

(19 May 2014 – to date)

[This is the current version and applies as from 19 May 2014, i.e. the date of commencement of the National Environmental Management: Air Quality Amendment Act 20 of 2014 – to date]

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT 39 OF 2004

(Gazette No. 27318, Notice No. 163. Commencement date: 11 September 2005 – save for sections 21, 22, 36 to 49, 51(1)(e), 51(1)(f), 51(3), 60 and 61 [Government Notice R898, Gazette No. 28016]

(English text signed by the President)

(Assented to 19 February 2005)

As amended by:

National Environment Laws Amendment Act 44 of 2008 - Gazette No. 31685, Notice No. 1318
Commencement date: 11 September 2009 [Proc. No. 902, Gazette No. 32563]

National Environment Laws Amendment Act 14 of 2009 - Gazette No. 32267, Notice No. 617.
Commencement date: 18 September 2009 [Proc. No. 65, Gazette No. 32580]

Commencement date of the Sections 21, 22, 36 to 49, 51(1)(e), 51(1)(f), 51(3), 60 and 61 of the original Act
39 for 2004: 1 April 2010 [Proc. No. 220, Gazette No. 33041]

National Environmental Management Laws Amendment Act 14 of 2013 – Gazette No. 36703, No. 530 dated
24 July 2013. Commencement date: 24 July 2013.

National Environmental Management: Air Quality Amendment Act 20 of 2014 – Gazette No. 37666, No. 390
dated 19 May 2014. Commencement date: 19 May 2014.

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,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

TABLE OF CONTENTS

CHAPTER 1 INTERPRETATION AND FUNDAMENTAL PRINCIPLES

Sections

1. Definitions
2. Object of Act
3. General duty of State
4. Application of Act
5. Application of National Environmental Management Act

6. Conflicts with other legislation

CHAPTER 2

NATIONAL FRAMEWORK AND NATIONAL, PROVINCIAL AND LOCAL STANDARDS

Part 1: National framework

7. Establishment
8. National monitoring and information management standards

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

9. National standards
10. Provincial standards
11. Local standards

Part 3: General

12. Ambient air quality and emission measurements

CHAPTER 3

INSTITUTIONAL AND PLANNING MATTERS

13. National Air Quality Advisory Committee
14. Appointment of air quality officers
15. Air quality management plans
16. Contents of air quality management plans
17. Reporting on implementation of air quality management plans

CHAPTER 4

AIR QUALITY MANAGEMENT MEASURES

Part 1: Priority areas

18. Declaration of priority areas
19. Management of priority areas
20. Regulations for implementing and enforcing priority area air quality management plans

Part 2: Listing of activities resulting in atmospheric emissions

21. Listing of activities
22. Consequences of listing

22A. Consequences of unlawful conduct of listed activity resulting in atmospheric emission

Part 3: Controlled emitters

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

Part 4: Controlled fuels

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

Part 5: Other measures

- 29. Pollution prevention plans
- 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
- 34. Control of noise
- 35. Control of offensive odours

CHAPTER 5
LICENSING OF LISTED ACTIVITIES

- 36. Licensing authority
- 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
- 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
- 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
- 48. Emission control officers
- 49. Criteria for fit and proper persons

CHAPTER 6
INTERNATIONAL AIR QUALITY MANAGEMENT

- 50. Transboundary air pollution

CHAPTER 7
OFFENCES AND PENALTIES

- 51. Offences
- 52. Penalties

CHAPTER 8
GENERAL MATTERS

Part 1: Regulations

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

Part 2: Consultative process

- 56. Consultation
- 57. Public participation

Part 3: Delegations and exemptions

- 58. Delegations
- 59. Exemptions

CHAPTER 9
MISCELLANEOUS

- 60. Repeal of legislation
- 61. Transitional arrangements in respect of registration certificates issued in terms of Atmospheric Pollution Prevention Act
- 62.
- 63.
- 64. Short title and commencement

SCHEDULE 1

SCHEDULE 2

(Table of Contents amended by section 16 of Act 20 of 2014)

CHAPTER 1

INTERPRETATION AND FUNDAMENTAL PRINCIPLES

1. Definitions

(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;

"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 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 Prevention Act, 1965 (Act No. 45 of 1965);

"commissioning" means the commencement of a listed activity;

(Definition of "commissioning" inserted by section 1(a) of Act 20 of 2014)

"controlled emitter" means any appliance or activity declared as a controlled emitter in terms of section 23;

