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NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY BILL

Mohammed Valli Moosa, the Minister of Environmental Affairs and Tourism, hereby publishes the draft National Environmental Management: Air Quality Bill for public information in terms of Rule 241(1)(b) of the National Assembly and Rule 186 (1) (a) of the National Council of Provinces.

The draft bill aims to bring the system of air pollution control in line with the Constitution of the Republic of South Africa. It replaces the outdated Air Pollution Prevention Act, 1965 (APPA), (Act No. 45 of 1965) with a more effective regulatory regime. It establishes national norms and standards for air quality management. It provides a framework for air quality planning and reporting and numerous regulatory instruments for the control of air pollution and as well as compliance and enforcement regime.

The draft bill will be tabled in Parliament during August 2003 for consideration. Written comments and inputs are invited from interested and affected parties as well as the general public. These must be submitted to:

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Parliament of South Africa
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2. Rev. P Moatshe
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Copies of the bill can be obtained from:

- Government Printers – Cape Town & Pretoria

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THE CLOSING DATE FOR COMMENTS IS 30 AUGUST 2003

MOMORANDUM ON THE OBJECTS OF THE BILL

NATIONAL ENVIRONMENTAL MANAGEMENT : AIR QUALITY BILL, 2003

1. INTRODUCTION

The Bill aims to bring the system of air pollution control in line with the Constitution allocation of function between the three spheres of government. It replaces the outdated Air Pollution Prevention Act (Act 45 of 1965) with a more effective regulatory regime, including the establishment of national norms and standards, a framework for air quality management planning and reporting regime and numerous regulatory instruments for the control of air pollution and compliance and enforcement.

The National Environmental Management: Air Quality Bill was approved by Cabinet on 16 April 2003 and published for comment on 22 April 2003. The closing date for the submission of comments was 30 May 2003. Comments were received from approximately 70 institutions and individuals. Certain amendments have been effected to the Bill relating to definitions, minimum standards for emission from listed activities, atmospheric impact reports, the role of province in licensing special cases and transparency provisions for exemptions.

2. GENERAL BACKGROUND AND OVERVIEW

The current approach to air quality management in South Africa is informed and regulated by the Atmospheric Pollution Prevention Act, 1965 (Act. 45 of 1965) (APPA). For many years,

this Act has been regarded as being outdated for a number of reasons, not least of these being that it cannot accommodate the constitutional allocation of functions in respect of the role of provincial and local government, it has inadequate compliance and enforcement mechanisms to implement the Act effectively and there is lack of transparency in decision-making. Furthermore, the APPA approach is based largely on point-source emission control that does not fully address the cumulative impacts of air pollution. As a result, certain areas of South Africa are exposed and vulnerable to exceptionally poor air quality in terms of both local and international standards.

The poor air quality in various areas of South Africa has various impacts that can be measured in terms of economic costs. As these costs are seldom paid for, or even recognised, by the polluters themselves, they are often referred to as externalities. As such, these are costs that are imposed on society and are paid for by both the victims of poor air quality and the public services.

The drafting team has gone through the comments in detail and has revised and amended sections of the Bill where this has been regarded as appropriate. In this regard, apart from a number of minor editorial changes and non-substantive revisions, the following areas received the most attention and subsequent revision: (i) Definitions - some definitions have been refined and some new definitions have been added; (ii) Listed Activities - provision has been made for the setting of minimum standards for emissions from listed activities; (iii) Atmospheric Impact Report - a new tool has been provided by which government is able to request relevant information from specific industries in respect of their emissions; (iv) Licensing authority - provision has been made for province to be the licensing authority in special cases including - at the request of local authority, in respect of existing registered industries, when the LA is the applicant and through joint LA-province agreement; (v) License Review - this section has been expanded with appropriate cross-reference to license variation; (vi) Exemptions - transparency provisions have been added; (vii) intergovernmental delegations have been provided for; (viii) Transitional Ambient Air Quality standards have been spelt out.

3. CHAPTER BY CHAPTER ANALYSIS

Chapter 1, the introductory chapter, of the Bill defines the specific terminology used, sets out the objectives of the bill and makes reference to the environmental management principles set forth in the National Environmental Management Act (Act 107 of 1998) (NEMA). Amendments to this chapter include the deletion of, among others steam as a pollutant, the redefinition of vehicle emissions as a non-point source of air pollution, and competent authority was also defined.

