decision in respect of paragraph (a) **[or (b)] to (c)** must be taken **[in] after** consultation with such other Minister.

(2A) The Minister, and every MEC with the concurrence of the Minister, may prepare compilations of information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every competent authority.

(3)[(a)] Procedures for the [The] investigation, assessment and communication of the potential impact of activities [contemplated in subsection (1) must take place in accordance with procedures complying with subsection (7)] must, as a minimum, ensure the following:

- (a) investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;
- (b) investigation of the potential impact, including cumulative effects, of the activity and its alternatives on the environment, socio-economic conditions and cultural heritage and assessment of the significance of that potential impact;
- (c) investigation of mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;
- (d) public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;
- (e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
- (f) investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;

- (g) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
- (h) that the findings and recommendations flowing from such investigation, and the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and
- (i) that environmental attributes identified in the compilation of information and maps as contemplated in subsection (2A) are considered.

**[(b) Every Minister and MEC responsible for an organ of state that is charged by law with authorising, permitting, or otherwise allowing an activity contemplated in subsection (1) may prescribe regulations laying down the procedures to be followed and the report to be prepared for the purpose of compliance with paragraph (a).]**

**[(c) Any regulations made in terms of this subsection or any other law that contemplates the assessment of the potential environmental impact of activities must, notwithstanding any other law, comply with subsection (7).]**

**[(d) This section does not affect the validity of any law contemplated in paragraph (c) that is in force at the commencement of this Act, including the provisions and regulations referred to in section 50 (2): Provided that paragraph (a) must nevertheless be complied with.]**

**[(4) Before any regulations are prescribed under this section or any other law that contemplates the assessment of the potential environmental impact of activities, and notwithstanding such other law—**

- (a) a Minister or MEC must submit a draft of such regulations to the Committee;**

**(b) the Committee must within 30 days of the receipt of such draft regulations—**

- (i) determine whether the draft regulations would bring about a duplication of effort by persons initiating activities contemplated in subsection (1) in the investigation and assessment of the potential impacts of activities that require authorisation or permission from more than one organ of state; and**
- (ii) approve the draft regulations unless they would bring about such a duplication of effort; or**
- (iii) specify amendments to be made to such draft regulations in order to avoid such a duplication of effort;**

**(c) a Minister or MEC must—**

- (i) where such draft regulations have been approved by the Committee, follow the procedure prescribed in section 47; or**
- (ii) give effect to the amendments specified by the Committee, and thereafter follow the procedure prescribed in section 47.]**

(4) The Minister, and every MEC with the concurrence of the Minister, may make regulations consistent with subsection (3) –

(a) laying down the procedure to be followed in applying for, the issuing of and monitoring compliance with environmental authorisations;

(b) laying down the procedure to be followed, and the institutional arrangements, in respect of –

- (i) the efficient administration and processing of environmental authorisations;
- (ii) fair decision-making and conflict management in the consideration and processing of applications for environmental authorisations;

- (iii) the preparation and evaluation of environmental impact assessments, strategic environmental assessments, environmental management plans, risk assessments, lifecycle assessments, and similar environmental management instruments;
  - (iv) applications by any person to the competent authority to be exempted from the provisions of any regulation in respect of a specific application;
  - (v) appeals against decisions of competent authorities;
- (c) prescribing fees to be paid for the consideration and processing of applications for environmental authorisations;
- (d) requiring the provision of funds or other security to ensure compliance with conditions attached to environmental authorisations;
- (e) specifying that environmental impact assessments, or other specified tasks performed in connection with an application for an environmental authorisation, may only be performed by an environmental assessment practitioner registered in accordance with the procedures to be established;
- (f) requiring that competent authorities maintain a registry of applications for, and records of decision in respect of, environmental authorisations;
- (g) specifying that a contravention of a specified regulation is an offence and prescribing penalties for the contravention of that regulation;
- (h) any other matter necessary for dealing with making and evaluating applications for environmental authorisations.

(4A) An MEC may make regulations in terms of section 24(4) only in respect of listed activities or areas in respect of which the MEC or the provincial department responsible for environmental affairs is the competent authority.

(5) Compliance with the procedure laid down by [a] the Minister or an MEC in terms of subsection (4) does not remove the need to obtain an authorisation other than an environmental authorisation, for that activity from any [other] organ of state

charged by law with authorising, permitting or otherwise allowing the implementation of the activity.

(6) Only the Minister may make regulations in accordance with subsection[s (3) and] (4) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential impacts for the purpose of complying with subsection (1) where—

- (a) the activity will affect **[the interest of]** more than one province or traverse international boundaries;
- (b) the activity will affect compliance with obligations resting on the Republic under customary or conventional international law[; or
- (c) **an activity contemplated in subsection (1) is not dealt with in regulations made under subsection (3)].**

**[(7) Procedures for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure the following:**

- (a) Investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;**
- (b) investigation of the potential impact, including cumulative effects, of the activity and its alternatives on the environment, socio-economic conditions and cultural heritage, and assessment of the significance of that potential impact;**
- (c) investigation of mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;**
- (d) public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;**

- (e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;
- (f) investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;
- (g) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;
- (h) that the findings and recommendations flowing from such investigation, and the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and
- (i) that environmental attributes identified in the compilation of information and maps as contemplated in subsection (2) (e) are considered.]”

### **Insertion of sections 24A to 24I in Act 107 of 1998**

3. The following sections are hereby inserted in the principal Act after section 24:

#### **“24A Procedure for listing activity or area**

Before listing any activity or area in terms of section 24(2), the Minister or MEC must publish a notice in the relevant Gazette –

- (a) specifying the activity or area that it is proposed to list;
- (b) inviting interested parties to submit written comments on the proposed listing within a reasonable period.

**24B Delisting of activities or areas**

(1) The Minister may delist an activity or area made by the Minister in terms of subsection 24(2).

(2) The MEC may, with the concurrence of the Minister, delist an activity or area made by the MEC in terms of sub-section 24(2).