"Department" means the Department responsible for environmental affairs;

(Definition of "Department" substituted by section 1(b) of Act 20 of 2014)

"environment" has the meaning assigned to it section 1 of the National Environmental Management Act;

"Environment Conservation Act"

(*Definition of "Environment Conservation Act" deleted by section 1(c) of Act 20 of 2014*)

"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;

"licensing authority" means an authority referred to in section 36(1), (2), (3A), (4) or (5) responsible for implementing the licensing system set out in Chapter 5;

(*Definition of "licensing authority" substituted by section 1(d) of Act 20 of 2014*)

"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;

"Minister" means the Minister responsible for environmental affairs;

(*Definition of "Minister" substituted by section 1(e) of Act 20 of 2014*)

"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);

"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);

"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;

"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;

"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;

"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—

(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.

2. Object of Act

The object of this Act is—

(a) to protect the environment by providing reasonable measures for—

(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.

3. General duty of State

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.

4. Application of Act

- (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).
- (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.

5. Application of National Environmental Management Act

- (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.

6. Conflicts with other legislation

- (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.

- (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
 - (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.

CHAPTER 2

NATIONAL FRAMEWORK AND NATIONAL, PROVINCIAL AND LOCAL STANDARDS

Part 1: National framework

7. Establishment

- (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;
 - (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;
 - (e) national norms and standards for air quality management planning;
 - (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—
 - (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;
- (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.

(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—
 - (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.

(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.

(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.

8. National monitoring and information management standards

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;
- (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—
 - (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;
 - (v) compliance with the Republic's obligations in terms of international agreements; and
 - (vi) access to information by the public.

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

9. National standards

- (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
- (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
- (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.

10. Provincial standards

- (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
 - (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, 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.
- (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

(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.

11. Local standards

(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
- (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.

(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—

- (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

12. Ambient air quality and emission measurements

For the purpose of this Chapter, the Minister must prescribe the manner in which—

- (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.

CHAPTER 3

INSTITUTIONAL AND PLANNING MATTERS

13. National Air Quality Advisory Committee

- (1) The Minister must, by notice in the *Gazette*, establish the National Air Quality Advisory Committee in terms of this Act.

(Section 13(1) substituted by section 2(a) of Act 20 of 2014)

- (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;
- (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 prescribe any other matter relating to the Committee.

(Section 13(2)(d) substituted by section 2(b) of Act 20 of 2014)

- (3) The object of the Committee is to advise the Minister on any air quality related matter as the Minister may determine from time to time.

(Section 13(3) added by section 2(c) of Act 20 of 2014)

14. Appointment of air quality officers

- (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.
- (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.
- (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.

15. Air quality management plans

- (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 contemplated in Chapter 5 of the Municipal Systems Act, an air quality management plan.

16. Contents of air quality management plans

- (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;
 - (ii) to improve air quality;
 - (iii) to identify and reduce the negative impact on human health and the environment of poor air quality;
 - (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);
 - (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
- (c) comply with such other requirements as may be prescribed by the Minister.

17. Reporting on implementation of air quality management plans

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—

- (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
- (e) its air quality monitoring activities.

CHAPTER 4
AIR QUALITY MANAGEMENT MEASURES

Part 1: Priority areas

18. Declaration of priority areas

- (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
 - (b) the area requires specific air quality management action to rectify the situation.
- (2) The Minister may act under subsection (1), 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 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.

(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.

19. Management of priority areas

- (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
 - (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—
 - (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.
- (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
- (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—

- (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.
- (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
- (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).

20. Regulations for implementing and enforcing priority area air quality management plans

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;
- (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

21. Listing of activities

- (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
 - (b) when necessary, amend the list by—
 - (i) adding to the list activities in addition to those 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 the MEC applies to the relevant province only.
- (3) A notice referred to in subsection (1)—
 - (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
 - (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.
- (4) 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.

(Section 21 commenced 1 April 2010)

22. Consequences of listing

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.