Chapter 2 deals with what is regarded as the 'backbone' of the new approach to air quality management, namely, the establishment of national ambient air quality standards. It also clarifies the setting of norms and standards within the various spheres of government. These standards will be a key mechanism in ensuring that the constitutional right in respect of an environment that is not harmful to health and well-being is progressively realised through the implementation of benchmark performance standards. Furthermore, ambient air quality standards will provide the goals and objectives for all air quality management plans and will also provide the yardstick against which the efficacy of these plans can be measured. To this end, the chapter provides for the identification of priority pollutants and the setting of ambient standards in respect of these pollutants. The chapter also allows for the setting of specific emission standards for any problem pollutant. This chapter was amended to include setting of emission standards from point sources. The provision for the provincial MEC to set provincial ambient standards was deleted, on the basis that national ambient standards will be sufficiently protective of health and the environment

Chapter 3 provides for the establishment of a multi-stakeholder National Air Quality Advisory Committee to advise the Minister on the implementation of the Bill. This chapter also deals with air quality management. In order not to duplicate the planning and reporting responsibilities of government, Chapter 3 indicates how air quality planning must be integrated with existing activities, i.e. the plans required in terms of NEMA must incorporate a consideration of air quality whereas integrated development plans compiled by municipalities must also take air quality into account. The name of the committee was changed from National Air Quality Management Committee to National Air Quality Advisory Committee. The

composition of the committee will be determined in line with the provisions for setting up the National Environmental Advisory Forum (NEAF) as prescribed in NEMA.

Chapter 4 describes the various regulatory tools or measures made available to government for implementing and enforcing air quality management plans and achieving acceptable ambient air quality. The tools have been designed in such a way as to ensure an optimal mix of regulatory approaches that will ensure that the diversity of air pollution issues can be managed in the most effective manner, with the least possible administrative burden and use of resources. These include the following:

- *Priority areas* – Air pollution ‘hot spots’ may be identified for focussed attention including specific air quality management plans and the provision for specific regulations relating to the area;
- *Listed Activities* – The identification of ‘problem’ processes means that they will require an Atmospheric Emission License before they can operate. This section also deals with the control of offensive odours;
- *Controlled emitters* – The setting of emission standards for identified ‘classes’ of emitters (e.g. motor vehicles, hazardous waste incinerators, etc.);
- *Control of Noise* – measures can be prescribed for the control of noise.
- *Control of odours* – measures can be prescribed for the control of offensive odours.

The chapter was amended to include the provision for the submission of atmospheric impact reports as an additional tool enabling air quality officers to manage air quality from existing industrial activities, as well as provisions for the control of dust. The control of vibration was removed from the bill as this was deemed not to be an air quality matter

Chapter 5 deals with licensing of listed activities. It defines with reference to section 24 of NEMA procedures to be followed and the authority responsible for granting such a licence. This chapter also makes provision for and defines the following;

- *Fit and proper persons* – This provision allows government to turn down license applications from applicants who have continuously demonstrated bad air quality management practices in the past
- *Emission control officers* – This provision allows government to demand that qualified air quality management practitioners are employed by 'problem' industries;

This chapter was amended to provide for DEAT to delegate the conversion of existing Registration certificates issued in terms of APPA to provinces.

Chapter 6 deals with South Africa's international obligations in respect of air quality management. In keeping with the 'good neighbour' aspect of NEPAD and our SADC obligations, the Bill allows the Minister to investigate cases where South African processes may be impacting on our neighbours. In this regard, the Bill also provides for regulations in respect of the control of processes impacting on our neighbours and the global atmosphere in general. This section is viewed as being significant as it will enable national government to implement swift responses required to harness the investment opportunities provided by some of the international instruments.

Chapter 7 deals with offences and penalties. The Bill as a whole is underpinned by the adoption of a comprehensive approach to the management of offences and penalties

Chapters 8 provide for general regulations and transitional arrangements. With regard to the latter, the Bill provides for a number of arrangements aimed at smoothing the transition from the air quality management approach under APPA.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

National and provincial government have concurrent jurisdiction with respect to 'environment' and 'pollution control, and 'air pollution' is a local government matter for which municipalities have executive authority. The current system under APPA effectively marginalizes both

province and local government from the area of air quality management. The Bill will not increase the administrative burden for the Department of Environmental Affairs and Tourism as it seeks devolve functions to municipalities. However, it will have organisational and personnel implications for municipalities, as most of them are currently not performing the Section 4 B air pollution control functions assigned to them by the Constitution.