(3) The Minister or MEC must comply with section 24A, read with the changes required by the context, before delisting an activity or area in terms of this section.

**24C Procedure for identifying the competent authority**

(1) When listing activities in terms of section 24(2) the Minister, or the MEC with the concurrence of the Minister, must identify the competent authority responsible for granting environmental authorisations in respect of those activities.

(2) The Minister must be identified in terms of subsection (1) as the competent authority if the activity -

- (a) has implications for national environmental policy or international environmental commitments or relations;
- (b) will take place within an area identified in terms of section 24(2)(b) as a result of the obligations resting on the Republic in terms of any international environmental instrument, other than any area falling within the sea-shore, a conservancy, a protected natural environment, a proclaimed private nature reserve, a natural heritage site, a world heritage site or the buffer zone or transitional area of a biosphere reserve;
- (c) will affect more than one province or traverse international boundaries; or
- (d) is undertaken, or is to be undertaken, by -
  - (i) a national department;
  - (ii) a provincial department responsible for environmental affairs; or

(iii) a statutory body performing an exclusive competence of the national sphere of government.

(3) The Minister and an MEC may agree that applications for environmental authorisations in regard to any activity or class of activities-

(a) contemplated by sub-section (2) may be dealt with by the MEC;

(b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister.

#### **24D Publication of list**

The Minister or MEC must publish in the relevant Gazette a notice listing activities and areas identified in terms of subsection 24(2) and listing the competent authorities identified in terms of subsection 24C.

#### **24E Minimum conditions attached to environmental authorisations**

Every environmental authorisation must as a minimum ensure that adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity.

#### **24F Commencing or continuing listed activity**

(1) Notwithstanding the provisions of any other Act, no person may commence an activity listed in terms of section 24(2)(a) or (b) unless the competent authority has granted an environmental authorisation for the activity, and no person may continue an existing activity listed in terms of section 24(2)(c) if an application for an environmental authorisation is refused.

(2) It is an offence for any person to commence or continue any listed activity, or cause any listed activity to be commenced or continued -

(a) in contravention of subsection (1);

(b) in contravention of the environmental authorisation granted for the activity.

(3) Sub-sections (1) and (2) do not apply if the activity was commenced or continued in response to an emergency, involving the safety of humans or property or the protection of the environment.

(4) A person convicted of an offence in terms of subsection (2) is liable to a fine or imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment. A fine imposed in terms of this section shall not exceed three times the value of the activity on completion.

(5) A person convicted of an offence in terms of subsection (2), and who after such conviction persists in the act or omission which constituted the offence, shall be guilty of a continuing offence and liable on conviction to a fine or to imprisonment for a period not exceeding 60 days for every day on which he or she so persists with such act or omission, or to both such fine and imprisonment.

#### **24G Registration authorities**

(1) Any association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may determine.

(2)

(2) The application must contain-

- (a) the constitution of the association;
- (b) a list of the members of the association;
- (c) a description of the criteria and process to be used to register environmental assessment practitioners;
- (d) a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;
- (e) a code of conduct regulating the ethical and professional conduct of members of the association; and
- (f) any other prescribed requirements.

(3) After considering an application, and any other additional information that the Minister may require, the Minister may-

- (a) by notice in the Gazette, appoint the association as a registration authority; or
- (b) on notice to the association, refuse to appoint the association as a registration authority.

(4) The Minister for good cause and on notice to the association may terminate the appointment of an association as a registration authority.

(5) The Minister must maintain a register of all associations appointed as registration authorities in terms of this section.

#### **24H Activities commenced or continued in contravention of Chapter 5 of this Act**

(1) Notwithstanding any other powers they may have, the Minister or MEC may direct any person who has commenced or continued any listed activity in contravention of Chapter 5, or caused any listed activity to be commenced or continued in contravention of Chapter 5, to-

- (a) compile a report containing -
  - i) an assessment of the nature, extent, duration and significance of the impacts of the activity on the environment, including the cumulative effects;
  - ii) a description of mitigation measures undertaken or to be undertaken in respect of the impacts of the activity on the environment;
  - (iii) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;
  - iv) an environmental management plan; and
  - v) provide such other information or undertake such further studies as the Minister or MEC deem necessary.

(2) Upon the payment by the person of a fine of 10% of the estimated value of the activity on completion, the Minister or MEC concerned must consider the report contemplated in that section and thereafter must -

- (a) direct such person to cease the activity, either wholly or in part and rehabilitate the environment subject to such conditions as the Minister or MEC may deem necessary; or
- (b) issue an environmental authorisation to such person subject to such conditions as the Minister or MEC may deem necessary.”

(3) The Minister or MEC may, on good cause shown, reduce the amount of the fine contemplated in subsection (2).

#### **Amendment of section 43 of Act 107 of 1998**

4. The following section is hereby substituted for section 43 of the principal Act:

#### **“43 Appeals [to the Minister]**

(1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act or a specific environmental management Act.

(2) Any affected person may appeal to the relevant MEC against a decision taken by any person acting under a power delegated by the MEC under this Act or a specific environmental management Act [An appeal under subsection (1) must be noted and must be dealt with in the manner prescribed].

(3) Any affected person may appeal to the Minister or MEC as the case may be against -

- (a) any decision to issue or refuse to issue an environmental authorisation or grant an exemption in terms of chapter 5 of this Act;
- (b) any provision or condition of an environmental authorisation or exemption issued or granted in terms of chapter 5 of this Act;
- (c) any directive issued in terms of chapter 5 of this Act.

(4) An appeal under subsections (1) to (3) must be noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee.

(5) The Minister or MEC, as the case may be, may, either consider and decide an appeal or appoint an appeal panel to consider and advise the Minister or MEC on the appeal.

(6) The Minister or MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate order, including an order that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(7) An appeal under this section does not suspend an environmental authorisation or exemption, or any provisions or conditions attached thereto, or any directive, unless the Minister or MEC directs otherwise.”