(Section 22 commenced 1 April 2010)

22A. Consequences of unlawful conduct of listed activity resulting in atmospheric emission

- (1) Section 24G of the National Environmental Management Act, 1998, as amended, applies to the commencement, without an environmental authorisation, of a listed activity or the activity specified in item 2 in Listing Notice 1 and items 5 and 26 in Listing Notice 2, relating to air quality in terms of Chapter 5 of the National Environmental Management Act, 1998.
- (2) Subsections (4) to (10) are applicable to the operating, without a provisional registration or registration certificate, of a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965, at any time prior to the commencement of this Act.
- (3) Subsections (4) to (10) are applicable to the conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, of an activity listed in terms of section 21 of this Act which results in atmospheric emission.
- (4) On application by a person who conducted an activity contemplated in subsection (2) or (3), the licensing authority may direct the applicant to—
 - (a) immediately cease the activity pending a decision on the application submitted in terms of this section;
 - (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;
 - (c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;
 - (d) cease, modify or control any act, activity, process or omission causing atmospheric emission;

- (e) eliminate any source of atmospheric emission;
- (f) compile a report containing—
 - (i) a description of the need and desirability of the activity;
 - (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
 - (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity;
 - (iv) 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;
 - (v) an environmental management programme; or
- (g) provide such other information or undertake such further studies as the licensing authority may deem necessary.

(5) The licensing authority must consider any reports or information submitted in terms of subsection (4) and thereafter may—

- (a) refuse to issue an atmospheric emission licence;
- (b) issue an atmospheric emission licence to such person to conduct the activity subject to such conditions as the licensing authority may deem necessary, which atmospheric emission licence shall only take effect from the date on which it has been issued; or
- (c) direct the applicant to provide further information or take further steps prior to making a decision in terms of paragraphs (a) or (b).

(6) The licensing authority may as part of the decision contemplated in subsection (5), direct a person to—

- (a) rehabilitate the environment within such time and subject to such conditions as the licensing authority may deem necessary;
- (b) prevent or eliminate any source of atmospheric emission from the activity within such time and subject to such conditions as the licensing authority may deem necessary; or
- (c) take any other steps necessary under the circumstances.

(7) A person contemplated in subsection (4) must pay an administrative fine, which may not exceed R5 million and which must be determined by the licensing authority, before the licensing authority may act in terms of subsection 5(a) or (b).

(8) In considering a decision contemplated in subsection (5)(a) or (b), the licensing authority may take into account whether or not the applicant complied with any directive issued in terms of subsections (4) or (5)(c).

(9) The submission of an application in terms of subsection (4) or the issuing of an atmospheric emission licence in terms of subsection 5(b) or the payment of the administrative fine in terms of subsection (7) shall—

- (a) in no way derogate from the environmental management inspector's or the South African Police Services' authority to investigate any transgression of this Act; or
- (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; and
- (c) not indemnify the applicant from liability in terms of section 51(1)(a) for having contravened section 22.

(10) If, at any stage after the submission of an application in terms of subsection (4), it comes to the attention of the licensing authority, that the applicant is under criminal investigation for the contravention of or failure to comply with section 22, the licensing authority may defer a decision to issue an atmospheric emission licence until such time that the investigation is concluded and—

- (a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;
- (b) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or

- (c) the applicant concerned has been convicted by a court of law of an offence in respect of such contravention or failure and the applicant has in respect of the conviction exhausted all the recognised legal proceedings pertaining to appeal or review.'

(Section 22A inserted by section 3 of Act 20 of 2014)

Part 3: Controlled emitters

23. Controlled emitters

- (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.
- (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;
 - (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—
 - (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.

24. Standards for controlled emitters

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

25. Consequences of declaration

- (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.
- (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.

Part 4: Controlled fuels

26. Controlled fuels

- (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.
- (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;
 - (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—
 - (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.

27. Use and prohibition of controlled fuels

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;
- (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.

28. Consequences of declaration

- (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.
- (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.

Part 5: Other measures

29. Pollution prevention plans

- (1) The Minister or MEC 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, 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).

(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).

(3) Pollution prevention plans must comply with such requirements as may be prescribed by the Minister or MEC.

(4) A notice contemplated in subsection (1)(b) or (2) must contain a requirement that the person indicated in the notice monitors, evaluates and reports on the implementation of the pollution prevention plan that has been approved in terms of subsection (1) or (2).

(Section 29(4) added by section 4 of Act 20 of 2014)

30. Atmospheric impact reports

An air quality officer may require any person to submit to the air quality officer an atmospheric impact report in a prescribed form if—

- (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
- (b) a review of a provisional atmospheric emission licence or an atmospheric emission licence is undertaken in terms of section 45.

31. Recognition programmes

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

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

32. Control of dust

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;
- (b) steps that must be taken to prevent nuisance by dust; or
- (c) other measures aimed at the control of dust.

33. Rehabilitation when mining operations cease

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—

- (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
 - (ii) the prevention of pollution of the atmosphere by dust after those operations have stopped.