5. FINANCIAL IMPLICATIONS

The Bill will increase the financial resources available for administering air quality management through the system of permit fees at local and provincial levels of government. It is anticipated that these additional resources will cover the costs of administering the Bill in these spheres of government. There will be no increase in budgetary requirements for air quality management at the level of national government.

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY BILL

To reform the law regulating air quality in order to protect and enhance the quality of air in the Republic, taking into account the need for sustainable development; to provide for national norms and standards regulating air quality monitoring, management and control by all spheres of government; for specific air quality measures; and for matters incidental thereto.

PREAMBLE**Whereas –**

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

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

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

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

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

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

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

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

contaminated ambient air cannot be remedied and thus, pollution minimisation through, particularly cleaner production, is key to ensuring that air quality is improved;

ambient air quality standards define air that is not harmful to the public's health and well-being or the environment;

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

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

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

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**CHAPTER 1
INTERPRETATION AND FUNDAMENTAL PRINCIPLES**

Interpretation

1. (1) In this Act, unless the context indicates otherwise –
“**air pollution**” means any change in the composition of the air, caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances;
“**air quality management plan**” means a plan referred to in section 14;
“**ambient air**” includes all air except that regulated by the Occupational Health and Safety Act, 1993 (Act 85 of 1993);
“**Atmospheric Pollution Prevention Act**” means the Atmospheric Pollution Prevention Act, 1965

(Act 45 of 1965);

“**atmospheric emission**” or “**emission**” means any emission or entrainment process emanating from a point, non-point or mobile source that results in air pollution;

“**atmospheric emission licence**” means a licence contemplated in Chapter 5 and includes a provisional atmospheric emission licence;

“**air quality officer**” means an officer appointed in terms of section 14 as an air quality officer;

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

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

“**environment**” has the meaning assigned to it section 1 of the National Environmental Management Act;

“**Environment Conservation Act**” means the Environment Conservation Act, 1989 (Act 73 of 1989);

“**Gazette**” –

(a) when used in relation to the Minister, means the *Government Gazette*; and

(b) when used in relation to the MEC responsible for air quality in a province, means the *Provincial Gazette* of that province;

“**greenhouse gas**” means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation, and includes carbon dioxide, methane and nitrous oxide;

“**licensing authority**” means an authority referred to in section 33 (1), (2), (3) or (4) responsible for implementing the licensing system set out in Chapter 5;

“**listed activity**” means any activity listed in terms of section 21;

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

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

“**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 117 of 1998);

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

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

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

“**precautionary principle**” means the principle set out in section 2(4)(a)(vii) of the National Environmental Management Act;

“**priority area**” means an area declared in terms of section 18;

“**priority area air quality management plan**” means a plan referred to in section 19;

“**this Act**” includes –

- (a) the national framework;
- (b) any regulation made in terms of section 50 or 51; and
- (c) any other subordinate legislation issued in terms of this Act.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

Object of this Act

2. The object of this Act is –

- (a) to protect and enhance the quality of air in the Republic, and

- (b) to reduce the risks to human health and the environment while taking into account the need for sustainable development.

State's general duty

3. In fulfilling the rights contained in section 24 of the Constitution, the state –
- (a) through the organs of state implementing this Act, must seek to protect and enhance the quality of air in the Republic; and
- (b) must implement this Act to achieve the progressive realisation of those rights.

Application of this Act

4. (1) This Act applies –
- (a) in the Republic, including its territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
- (b) to all activities in the Republic affecting the quality of air.
- (2) This Act binds all organs of state –
- (a) in the national and local spheres of government; and
- (b) in the provincial sphere of government, subject to section 146 of the Constitution.

Application of National Environmental Management Act

5. (1) This Act must be read with any applicable provisions of the National Environmental Management Act.

- (2) The application of this Act must be guided by the national environmental management principles set out in section 2 of the National Environmental Management Act.

Note: The NEMA Amendment Bill currently before Parliament must be amended to include a reference to this Bill in the definition of "specific environmental management Act".

Conflicts with other legislation

6. (1) In the event of any conflict between a section of this Act and –

- (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
and
- (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

Establishment

7. (1) The Minister must, as soon as reasonably practicable, by notice in the *Gazette*, establish a national framework for achieving the object of this Act, which must include –
- (a) strategies, objectives and plans to attain compliance with ambient air quality standards;
 - (b) strategies, objectives and plans 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, non-point and mobile 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;
 - (g) mechanisms to provide for co-operative governance in respect of air quality management; and
 - (h) 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 any 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 from time to time; 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 53 and 54.