**Amendment of section 44 of Act 107 of 1998**

5. Section 44 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister may make regulations –
- (a) dealing with any matter which under this Act must, or may, be dealt with by regulation; and
  - (b) generally, to carry out the purposes and the provisions of this Act.”

**Amendment of section 47 of Act 107 of 1998**

6. Section 47 of the principal Act is hereby amended by –

- (a) the substitution for subsection (2) of the following subsection:

“(2) The Minister or MEC must, within 30 days after promulgating and publishing any regulations under this Act, [table] refer the regulations to Parliament or the relevant provincial legislature as the case may be [in the National Assembly and the National Council of Provinces and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature].”

(b) by the deletion of subsections (3) and (4);

(c) by the substitution of subsection (5) for the following subsection:

“[(5)(a) The National Assembly, after considering any rejection of a regulation by the National Council of provinces: and the relevant provincial legislature, may by resolution within 60 days after they have been tabled disapprove of the regulations,]

(3) Parliament or the relevant provincial legislature must consider the regulations and may approve the regulations or disapprove the regulations and may suspend its disapproval for any period and on any conditions to allow the Minister or MEC to amend the regulations [correct a defect].”

(d) by the substitution of subsection (6) for the following subsection:

“[(6)] (4) If [the National Assembly] Parliament or a provincial legislature disapproves of any regulation, the regulation lapses, but without affecting –

- (i) the validity of anything done in terms of the regulation before it lapsed;  
or
- (ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.”

**Amendment of section 50 of Act 107 of 1998**

7. Section 50 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection;

“(3) Any application made in terms of sections 21 or 22 of the Environment Conservation Act, 1989 (Act 73 of 1989) that has commenced but not been finalised when those sections are repealed, shall be finalised as if those sections had not been repealed.”

**Substitution of Schedule 3 to Act 107 of 1998**

8. The following Part is hereby substituted for Part (a) of Schedule 3 to the principal Act:

**“Part (a): National Legislation**

<b>No. and year of law</b>	<b>Short title</b>	<b>Relevant provisions</b>
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947	Section 18 (1) (l) in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animal Protection Act, 1962	Sections 2(1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	Section 9
Act No. 15 of 1973	Hazardous Substances Act, 1973	Section 19(1)(a) and (b) in so far as it relates to contraventions of sections 3 and 3A
Act No. 63 of 1976	Mountain Catchment Areas Act, 1976	Section 14 in so far as it relates to contraventions of section 3
Act No. 63 of 1977	Health Act, 1977	Section 27
Act No. 73 of 1980	Dumping at Sea Control Act,	Sections 2(1)(a) and 2(1)(b)

	1980	
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability) Act, 1981	Section 2(1)
Act No. 43 of 1983	Conservation of Agricultural Resources Act, 1983	Sections 6 and 7
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships) Act, 1986	Section 3A"
Act No. 73 of 1989	Environment Conservation Act, 1989	Section 29(2)(a) and (4)
Act No. 18 of 1998	Marine Living Resources Act, 1998	Section 58(1) in so far as it relates to contraventions of sections 43(2), 45, and 47, and section 58(2) in so far as it relates to contraventions of international conservation and management measures
Act No. 36 of 1998	National water Act, 1998	Section 151(I) and (j)
<u>Act No. 107 of 1998</u>	<u>National Environmental Management Act, 1998</u>	<u>Section 24 (G)</u>

#### Short title and commencement

9. This Act is called the National Environmental Management Second Amendment Act, 2003, and takes effect on a date determined by the President by proclamation.

No. 556

22 April 2003

**NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY BILL**

The Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, hereby publishes the National Environmental Management: Air Quality Bill, which seeks to repeal the Atmospheric Pollution Prevention Act, 1965 (Act. 45 of 1965), (APPA).

The draft Bill provides the framework for the reform air quality governance through the establishment of national norms and standards, and a regulatory framework for an air quality management planning and reporting regime and numerous regulatory instruments for the control of air pollution and a comprehensive approach to compliance and enforcement. More details are set out in the explanatory memorandum and the attached Bill.

Written comments and inputs are invited from interested parties and the general public, which must be submitted **on or before 30 May 2003** to:

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## **NATIONAL ENVIRONMENTAL MANAGEMENT AIR QUALITY BILL, 2003**

### **EXPLANATORY MEMORANDUM**

The National Environmental Management: Air Quality Bill seeks to repeal the Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965) and to provide the framework for governance of air quality management through the establishment of national norms and standards, and a regulatory framework for an air quality management planning and reporting regime and numerous regulatory instruments for the control of air pollution and a comprehensive approach to compliance and enforcement.

This amendment to the Act seeks to, among other things:

- protect, restore and enhance the air quality in the Republic, having regard to the need to ensure sustainable development;
- provide increased opportunities for public involvement and participation in the protection of air quality;
- ensure that the public has access to relevant and meaningful information about air pollution;
- reduce risks to human health and prevent the degradation of air quality by the use of mechanisms that promote:
  - pollution prevention and cleaner production,
  - the reduction to harmless levels of the discharge of substances likely to impair air quality,

**NATIONAL ENVIRONMENTAL MANAGEMENT****DRAFT AIR QUALITY BILL**

**To reform the law regulating air quality in order to protect, restore and enhance the quality of air in the Republic, taking into account the need for sustainable 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 –**

everyone has a right to an environment that is not harmful to his or her health or well-being;

everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and secure ecologically sustainable development while promoting justifiable economic and social development;

sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations;

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

many inhabitants of South Africa live and work in areas where the air is harmful to their health and well being;

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

economic growth in many areas with high growth potential is being hampered by poor air quality in these areas;

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

contaminated ambient air cannot be remedied and thus, pollution minimisation through cleaner production is the only sustainable means by which air quality can be improved;

ambient air quality standards define public air that is not harmful to health and well-being;

air that conforms to ambient air quality standards facilitates and enhances sustainable development;

new and innovative approaches to legislation are required to protect, restore and enhance the air quality in the Republic.