34. Control of noise

- (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
 - (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.

35. Control of offensive odours

- (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.

CHAPTER 5

LICENSING OF LISTED ACTIVITIES

36. Licensing authority

- (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).
- (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.

(3)

(Section 36(3) deleted by section 5(a) of Act 20 of 2014)

(3A)

- (a) In accordance with sections 125(2)(b) and 156(1)(b) of the Constitution whenever a licensing authority fails to take a decision on an application for an atmospheric emission licence within the time period set out in section 40(3) or (3A) of this Act, the person that applied for an atmospheric emission licence may apply to the Minister or MEC, as the case may be, to take the decision.
- (b) The person contemplated in paragraph (a) must notify the licensing authority in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.
- (c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the licensing authority in order to enable the Minister or MEC, as the case may be, to take a decision.
- (d) Before taking a decision as contemplated in paragraph (a), the Minister or MEC must request the licensing authority to provide him or her with a report within a specified time period on the status and causes of delay in the application.

- (e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactorily response or cooperation is received from the licensing authority within the specified time period the Minister or MEC, as the case may be, must, where appropriate—
 - (i) inform the person that applied for an atmospheric emission licence in the event that the licensing authority has complied with the relevant prescripts;
 - (ii) assist the licensing authority in accordance with sections 125(3) and 155(7) of the Constitution to fulfil its obligations under this Act; or
 - (iii) direct the licensing authority to take the decision and such other steps as the Minister or MEC, as the case may be, may deem necessary, within a specified time period.
- (f) In the event that the licensing authority fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister or MEC, as the case may be, must take the decision within a reasonable period of time.
- (g) The Minister or MEC, as the case may be, must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament or Provincial Legislature, as the case may be, setting out the details regarding the exercise of the power referred to in this section during the previous financial year.

(Section 36(3A) inserted by section 5(b) of Act 20 of 2014)

- (3B) The MEC or Minister, as the case may be, must make a decision on the application contemplated in subsection (3A)(a), within a reasonable period of time from the date of receipt of the application.

(Section 36(3B) inserted by section 5(b) of Act 20 of 2014)

- (3C) In the event that the MEC fails to make a decision on the application, within a reasonable period of time, as contemplated in subsection (3B), the applicant may submit the application to the Minister for a decision in terms of subsection (3A)(a).

(Section 36(3C) inserted by section 5(b) of Act 20 of 2014)

- (3D) In the event that the MEC does not have capacity to exercise the power, or for any good reason is unable to do so or to do so within a reasonable period of time, the MEC may request, in writing, the Minister to exercise the power in terms of subsection (3A)(a).

(Section 36(3D) inserted by section 5(b) of Act 20 of 2014)

- (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—

- (a) that application; and

(b) the implementation of this Act in relation to any licence that may be issued to the municipality.

(5) Notwithstanding subsections (1) to (4), the Minister is the licensing authority and must perform the functions of the licensing authority if—

- (a) a provincial organ of state, which has been delegated the power to perform the licensing authority function in terms of subsection (2) by the metropolitan or district municipality, applies for an atmospheric emission licence;
- (b) the listed activity falls within the boundaries of more than one province;
- (c) the listed activity forms part of a matter declared as a national priority in terms of a Cabinet decision and notice referred to in section 24C(2B) of the National Environmental Management Act, 1998, as amended by the National Environmental Management Laws Second Amendment Act, 2013;
- (d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, or the Minister has been identified as the competent authority; or
- (e) the listed activity relates to a prospecting, mining, exploration or production activity as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998.

(Section 36(5) added by section 5(c) of Act 20 of 2014)

(6) For the purposes of subsection (5)(d), the Minister, as the competent authority empowered under section 24C(2) of the National Environmental Management Act, 1998 and as the licensing authority empowered under section 43(1) of the National Environmental Management: Waste Act, 2008, may issue an integrated environmental authorisation for the activities listed under section 24(2) of the National Environmental Management Act, 1998 and section 19(1) of the National Environmental Management: Waste Act, 2008.

(Section 36(6) added by section 5(c) of Act 20 of 2014)

(7) An integrated environmental authorisation contemplated in subsection (6) may be issued only if—

- (a) the relevant provisions of this Act, the National Environmental Management Act, 1998, and the National Environmental Management: Waste Act, 2008, have been complied with; and

- (b) the integrated environmental authorisation specifies the provisions in terms of which it has been issued.