- (b) Paragraph (a) need not be complied with if the framework is amended in a non-

substantive way.

National monitoring and information management standards

8. The national framework must establish national standards for –

- (a) the monitoring by municipalities of –
 - (i) ambient air quality; and
 - (ii) point, non-point and mobile source emissions;
- (b) the monitoring by provinces of –
 - (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) performance of organs of state in respect of air quality management plans and priority area air quality management plans;
 - (iv) impact of, and compliance with, air quality management plans and priority area air quality management plans;
 - (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

National standards

9. (1) The Minister, by notice in the *Gazette* –

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

(2) Section 7 (3) (a), (4), (5) and (6), with the necessary changes as the context may require, applies to a notice published in terms of this section.

Provincial standards

10. (1) The MEC responsible for air quality in a province may, by notice in the *Gazette* –
- (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present or are likely to present a threat to health, well-being or the environment in the province; and
 - (b) in respect of each of those substances or mixtures of substances, establish provincial standards for –
 - (i) ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; or
 - (ii) emissions from point, 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, an MEC may not alter any such national standards except by establishing stricter standards for the province or for any geographical area within the province.

- (3) A notice in terms of this section may –
- (a) differentiate between different geographical areas within the province;
 - (b) provide for the phasing in of its provisions; or
 - (c) be amended from time to time.

(1) (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 53 and 54.

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

Local standards

11. (1) A municipality may in terms of a by-law –

- (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present or are likely to present a threat to health, well-being or the environment in the municipality; and
- (b) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point, 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) Before a municipality passes a by-law referred to in subsection (1), it must follow a consultative process in terms of Chapter 4 of the Municipal Systems Act.

Part 3: General**Ambient air quality and emission measurements**

12. For the purpose of this Chapter, the Minister may by regulation in terms of section 50 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 manner and 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****National Air Quality Advisory Committee**

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

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

Appointment of air quality officers

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

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

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

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

(5) An air quality officer may delegate a duty or power referred to in subsection (4) to an official in the service of that officer's administration, subject to any limitations or conditions as may be prescribed by the Minister by regulation in terms of section 50.

(6) Air quality officers must co-ordinate their activities in a manner as may be set out in the national framework or prescribed by the Minister by regulation in terms of section 50.

Air quality management plans

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

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

Contents of air quality management plans

16. (1) An air quality management plan must –
- (a) within the domain of the relevant national department, province or municipality, seek –
 - (i) to give effect, in respect of air quality, to Chapter 3 of the National Environmental Management Act to the extent that that Chapter is applicable to it;
 - (ii) to improve air quality;
 - (iii) to address the effects of emissions from the use of fossil fuels in residential applications;
 - (iv) to address the effects of emissions from industrial sources;
 - (v) to implement the Republic's obligations in respect of international agreements; and
 - (vi) to give effect to best practise 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 any other requirements as may be prescribed by the Minister by regulation in terms of section 50.

Reporting on implementation of air quality management plans

17. The annual report which an organ of state must submit in terms of section 16(1)(b) of the National Environmental Management Act must contain information on the implementation of its air quality management plan, including information on –

- (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

Declaration of priority areas

- 18.** (1) The Minister or the MEC responsible for air quality in a province may, by notice in the *Gazette*, declare an area as a priority area if –
- (a) ambient air quality standards are being or are likely to be exceeded in the area, or any other situation exists which is causing, or is likely to cause, a significant negative impact on air quality in the area; and
 - (b) the area requires specific air quality management action to rectify the situation.
- (2) The Minister may declare an area in terms of subsection (1) as a priority area if –
- (a) the negative impact on air quality in the area –
 - (i) affects the national interest; or
 - (ii) is contributing, or is likely to contribute, to air pollution in another country;
 - (b) the area extends beyond provincial boundaries; or
 - (c) the area falls within a province and the province requests the Minister to declare the area as a priority area.
- (3) The MEC responsible for air quality in a province may in terms of subsection (1) declare an area falling within the province as a priority area.
- (4) The MECs responsible for air quality in 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.
- (5) 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 53 and 54.
- (6) The declaration of an area as a priority area may be withdrawn if the area is in compliance with ambient air quality standards for a period of no less than one year.

Management of priority areas

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

- (a) after consulting the air quality officers of any affected province and municipality, prepare a priority area air quality management plan for the area; and
- (b) within six months of the declaration of the area, or such longer period as the Minister may specify, submit the plan to the Minister for approval.