**IT IS NOW ENACTED** by the Parliament of the Republic of South Africa as follows: -

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**CHAPTER 1****INTERPRETATION, OBJECT AND APPLICATION OF ACT****Definitions and interpretation**

1. (1) In this Act, unless the context indicates otherwise –

**“air pollution”** means changes in the natural composition of the air, especially through smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols, steam, odorous substances and radioactive substances;

**“Atmospheric Pollution Prevention Act”** means the Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965);

**“atmospheric emission”** or **“emission”** means any emission or entrainment process emanating from a point or non-point source that changes the natural composition of ambient air;

**“atmospheric emission license”** means a license contemplated in section 30, and includes a provisional atmospheric emission license;

**“air quality officer”** means an officer appointed in terms of section 13;

**“controlled emitter”** means any appliance or activity declared as a controlled emitter in terms of section 22;

**“Department”** means the Department of Environmental Affairs and Tourism;

**“environment”** has the meaning set out in section 1 of the National Environmental Management Act;

**“environmental management co-operation agreement”** means an agreement contemplated in section 35 of the National Environmental Management Act;

**“Gazette”**, when used in relation to –

- (a) the Minister, means the *Government Gazette*; and
- (b) the MEC responsible for air quality in a province, means the *Provincial Gazette* of that province;

**“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;

**“licensing authority”** means authority responsible for implementing the licensing system set out in Chapter 5;

**“listed activity”** means any activity listed in terms of section 20;

**“MEC responsible for air quality”** means the member of the Executive Council of a province who is responsible for air quality management in the province;

**“Minister”** means the Minister of Environmental Affairs and Tourism;

**“municipality”** means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**“National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act 107 of 1998);

**“national framework”** means the framework which must be established in terms of section 6 (1);

**“non-point source”** means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source, and includes veld and forest fires, mining activities, agricultural activities and stockpiles;

**“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;

**“point source”** means a single identifiable source of atmospheric emission, and includes smoke stacks and vehicle exhausts;

**“pollution”** has the meaning set out in section 1 of the National Environmental Management;

**“this Act”** includes –

- (a) the national framework;
- (b) any regulation made in terms of section 46 or 47; 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.

### **Object of this Act**

2. The object of this Act is to protect, restore and enhance the quality of air in the Republic, taking into account the need for sustainable development.

### **State’s general duty**

3. In fulfilling the rights contained in section 24 of the Constitution, the state –

- (a) through the organs of state implementing this Act, must endeavour to protect, restore and enhance the quality of air in the Republic; and
- (b) must implement this Act to achieve the progressive realisation of those rights.

#### **Application of this Act**

4. (1) This Act applies –
- (a) in the Republic, including its territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
  - (b) to all activities affecting the quality of air in South Africa.
- (2) This Act, excluding section 44, 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**

5. This Act must be –
- (a) read with the provisions of the National Environmental Management Act; and
  - (b) interpreted and applied in accordance with the principles set out in section 2 of that Act.

## **CHAPTER 2**

### **AIR QUALITY NORMS AND STANDARDS**

#### ***Part 1: National norms and standards***

##### **National framework**

6. (1) The Minister must, by notice in the *Gazette*, establish a national framework setting national norms and standards for achieving the object of this Act, which may include norms and standards for –
- (a) ambient air quality;
  - (b) emissions from point or non-point sources;
  - (c) air quality monitoring;
  - (d) air quality management planning; and

(e) air quality information management.

(2) National norms and standards set in terms of subsection (1) must be aimed at –

- (a) providing opportunities for public participation in the protection, restoration and enhancement of air quality;
- (b) ensuring public access to air quality information systems;
- (c) preventing air pollution and the degradation of air quality;
- (d) reducing to harmless levels discharges likely to impair air quality, including the reduction of air pollution at source;
- (e) promoting efficient air quality management;
- (f) effective air quality monitoring;
- (g) regular reporting on air quality; and
- (h) complying with the Republic's obligations in terms of international agreements;

(3) The national framework –

- (a) binds all organs of state in all spheres of government;
- (b) may assign and delineate responsibilities for the implementation of this Act amongst –
  - (i) the different spheres of government; and
  - (ii) different organs of state;
- (c) may differentiate between different geographical areas; and
- (d) may be amended from time to time.

(4) Before publishing the national framework, or any amendment to the framework, the Minister must follow a consultative process in accordance with sections 49 and 50.

(5) Subsection (4) need not be applied to a non-substantive change to the framework.

### **National standards for ambient air quality and emissions**

7. The national framework may –

- (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present or is likely to present a threat to health or the environment; and
- (b) in respect of each of those substances or mixtures of substances, establish national standards for –
  - (i) ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; or
  - (ii) emissions from point or non-point sources.

### **National monitoring and information management standards**

8. The national framework may establish national standards for –

- (a) the monitoring by municipalities of –
  - (i) ambient air quality; and
  - (ii) point and non-point source emissions; and
- (b) the monitoring by provinces of –
  - (i) ambient air quality; and
  - (ii) the performance of municipalities in implementing this Act.
- (c) for the collection and management of data necessary to assess –
  - (i) compliance with this Act;
  - (ii) compliance with ambient air quality and emission standards;
  - (iii) performance of organs of state in respect of air quality management plans and priority area air quality management plans;
  - (iv) impact of, and compliance with, air quality management plans and priority area air quality management plans; and
  - (v) compliance with the Republic's obligations in terms of international agreements.

### ***Part 2: Provincial and local norms and standards***

#### **Provincial standards for ambient air quality and emissions**

9. (1) The MEC responsible for air quality in a province 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 or is likely to present a threat to health or the environment in the province; and
  - (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
    - (ii) emissions from point or non-point sources in the province or in any geographical area within the province.
- (2) If national standards have been established in terms of section 7 for any particular substance or mixture of substances, an MEC may not alter any such national standards except by establishing stricter standards for the province or for any geographical area within the province.
- (3) A notice in terms of this section may differentiate between different geographical areas within the province.
- (4) 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 49 and 50.
- (5) Subsection (4) need not be applied to a non- substantive change to the notice.