(Section 36(7) added by section 5(c) of Act 20 of 2014)

- (8) The Minister and the licensing authority contemplated in subsections (1) to (4) may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister or the relevant licensing authority contemplated in subsections (1) to (4).

(Section 36(8) added by section 5(c) of Act 20 of 2014)

(Section 36 commenced 1 April 2010)

37. Application for atmospheric emission licences

- (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.
- (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.

(Section 37 commenced 1 April 2010)

38. Procedure for licence applications

- (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;
 - (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
 - (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 applies to all applications for atmospheric emission licences, which are subject to an environmental impact assessment in terms of section 24 of the National Environmental Management Act, and both an applicant and the licensing authority must comply with that section and any applicable notice issued or regulation made in relation to that section.

(Section 38(2) substituted by section 6(a) of Act 20 of 2014)

(3)

(a) An applicant must, immediately after the submission of the application to the licensing authority, take appropriate steps to bring the application to the attention of relevant organs of state, interested persons and the public.

(Section 38(3)(a) substituted by section 6(b) of Act 20 of 2014)

(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;

(iiA) indicating where a copy of the application can be obtained;

(Section 38(3)(b)(iiA) inserted by section 6(c) of Act 20 of 2014)

(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.

(Section 38 commenced 1 April 2010)

39. Factors to be taken into account by licensing authorities

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;
- (c) the best practicable environmental options available that could be taken—
 - (i) to prevent, control, abate or mitigate that pollution; and
 - (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 any applicable environmental impact assessment done, the decision taken on the application of the environmental authorisation, and any applicable notice issued or regulation made pursuant to that section;

(Section 39(d) substituted by section 7 of Act 20 of 2014)

- (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.

(Section 39 commenced 1 April 2010)

40. Decisions of licensing authority

- (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 any applicable environmental impact assessment done, the decision taken on the application for the environmental authorisation, and any applicable notice issued or regulation made pursuant to that section;

(Section 40(2)(c) substituted by section 8(a) of Act 20 of 2014)

- (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 the decision on the relevant application for an environmental authorisation has been made in terms of section 24 of the National Environmental Management Act, the licensing authority must decide the application within 60 days of the date on which the decision on the application for the environmental authorisation has been made.

(Section 40(3) substituted by section 8(b) of Act 20 of 2014)

- (3A) Where the listed activity relates to a prospecting, mining, exploration or production activity contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998, the Minister, after consultation with the licensing authority contemplated in section 36(1) and (2) of this Act, must decide the application within the timeframes set out in the National Environmental Management Act, 1998.

(Section 40(3A) inserted by section 8(c) of Act 20 of 2014)

- (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.

(Section 40 commenced 1 April 2010)

41. Successful applications

- (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.
- (3) A provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity, and may be extended for an additional one year on good cause shown to the licensing authority.

(Section 41(3) added by section 9 of Act 20 of 2014)

(Section 41 commenced 1 April 2010)

42. Issuing of atmospheric emission licences

- (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.

(Section 42 commenced 1 April 2010)

43. Contents of provisional atmospheric emission licences and atmospheric emission licences

(1) A provisional atmospheric emission licence and an atmospheric emission licence must specify—

- (a) the activity in respect of which it is issued;
- (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;
- (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;
- (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
- (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;
- (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.

(Section 43 commenced 1 April 2010)

44. Transfer of provisional atmospheric emission licences and atmospheric emission licences

- (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.
- (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.
 - (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.
- (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;
- (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.

(Section 44 commenced 1 April 2010)

45. Review of provisional atmospheric emission licences and atmospheric emission licences

- (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, on payment of the prescribed processing fee.
- (2) The licensing authority must inform the licence holder and the relevant provincial air quality officer, in writing, of any proposed review, the reason for such review and the cost of the prescribed processing fee.
- (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.

(Section 45 substituted by section 48 of Act 14 of 2009)

(Section 45 commenced 1 April 2010)

46. Variation of provisional atmospheric emission licences and atmospheric emission licences

- (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—
 - (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;
 - (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.

(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.

(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;
- (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.

(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;
- (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.

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

(Section 46 commenced 1 April 2010)

47. Renewal of provisional atmospheric emission licences and atmospheric emission licences

- (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.
- (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
 - (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.
- (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.

(Section 47 commenced 1 April 2010)

48. Emission control officers

- (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.
- (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;
 - (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.

(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.