(2) If the MEC responsible for air quality in a province has in terms of section 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 responsible for air quality 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 53 and 54.
- (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) The Minister or the relevant MEC or MECs must publish an approved plan in the

Gazette within 90 days of approval. An approved plan takes effect from the date of publication.

(6) A priority area air quality management plan –

- (a) must be aimed at co-ordinating air quality management in the area;
- (b) must address air quality in the area; and
- (c) may for this purpose provide for the establishment of 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 (6).

Regulations for implementing and enforcing priority area air quality management plans

20. The Minister or the MEC responsible for air quality in a province may in terms of section 50 or 51 make regulations necessary for implementing and enforcing approved priority area air quality management plans, including –

- (a) funding arrangements;
- (b) measures to facilitate compliance with such plans;
- (c) penalties for any contravention of or any failure to comply with such plans; and
- (d) regular review of such plans.

Part 2: Listing of activities resulting in atmospheric emissions

Listing of activities

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

- (a) publish a list of activities which results in atmospheric emissions which have or are likely to have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage; or
- (b) amend the list by –
 - (i) adding to the list additional activities contemplated in subsection (1);
 - (ii) removing activities from the list; or
 - (iii) making other changes to particulars on the list.

(2) A list published by the Minister applies nationally and a list published by an MEC applies in the relevant province only.

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

- (a) may 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 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) (a) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minister or MEC must follow a consultative process in accordance with sections 53 and 54.

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

Consequences of listing

22. No person may without an atmospheric emission licence issued in terms of Chapter 5 –

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

Part 3: Controlled emitters

Controlled emitters

23. (1) The Minister or the MEC responsible for air quality in a province 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, presents or is likely to present a threat to health or the environment.

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

- (a) follow a consultative process in accordance with sections 53 and 54;
- (b) apply the precautionary principle; and
- (c) consider
 - (i) any sound scientific information;
 - (ii) any risk assessments; and
 - (iii) the Republic's obligations in terms of any applicable international agreements.

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

Standards for controlled emitters

24. (1) When the Minister or the MEC responsible for air quality in a province declares an appliance or activity, or any appliance or activity falling within a specified category, as a controlled emitter in terms of section 23, the notice referred to in that section must establish emission standards for such appliance or activity, which must include standards setting the permissible amount or concentration of any specified substance or mixture of substances that may be emitted from the controlled emitter.

(2) The Minister must by regulation in terms of section 50 prescribe the manner in which measurements of emissions from controlled emitters must be carried out.

Consequences of declaration

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

(2) Subsection (1) applies –

- (a) nation-wide 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: Other measures

Pollution prevention plans

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

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

(2) The Minister or MEC may, by written notice to a person carrying out a listed activity and which involves the emission of a substance declared as a priority 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 requirements as may be prescribed by the Minister or MEC by regulation in terms of section 50 or 51.

Atmospheric impact reports

27. 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 caused, or is likely to cause, a detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage, or has contributed to, or is likely to contribute to, the degradation of ambient air quality; or
- (b) a review of an atmospheric emission licence is undertaken in terms of section 42.

Recognition programmes

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

Part 5: Measures in respect of dust, noise and offensive odours

Control of dust

29. The Minister or the MEC responsible for air quality in a province may, make in terms of section 50 or 51 make regulations prescribing –
- (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.

Rehabilitation when mining operations cease

30. If 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.

Control of noise

31. The Minister or the MEC responsible for air quality in a province may, by regulation in terms of section 50 or 51, prescribe measures for the control of noise, either in general or by specified machinery or activities or in specified places or areas, including for determining –

- (a) a definition of noise; and
- (b) the maximum levels of noise.

Control of offensive odours

32. (1) The Minister or the MEC responsible for air quality in a province may, by regulation in terms of section 50 or 51, 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****Licensing authority**

33. (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 licensing authority in the area of that municipality.

(3) If a province has in terms of section 139 of the Constitution intervened in a metropolitan or district municipality on the ground that that municipality cannot or does not fulfil its obligations as licensing authority in terms of this Act, a provincial organ of state designated by the province

must for the duration of the intervention be regarded as licensing authority in the area of that municipality.

(4) If a municipality applies for an atmospheric emission licence, a provincial organ of state designated by the province 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.

Application for atmospheric emission licences

34. (1) A person must apply for an atmospheric emission licence by lodging to the licensing authority of the area in which the listed activity is or is to be carried out, an application on the form prescribed by the licensing authority.