#### **Local standards for emissions**

- 10.** (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 or is likely to present a threat to health or the environment in the municipality; and
  - (b) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point or non-point sources in the municipality.

(2) If national or provincial standards have been established in terms of section 7 or 9 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.

(3) 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 measurements**

11. For the purpose of this Chapter, the Minister must by regulation in terms of section... prescribe the manner in which –

- (a) ambient air quality measurements must be carried out; and
- (b) measurements of emissions from point or non-point sources must be carried out.

## **CHAPTER 3**

### **INSTITUTIONAL AND PLANNING MATTERS**

#### **National Air Quality Management Committee**

12. (1) The Minister may, by notice in the *Gazette*, establish a National Air Quality Advisory Committee to advise the Minister on the implementation of this Act.

(2) When establishing the Committee, the Minister must, by notice in the *Gazette*, set out –

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

**Appointment of air quality officers**

13. (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 responsible for air quality in a province 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.

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

(5) An air quality officer may delegate a duty or power referred to in subsection (4) to a person in the service of that officer's administration, subject to any limitations or conditions as may be prescribed by the Minister by regulation in terms of section 46.

(6) Air quality officers must co-ordinate their activities in a manner as may be set out in the national framework or prescribed by the Minister by regulation in terms of section 46.

**Air quality management plans**

14. (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.

(2) Each municipality must include in its integrated development plan envisaged in section 25 of the Municipal Systems Act, an air quality management plan.

**Contents of air quality management plans**

- 15.** (1) An air quality management plan must –
- (a) within the domain of the relevant 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;
    - (ii) to improve air quality across the country;
    - (iii) to address the effects of emissions from the use of fossil fuels in residential applications;
    - (iv) to implement the Republic's obligations in respect of international agreements; and
    - (v) to give effect to best practise in air quality management;
  - (b) describe how the department, province or municipality will give effect to its air quality management plan; and
  - (c) comply with any other the requirements as may be prescribed by the Minister by regulation in terms of section 46.

**Reporting on implementation of air quality plans**

- 16.** 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 plan, including information on –
- (a) air quality management initiatives undertaken by it during the reporting period;
  - (b) the level of its compliance with air quality national standards;
  - (c) measures taken by it to secure compliance with those standards; and
  - (d) its air quality monitoring activities.

**CHAPTER 4****AIR QUALITY MANAGEMENT MEASURES*****Part 1: Priority areas*****Declaration of priority areas**

- 17.** (1) The Minister or the MEC responsible for air quality in a province may, by notice in the *Gazette*, declare an area as a priority area if –

- (a) ambient air quality standards are being or are likely to be exceeded in the area, or any other situation exists which is causing, or is likely to cause, a significant negative impact on air quality in the area; and
- (b) the area requires specific air quality management action to rectify the situation.

(2) The Minister may declare an area in terms of subsection (1) as a priority area if –

- (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.

(3) The MEC responsible for air quality in a province may in terms of subsection (1) declare an area falling within the province as a priority area. The MECs responsible for air quality in two or more adjoining provinces may by joint action declare an area falling within those provinces as a priority area.

(4) Before publishing a notice in terms of subsection (1), the Minister or MEC must follow a consultative process in accordance with sections 49 and 50.

(5) The declaration of an area as a priority area must be withdrawn if the area is in compliance with ambient air quality standards.

### **Management of priority areas**

18. (1) If the Minister has in terms of section 17 declared an area as a priority area, the national air quality officer must –

- (a) after consulting the air quality officers of the affected provinces and municipalities, 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 Minister may specify, submit the plan to the Minister for approval.

(2) If the MEC responsible for air quality in a province has in terms of section 17 declared an area as a priority area, the air quality officer of the relevant province must –

(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

(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.

(3) Before approving a priority area air quality management plan, the Minister or MEC may require the relevant air quality officer to amend the plan within a period determined by the Minister or MEC.

(4) The Minister or MEC must publish an approved plan in the *Gazette* within 90 days of approval. An approved plan takes effect from the date of publication.

(5) A priority area air quality management plan –

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

(b) may for this purpose provide for the establishment of a committee representing relevant role players.

(6) A priority area air quality management plan lapses when the declaration of the area as a priority area is withdrawn in terms of section 17 (5).

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

**19.** The Minister or the MEC responsible for air quality in a province may in terms of section 46 or 47 make 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;
- (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 harmful atmospheric emissions***

### **Listing of activities**

**20.** (1) The Minister or the MEC responsible for air quality in a province may, by notice in the *Gazette* –

- (a) publish a list of activities which results in atmospheric emissions which has or is likely to have a significant detrimental effect on the environment, including health, social conditions, economic conditions or the cultural heritage; or
- (b) amend the list by –
  - (i) adding to the list additional activities contemplated in paragraph (a);
  - (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 an MEC applies in the relevant province only.

(3) 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 49 and 50. This subsection need not be applied to a non- substantive change to a notice.

(4) A notice referred to in subsection (1) –

- (a) must determine the date on which the notice takes effect; and
- (b) may contain transitional and other special arrangements in respect of activities which are carried out at the time of their listing.

### **Consequences of listing**

**21.** No person may without an atmospheric emission license issued in terms of Chapter 5 –

- (a) carry out –
  - (i) anywhere in the Republic an activity listed on the national list; or
  - (ii) in a province an activity listed on the list applicable in that province;
- (b) commence with the construction of infrastructure for the carrying out of a listed activity.

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

#### **Controlled emitters**

**22.** (1) When an appliance or activity results in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, presents or is likely to present a threat to health or the environment, the Minister or the MEC responsible for air quality in a province may, by notice in the *Gazette*, declare any appliance or activity within a category specified in the notice to be a controlled emitter.

(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 49 and 50; and
- (b) consider –
  - (i) the precautionary principle;
  - (ii) any sound scientific information;
  - (iii) any risk assessments; and
  - (iv) the Republic's obligations in terms of any applicable international agreements.

(3) Subsection (2) need not be applied to a non-substantive change to a notice.