(Section 48 commenced 1 April 2010)

49. Criteria for fit and proper persons

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—

- (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;
- (c) that person has been a director or senior manager who is or was a director or manager of a company, a juristic person or firm to whom paragraph (a) or (b) applies; or

(Section 49(c) substituted by section 10 of Act 20 of 2014)

- (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.

(Section 49(c) substituted by section 49 of Act 14 of 2009)

(Section 49 commenced 1 April 2010)

CHAPTER 6
INTERNATIONAL AIR QUALITY MANAGEMENT

50. Transboundary air pollution

(1) The Minister may investigate any situation which creates, or may reasonably be anticipated to contribute to—

- (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.
- (3) Before publishing regulations under subsection (2), the Minister must consult with—
 - (a) the Cabinet member responsible for foreign affairs; and
 - (b) the MEC concerned.
- (4) Regulations contemplated 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 regulation before it is published.

CHAPTER 7

OFFENCES AND PENALTIES

51. Offences

- (1) A person is guilty of an offence if that person—
 - (a) contravenes a provision of section 22, 25, 28 or 35(2);
(Section 51(a) substituted by section 11 of Act 20 of 2014)

- (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;
- (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;

(Section 51(1)(e) commenced 1 April 2010)

- (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;

(Section 51(1)(f) commenced 1 April 2010)

- (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).
- (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.

(Section 51(3) commenced 1 April 2010).

52. Penalties

- (1) A person convicted of an offence referred to in section 51 is liable to a fine not exceeding five million rand, or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million rand or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.
- (2) A fine contemplated in subsection (1) must be determined with due consideration of—
 - (a) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;
 - (b) the monetary or other benefits which accrued to the convicted person through the commission of the offence; and

- (c) the extent of the convicted person's contribution to the overall pollution load of the area under normal working conditions; and

(3) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

(Section 52 substituted by section 50 of Act 14 of 2009)

CHAPTER 8

GENERAL MATTERS

Part 1: Regulations

53. Regulations by Minister

The Minister may make regulations that are not in conflict 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 and climate change;

(Section 53(a) substituted by section 12(a) of Act 20 of 2014)

- (aA) information relating to energy that is required for compiling atmospheric emissions;

(Section 53(aA) inserted by section 12(b) of Act 20 of 2014)

- (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;

- (d) open fires and incinerators;

- (e) ozone-depleting substances;

- (f) codes of practice;

- (g) records and returns;

- (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;
- (l) incentives to encourage change in behaviour towards air pollution by all sectors in society;
- (IA) the procedure and criteria to be followed in the determination of an administrative fine in terms of section 22A.

(Section 53(IA) inserted by section 12(c) of Act 20 of 2014)

- (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;
- (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.

54. Regulations by MECs responsible for air quality

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).

55. General

- (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
 - (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

- (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 in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years and in respect of both instances to both such fine and such imprisonment.

(Section 55(2) amended by section 37 of Act 14 of 2013)

(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.
- (b) Paragraph (a) need not be complied with if the regulations are amended in a non-substantive way.

Part 2: Consultative process

56. Consultation

- (1) Before exercising a power which, in terms of 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—
 - (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 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;
- (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.

57. Public participation

- (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
 - (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 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 concerned.

Part 3: Delegations and exemptions

58. Delegations

- (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 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).

(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 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 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.

59. Exemptions

(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).

(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.

- (b) The steps contemplated in paragraph (a) must include the publication of a notice 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—

- (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
- (b) a metropolitan or district municipality.

CHAPTER 9 **MISCELLANEOUS**

60. Repeal of legislation

- (1) The legislation mentioned in the Table in Schedule 1 is hereby repealed or 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 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.

(Section 60 commenced 1 April 2010)

61. Transitional arrangements in respect of registration certificates issued in terms of Atmospheric Pollution Prevention Act

(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).
 - (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 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 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 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—
 - (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
 - (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.
- (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.
 - (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.

(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.

(Section 61 commenced 1 April 2010)

62.

(Section 62 repealed by section 13 of Act 20 of 2014)

63.

(Section 63 repealed by section 14 of Act 20 of 2014)

64. Short title and commencement

- (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.

SCHEDULE 1

(Section 60)

Legislation repealed

No. and year of Act	Short title	Extent of repeal
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

(Schedule 1 substituted by section 8 of Act 44 of 2008 - Gazette No. 31685, Notice No. 1318 dated 5 December 2008)

SCHEDULE 2

(Section 63)

Ambient air quality standards

(Schedule 2 repealed by section 15 of Act 20 of 2014)