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

- (a) a processing fee as may be reasonably prescribed by the Minister by regulation in terms of section 50; and
- (b) any documentation and information as may be reasonably prescribed by the licensing authority.

Procedure for licence applications

35. (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 –
 - (i) other information, in addition to the information contained in or submitted in connection with the application;
 - (ii) an assessment in terms of section 24 of the National Environmental Management Act or section 21 of the Environment Conservation Act of the likely effect of the proposed licence on air quality; and
 - (iii) an independent review of such assessment, by a person acceptable to the licensing authority;
- (b) may conduct its own investigation on the likely effect of the proposed 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 and section 21 of the Environment Conservation Act applies to all applications for atmospheric emission licences, and both an applicant and the licensing authority must comply with the requirements of those sections.

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

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

Factors to be taken into account by licensing authorities

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

- (a) the pollution being or likely to be caused by the carrying out of the listed activity applied for and the effect or likely effect of that pollution on the environment, including health, social conditions, economic conditions, cultural heritage and ambient air quality;
- (b) any practical measures that could be taken –
 - (i) to prevent, control, abate or mitigate that pollution; and
 - (ii) to protect the environment from harm as a result of that pollution;
- (c) the record of decision issued in terms of section 24 of the National Environmental Management Act or section 21 of the Environment Conservation Act;
- (d) any relevant tradable emission scheme;

- (e) whether the applicant is a fit and proper person determined in accordance with the criteria set out in section 46;
- (f) the applicant's submissions;
- (g) any submissions from organs of state, interested persons and the public; and
- (h) any guidelines issued by the Minister or the MEC responsible for air quality in the relevant province relating to the performance by licensing authorities of their functions.

Decisions

37. (1) The licensing authority may –

- (a) grant an application; or
- (b) refuse the application.

(2) Any decision by a licensing authority to grant an application must be consistent with –

- (a) this Act and any other applicable national or provincial legislation;
- (b) any applicable national or provincial environmental management policies;
- (c) any decision in terms of section 24 of the National Environmental Management Act or section 21 of the Environment Conservation Act;
- (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 26;
- (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.

(2) After a licensing authority has reached a decision in respect of a licence application, it must promptly –

- (a) notify the applicant;
- (b) in a manner determined by the licensing authority, notify any persons who have objected to the application; and

- (c) at the request of any person referred to in paragraph (a) or (b), give written reasons for its decision or make public its reasons.

Successful applications

38. (1) If an application for an atmospheric emission licence has been granted in terms of section 37(1)(a), the licensing authority must first issue a provisional atmospheric emission licence to enable the installation and 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 the MEC responsible for air quality in the relevant province has prescribed by regulation in terms of section 50 or 51 for listed activities of the kind in question.

Issuing of atmospheric emission licences

39. (1) The holder of a provisional atmospheric emission licence is entitled to an atmospheric emission licence when the commissioned facility is 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 40
- (b) as the licensing authority may determine; and
- (c) as the Minister or the MEC responsible for air quality in the relevant province has prescribed by regulation in terms of section 50 or 51 for listed activities of the kind in question.

Contents of provisional atmospheric emission licences and atmospheric emission licences

40. (1) 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 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) An atmospheric emission 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 enforcement officer 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 officer a certified statement indicating –
 - (i) the extent to which the conditions and requirements of the licence have or have not been complied with;
 - (ii) particulars of any failure to comply with any of those conditions or requirements;
 - (iii) the reasons for any failure to comply with any of those conditions or requirements; and
 - (iv) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure.

Transfer of atmospheric emission licences

41. (1) If ownership of an activity for which an atmospheric emission licence was issued is transferred, the atmospheric emission 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 person may apply for permission for the transfer of an atmospheric emission licence by lodging to the licensing authority of the area in which the listed activity is carried out, an application on the form prescribed by the licensing authority.

- (3) An application for an atmospheric emission licence must be accompanied by –
- (a) a processing fee as may be reasonable prescribed the Minister by regulation in terms of section 50; and
 - (b) any documentation and information as may be reasonable prescribed by the licensing authority.

(4) When considering an application for the transfer of an atmospheric emission 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 determined in accordance with the criteria set out in section 46.

Review of atmospheric emission licences

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

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

(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 27.

Variation of atmospheric emission licences

43. (1) A licensing authority may, by written notice to the holder of 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 41; or
- (f) if it is reviewed in terms of section 42.