#### **Standards for controlled emitters**

**23.** (1) The Minister or MEC must set emission standards for any appliance or activity declared as a controlled emitter in terms of section 22.

(2) The emission standards referred to in subsection (1) must establish –

- (a) the maximum permissible amount or concentration of any specified pollutants that may be emitted from the controlled emitter; and
- (b) the concentration values of such specified pollutants.

(3) The Minister must by regulation in terms of section 46 prescribe the manner in which measurements of emissions from controlled emitters must be carried out.

#### ***Part 4: Other measures***

##### **Pollution prevention plans**

24. (1) The Minister or the MEC responsible for air quality in a province may, by notice in the *Gazette* –

- (a) declare any substance contributing to air pollution as a priority air pollutant; and
- (b) require persons falling within a category specified in the notice to prepare and implement pollution prevention plans in respect of a substance declared as a priority pollutant in terms of paragraph (a).

(2) An air quality officer may, by written notice to a person carrying out an activity listed in terms of section 20 and which involves the emission of a substance declared as a priority pollutant, require that person to prepare and implement a pollution prevention plan, whether or not that person falls within a category specified in terms of subsection (1) (b).

(3) Pollution prevention plans must comply with requirements as may be prescribed by the Minister by regulation in terms of section 46.

##### **Environmental management co-operation agreements**

25. In order to promote compliance with the national environmental management principles insofar as air quality is concerned, the Minister, the MEC responsible for air quality in a province or a municipality may enter into an environmental management co-operation agreement with any person or community with regard to –

- (a) the development and application of air quality technology;

- (b) the use of renewable energy sources;
- (c) increased energy efficiency;
- (d) the utilisation of less carbon intensive fuels;
- (e) conservation measures to enhance greenhouse sinks and reservoirs;
- (f) any matter mentioned in section 35 of the National Environmental Management act; and
- (g) any other related matter.

### **Recognition programmes**

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

### **Control of noise and vibration**

27. The Minister or the MEC responsible for air quality in a province may, by regulation in terms of section 46 or 47, prescribe measures for the control of noise and vibration, either in general or by specified machinery or in specified instances or in specified places or areas, including for determining –

- (a) definitions for noise and vibration;
- (b) the maximum levels of noise and vibration.

### **Control of odours**

28. The occupier of any premises at which a process is carried on may not cause or permit the emission of any offensive odour.

## **CHAPTER 5**

### **LICENSING OF LISTED ACTIVITIES**

#### **Licensing authority**

29. Metropolitan and district municipalities are charged with implementing the atmospheric emission licensing system referred to in Part 2 of Chapter 4, and must for this purpose perform the functions of licensing authority as set out in this Chapter.

**Application for atmospheric emission licenses**

**30.** (1) A person may apply for an atmospheric emission license by lodging to the licensing authority of the area in which the listed activity is or is to be carried out, an application on the form prescribed by the licensing authority in terms of its by-laws.

(2) An application for an atmospheric emission license must be accompanied by –

- (a) a processing fee as may be prescribed Minister by regulation in terms of section 46; and
- (b) any documentation and information as may be prescribed by the licensing authority in terms of its by-laws.

**Procedure for license applications**

**31.** 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 –
  - (i) other information, in addition to the information contained in or submitted in connection with the application;
  - (ii) an assessment in terms of section 24 of the National Environmental Management Act of the likely effect of the proposed license on air quality; and
  - (iii) an independent review of such assessment, by a person acceptable to the licensing authority;
- (b) may conduct its own investigation on the likely effect of the proposed license on air quality;
- (c) may invite written comments from any organ of state which has an interest in the matter; and
- (d) must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.

(3) Section 24 of the National Environmental Management Act applies to all applications for atmospheric emission licenses, and both an applicant and the licensing authority must comply with the requirements of that section.

(4) An applicant must take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the general public. Such steps must include the publication of a notice in newspapers circulating in the area in which the listed activity applied for is or is to be carried out –

- (a) describing the nature and purpose of the license applied for;
- (b) giving particulars of the listed activity, including the place where it is or is to be carried out;
- (c) 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
- (d) containing such other particulars as the licensing authority may require.

**Factors that must be taken into account by licensing authorities**

**32.** When considering an application for an atmospheric emission license, the licensing authority must take into account all relevant matters, including –

- (a) 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 and the cultural heritage;
- (b) any practical measures that could be taken –
  - (i) to prevent, control, abate or mitigate that pollution; and
  - (ii) to protect the environment from harm as a result of that pollution;
- (c) any relevant tradable emission scheme;
- (d) whether the applicant is a fit and proper person determined in accordance with the criteria set out in section 42;
- (e) the applicant's submissions;
- (f) any submissions from organs of state, interested persons and the public; and
- (g) any guidelines issued by the Minister or the MEC responsible for air quality in the relevant province relating to the performance by licensing authorities of their functions.

**Decisions**

33. (1) The licensing authority may –

- (a) grant an application; or
- (b) refuse the 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) any decision in terms of section 24 of the National Environmental Management Act;
- (d) the national environmental management principles set out in section 2 of the National Environmental Management Act;
- (e) the objectives of any applicable air quality management plan; and
- (f) any ambient air quality or emission standards that have been determined in terms of this Act.

(3) After the licensing authority has reached a decision in respect of a license application, it must promptly –

- (a) notify the applicant;
- (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 referred to in paragraph (a) or (b), give written reasons for its decision or make public its reasons.

**Successful applications**

34. (1) If an application for an atmospheric emission license has been granted in terms of section 33 (1) (a), the licensing authority must first issue a provisional atmospheric emission license to enable the installation and commissioning of the listed activity.

(2) A provisional atmospheric emission license is subject to such conditions and

requirements –

- (a) as the licensing authority may determine; and
- (b) as the Minister or the MEC responsible for air quality in the relevant province has prescribed by regulation in terms of section 46 or 47 for listed activities of the kind in question.

#### **Issuing of final atmospheric emission licenses**

**35.** (1) The holder of a provisional atmospheric emission license is entitled to an atmospheric emission license when the commissioned facility is in full compliance with the conditions and requirements of the provisional atmospheric emission license.

(2) An atmospheric emission license is subject to such conditions and requirements –

- (a) as are specified in section 36;
- (b) as the licensing authority may determine; and
- (c) as the Minister or the MEC responsible for air quality in the relevant province has prescribed by regulation in terms of section 46 or 47 for listed activities of the kind in question.

#### **Contents of provisional and final atmospheric emission licenses**

**36.** (1) An atmospheric emission license must specify –

- (a) the activity in respect of which it is issued;
- (b) the property in respect of which it is issued;
- (c) the person to whom it is issued;
- (d) the duration of the license;
- (e) the periods at which the license may be reviewed;
- (f) the maximum allowed 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;

- (g) any other operating requirements relating to atmospheric discharges, including non-point source or fugitive emissions;
- (h) point source emission measurement and reporting requirements;
- (i) on site ambient air quality measurement and reporting requirements;
- (j) penalties for non-compliance;
- (k) greenhouse gas emission measurement and reporting requirements; and
- (l) any other conditions which are necessary to protect air quality.

(2) An atmospheric emission license may –

- (a) specify the control technology to be used;
- (b) specify conditions in respect of odour and vibrations;
- (c) require the holder of the licence to comply with all lawful requirements of an environmental enforcement officer carrying out his or her duties in terms of the National Environmental Management Act, including a requirement that the holder of the license must, on request, submit to the officer a certified statement indicating –
  - (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
  - (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
  - (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 atmospheric emission licenses**

37. (1) An atmospheric emission license may with the permission of the licensing authority be transferred by the holder of the license to another person.

(2) A person may apply for permission for the transfer of an atmospheric emission license by lodging to the licensing authority of the area in which the listed activity is carried out, an application on the form prescribed by the licensing authority in terms of its by-laws.

(3) An application for an atmospheric emission license must be accompanied by –

- (a) a processing fee as may be prescribed Minister by regulation in terms of section 46; and
- (b) any documentation and information as may be prescribed by the licensing authority in terms of its by-laws.

(4) When considering an application for an atmospheric emission license, the licensing authority must take into account all relevant matters, including whether the person to whom the license is to be transferred is a fit and proper person determined in accordance with the criteria set out in section 42.

### **Variation of atmospheric emission licenses**

38. A licensing authority may, by written notice to the holder of an atmospheric emission license, vary the license –

- (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; or
- (d) at the written request of the holder of the license.

(2) A variation includes –

- (a) the attaching of an additional condition or requirement to a license;
- (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.

(3) A license may be varied at any time during its currency, including on its being transferred to another person.

(4) If a licensing authority receives a request from the holder of a license in terms of

subsection (1) (d), the licensing authority may require the holder of the license to take appropriate steps to bring the request to the attention of relevant organs of state, interested persons and the general public if –

- (a) the variation of the license will authorise a significant increase in the environmental impact regulated by the license; and
- (b) the proposed variation has not, for any reason, been the subject of an authorisation in terms of any other legislation and public consultation.

(5) Steps in terms of subsection (4) must include the publication of a notice in newspapers circulating in the area in which the listed is carried out –

- (a) describing the nature and purpose of the request;
- (b) giving particulars of the listed activity, including the place where it is carried out;
- (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
- (d) containing such other particulars as the licensing authority may require.

#### **Review of atmospheric emission licenses**

39. A licensing authority must review an atmospheric emission license at intervals specified in the license.

#### **Renewal of atmospheric emission licenses**

40. (1) An atmospheric emission license may on application by the holder of the license be renewed by a licensing authority.

(2) The holder of an atmospheric emission license may before the expiry date of the license apply for the renewal of the license to the licensing authority of the area in which the listed activity is carried out, by lodging to the licensing authority an application on the form prescribed by the licensing authority in terms of its by-laws.

- (3) An application for the renewal of a license must be accompanied by –
- (a) a processing fee as may be prescribed Minister by regulation in terms of section 46; and
  - (b) any documentation and information as may be prescribed by the licensing authority in terms of its by-laws.
- (4) The holder of a provisional atmospheric emission license may not apply for the renewal of the provisional license more than once.
- (5) Sections 31, 33 and 36, read with the necessary changes as the context may require, apply to an application for the renewal of a license

#### **Emission control officers**

41. (1) An air quality officer may require the holder of an atmospheric emission license to designate an emission control officer, having regard to the size and nature of the listed activity for which the license was granted.

(2) An emission control officer must have requisite technical competence for the listed activity in question, and must –

- (a) work towards the development and introduction of environmentally compatible processes; and
- (b) take all reasonable steps to ensure compliance with the license conditions and requirements.

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

#### **Criteria for fit and proper persons**

42. 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 –

- (a) whether that person has contravened this Act, the Atmospheric Pollution Prevention Act or any other legislation applicable to air quality;
- (b) whether that person has held an atmospheric emission license or other authority under this Act, the Atmospheric Pollution Prevention Act or any such other legislation that has been suspended or revoked;
- (c) whether that person is or was a director or manager of a company or firm to whom paragraph (a) or (b) applies; and
- (d) whether 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.

## CHAPTER 6

### INTERNATIONAL AIR QUALITY MANAGEMENT

#### Trans-boundary air pollution

**43.** (1) The Minister may investigate any situation which creates, or may reasonably be anticipated to contribute to –

- (a) trans-boundary air pollution; 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, as a result of a substance or substances being released into the air from a source.

(2) If, after such investigation, the Minister is of the opinion 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 human health in a country other than the Republic, the Minister may in terms of section 46 prescribe regulations for the purposes of preventing, controlling or correcting the releases within the Republic.

(3) Before publishing regulations referred to in subsection (2), the Minister must consult with –

- (a) the Cabinet member responsible for foreign affairs;
- (b) the MEC responsible for air quality in each of the provinces concerned.

- (4) Regulations referred to in subsection (2) may include provisions regarding –
- (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
  - (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 identification, notice or regulation before it is published.