(2) A variation includes –

- (a) the attaching of an additional condition or requirement to a 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 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 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 35 and 37, read with the necessary changes as the context may require, apply to the variation of an atmospheric emission licence.

Renewal of atmospheric emission licences

44. (1) An atmospheric emission licence may, on application by the holder of the licence, be renewed by a licensing authority.

(2) The holder of an atmospheric emission 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 on the form prescribed by the licensing authority.

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

- (a) a processing fee as may be reasonably prescribed Minister by regulation in terms of section 50;
- (b) proof that the relevant provincial air quality officer has been notified of the application; and
- (c) any documentation and information as may be reasonably prescribed 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 35, 37 and 40, read with the necessary changes as the context may require, apply to an application for the renewal of an atmospheric emission licence.

Emission control officers

45. (1) An air quality officer may require the holder of 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 environmentally compatible processes; and
- (b) take all reasonable steps to ensure compliance by the holder of the licence with the licence conditions and requirements.

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

Criteria for fit and proper persons

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

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

CHAPTER 6

INTERNATIONAL AIR QUALITY MANAGEMENT

Trans-boundary air pollution

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

- (a) trans-boundary air pollution; or
- (b) air pollution that violates, or is likely to violate, an international agreement binding on the Republic in relation to the prevention, control or correction of pollution, as a result of a substance or substances being released into the air from a source.

(2) If, after such investigation, the Minister is of the opinion that the release of a substance into the air from a source in the Republic may have a significant detrimental impact on air quality, the environment or health in a country other than the Republic, the Minister may in terms of section 50 prescribe regulations for the purposes of preventing, controlling or correcting the releases within the Republic.

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

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

(4) Regulations referred to in subsection (2) may include provisions regarding –

- (a) the quantity or concentration of the substance that may be released into the air;
- (b) the manner in which and conditions under which the substance may be released into the air, either alone or in combination with any other substance;
- (c) the maintenance of records for the administration of any regulation made under this section;
- (d) the conduct of sampling, analyses, tests, measurements or monitoring of the substance and the submission of the results to the Minister; and
- (e) the conditions, test procedures and laboratory practices to be followed for conducting sampling, analyses, tests, measurements or monitoring of the substance.

(5) The Minister may, through the Cabinet member responsible for foreign affairs, advise the government of any country that would be affected by or benefit from the identification, notice or regulation before it is published.

CHAPTER 7

OFFENCES AND PENALTIES

Offences

48. (1) A person is guilty of an offence if that person –
- (a) contravenes a provision of section 22, 24, 25, 26, 27, 30, 32(2), or 44;

- (b) contravenes or fails to comply with a condition or requirement of an atmospheric emission licence or a provision of Chapter 5;
- (c) supplies false or misleading information in any application for an atmospheric emission licence, or for the transfer, variance or renewal of such a licence;
- (d) supplies false or misleading information to an air quality officer;
- (e) contravenes or fails to comply with a condition subject to which exemption from a provision of this Act was granted in terms of section 56.

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

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

Penalties

49. (1) A person convicted of an offence referred to in section 48 is liable to a fine, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.
- (2) A fine in terms of subsection (1) –
- (a) may not exceed an amount prescribed in terms of legislation regulating maximum fines for criminal offences; and
 - (b) must be determined with due consideration of –
 - (i) the severity of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;
 - (ii) the monetary or other benefits which accrued to the convicted person through the commission of the offence; and
 - (iii) the extent of the convicted person's contribution to the overall pollution load of the area under normal working conditions.

CHAPTER 8
GENERAL MATTERS

Part 1: Regulations

Regulations by Minister

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

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

Regulations by MECs responsible for air quality

51. The MEC responsible for air quality management in a province may make regulations for the province, not inconsistent with this Act, in respect of any matter which the MEC may or must make in terms of this Act, including a matter referred to in section 50 (c) to (p).

General

52. (1) Regulations made in terms of section 50 or 51 may –

- (a) restrict or throughout 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; or
- (b) differentiate between different –
 - (i) areas or categories of areas; or
 - (ii) persons or categories of persons;
- (c) incorporate by reference any code of practice or national and international standard relating to air quality.

(2) Regulations made in terms of section 50 or 51 may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to –

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

(3) (a) Before publishing any regulations in terms of section 50 or 51, or any amendment to the regulations, the Minister or MEC must follow a consultative process in accordance with sections 53 and 54.

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

Part 2: Consultation process

Consultation

53. (1) Before exercising a power which, in terms of a provision of this Act, must be exercised in accordance with this section and section 54, the Minister or MEC responsible for air quality in the province must follow a consultative process as may be appropriate in the circumstances.