## CHAPTER 7

### OFFENCES AND PENALTIES

#### Offences

44. (1) A person is guilty of an offence if that person –
- (a) contravenes a provision of section 21 or 28;
  - (b) contravenes or fails to comply with a condition or requirement of an atmospheric emission license;
  - (c) supplies false or misleading information in any application for an atmospheric emission license, or for the transfer, variance or renewal of such a license;
  - (d) supplies false or misleading information to an air quality officer;
  - (e) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of section 51.

(2) A person operating a controlled emitter is guilty of an offence if specified pollutants at concentrations above the standards for such pollutants are emitted from that controlled emitter.

(3) A person operating a listed activity is guilty of an offence if specified pollutants at concentrations above the emission limits specified in an atmospheric emission license is emitted from that activity.

### **Penalties**

45. (1) A person convicted of an offence referred to in section 44 is liable to a fine, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

- (2) A fine in terms of subsection (1) –
- (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, safety and the environment;
    - (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**

### **GENERAL MATTERS**

#### ***Part 1: Regulations***

#### **Regulations by Minister**

46. The Minister may or must make regulations in respect of any matter which the Minister may or must make in terms of this Act, including regulations, not inconsistent with this Act, regarding –

- (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 from point and non-point sources of emissions, including motor vehicles;
- (d) the regulation of noise and vibrations;
- (e) open fires or incinerators;
- (f) ozone depleting substances;
- (g) codes of practice;
- (h) records and returns;
- (i) labelling;
- (j) trading schemes;
- (k) appeals against decisions of officials in the exercise of their powers and functions in terms of the regulations;
- (l) incentives to encourage change in behaviour towards air pollution by all sectors in society;
- (m) the avoidance or reduction of harmful effects on air quality from activities not otherwise regulated in terms of this Act; or
- (n) any other matter necessary for the implementation of this Act.

#### **Regulations by MECs responsible for air quality**

**47.** The MEC may make regulations, not inconsistent with this Act, regarding a matter referred to in section 46 (c) to (n).

#### **General**

**48.** (1) Regulations made in terms of section 46 or 47 may –

- (a) restrict or prohibit any act either absolutely or conditionally;
- (b) apply –
  - (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas; or
  - (ii) generally to all persons or only to a specified category of persons; or
- (c) differentiate between different –
  - (i) areas or categories of areas; or

- (ii) persons or categories of persons;
- (d) incorporate by reference any code of practice or national and international standard relating to air quality.

(2) Regulations made in terms of section 46 or 47 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 –

- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine; or
- (c) both a fine and imprisonment.

(3) Before publishing any regulations in terms of section 46 or 47, or any amendment to the regulations, the Minister or MEC must follow a consultative process in accordance with sections 49 and 50.

- (4) Subsection (3) need not be applied to a non- substantive change to the regulations.

### ***Part 2: Consultation process***

#### **Consultation**

49. (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 50, the Minister or MEC responsible for air quality in the province must follow a consultative process as may be appropriate in the circumstances.

- (2) The Minister must, as may be appropriate in terms of subsection (1) –
  - (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

(c) allow public participation in the process in accordance with section 50.

(3) The MEC responsible for air quality in a province must, as may be appropriate in terms of subsection (1) –

(a) consult all members of the Executive Council 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 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 50.

### **Public participation**

**50.** (1) The Minister or MEC must give notice of the proposed exercise of the relevant power –

(a) in the *Gazette*; and

(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 21 days 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 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.

### ***Part 3: Exemptions***

#### **Exemptions**

**51.** (1) Any person or organ of state may, in writing, apply to the Minister for exemption from the application of any provision of this Act.

(2) An application in terms of subsection (1) must be accompanied by reasons.

(3) The Minister may –

- (a) require further information from the applicant before deciding the application;
- (b) grant the application or grant the application on conditions; or
- (c) refuse the application.

(4) The Minister may –

- (a) withdraw any exemption granted in terms of this section if any condition subject to which it was granted is not complied with; or
- (b) from time to time review any exemption or condition subject to which it was granted;

## **CHAPTER 9**

### **MISCELLANEOUS**

#### **Repeal of legislation**

**52.** (1) The Atmospheric Pollution Prevention Act is hereby repealed.

(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 regarded as having been done under the provision of this Act.

**Transitional arrangements in respect of registration certificates**

**53.** (1) At the commencement of this Act all existing registration certificates issued in respect of processes identified in Schedule 2 of the Atmospheric Pollution Prevention Act must be deemed to be provisional atmospheric emission licenses issued in terms of this Act for a period of two years from the commencement of this Act.

(2) The national air quality officer must issue written confirmation to holders of such registration certificates of the change in status of their atmospheric emission authorisation within 90 days of the commencement of this Act.

(3) The holders of a written confirmation referred to in subsection (2) must make an application for an atmospheric emission license within one year of the commencement of this Act.

(4) Failure to make the necessary application within the period provided under subsection (3) renders the provisional atmospheric emission license referred to in subsection (1) null and void.

(5) The holder of a provisional atmospheric emission license contemplated in subsection (1) is entitled to an atmospheric emission license when the facility for which the license is issued is in full compliance with the requirements of the provisional atmospheric emission license.

(6) Despite subsection (5), the licensing authority may require a review of the provisional atmospheric emission license in terms of section 39 or a variation as provided for in section 38 before the atmospheric emission license contemplated in of subsection (5) is granted.

**Transitional provision regarding listed activities**

**54.** Pending the identification of listed activities as contemplated in section 20, the processes identified in Schedule 2 of the Atmospheric Pollution Prevention Act must be regarded to be listed activities.

**Transitional provision regarding ambient standards**

55. Pending the setting of standards referred to in section 6, the ambient air quality guidelines contained in the Atmospheric Pollution Prevention Act continue to apply.

**Short title and commencement**

56. This Act is called the National Environmental Management: Air Quality Act, 2003, and takes effect on a date determined by the Minister by notice in the *Gazette*.

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