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

- (a) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;
- (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the MEC responsible for air quality in each province that will be affected by the exercise of the power; and
- (c) allow public participation in the process in accordance with section 54.

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

- (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the power;
- (b) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the Minister and all other national organs of state that will be affected by the exercise of the power; and
- (c) allow public participation in the process in accordance with section 54.

Public participation

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

- (a) in the *Gazette*; and
- (b) in at least one newspaper distributed nationally, or if the exercise of the power will affect only a specific area, in at least one newspaper distributed in that area.

(2) The notice must –

- (a) invite members of the public to submit to the Minister or MEC, within 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.

Part 3: Delegations and exemptions

Delegations

55. (1) The Minister may delegate to an official of the Department and the MEC responsible for air quality in a province may delegate to an official in the MEC's department –

- (a) any of the powers or duties assigned to the Minister or MEC in terms of this Act, excluding the power to publish or amend a regulation in terms of section 50 or 51 or a notice in terms of section 7 (1), 9 (1), 10 (1), 18 (1), 21 (1), 23 (1) or 26 (1); or
- (b) any powers or duties reasonably necessary to assist the Minister in exercising a power or complying with a duty assigned to the Minister in terms of this Act.

(2) The Minister or MEC must regularly review and, if necessary, amend or withdraw a delegation in terms of subsection (1).

(3) A delegation to an official in terms of subsection (1)—

- (a) is subject to any limitations and conditions as the Minister or MEC may impose;
- (b) is subject to any limitations and conditions the Minister or MEC may impose;
- (c) may either be to a specific individual or to the holder of a specific post in the relevant department;
- (d) may authorise that official to sub-delegate, in writing, the delegated power or duty to another

- official in the department, or to the holder of a specific post in the department; and
- (e) does not divest the Minister or MEC of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(4) The Minister or MEC may confirm, vary or revoke any decision taken by an official as a result of a delegation or sub-delegation in terms of this section, subject to any rights that may have become vested as a consequence of the decision.

Exemptions

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

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

(3) 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. Such steps must include the publication of a notice in newspapers –

- (a) giving reasons for the application; and
- (b) 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

Repeal of legislation

57. (1) The Atmospheric Pollution Prevention Act is hereby repealed subject to subsection (2) and (3) and section 58.

(2) Anything done or deemed to have been done under a provision repealed by subsection (1) and which can be done in terms of a provision of this Act must be regarded as having been done under the provision of this Act.

(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, remain in force in the area of a municipality until repealed by the municipality of that area.

Transitional arrangements in respect of registration certificates

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

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

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

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

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

(6) Despite subsection (5) the licensing authority may require a review of the provisional atmospheric emission licence in terms of section 42 or a variation as provided for in section 43 before the atmospheric emission licence contemplated in of subsection (5) is granted.

Transitional provision regarding listed activities

59. Pending the publication of listed activities as contemplated in section 21, the processes identified in Schedule 2 of the Atmospheric Pollution Prevention Act must for the purposes of this Act be regarded to be listed activities.

Transitional provision regarding ambient air quality standards

60. Pending the establishment of ambient air quality standards in terms of sections 9, 10 or 11, the ambient air quality guidelines made in terms of the Atmospheric Pollution Prevention Act continue to apply as follows:

- (a) ambient concentrations of ozone (O_3) may not exceed –
 - (i) an instant peak of 1.25 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (ii) a one hour average of 0.12 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
- (b) ambient concentrations of the oxides of nitrogen (NO_x) may not exceed –
 - (i) an instant peak of 1.4 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (ii) a one hour average of 0.8 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (iii) a twenty four (24) hour average of 0.4 parts per million measured at 25⁰ Celsius and normal atmospheric pressure and the 24 hour limit may not be exceeded more than three times in one year;

- (iv) a one month average of 0.3 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
- (v) an annual average of 0.2 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
- (c) ambient concentrations of nitrogen dioxide (NO₂) may not exceed –
 - (i) an instant peak 0.5 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (i) a one hour average of 0.2 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (ii) a twenty four hour average of 0.1 parts per million measured at 25⁰ Celsius and normal atmospheric pressure and the 24 hour limit may not be exceeded more than three times in one year;
 - (iii) a one month average of 0.08 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (iv) an annual average of 0.05 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
- (d) ambient concentrations of Sulphur dioxide (SO₂) may not exceed –
 - (i) a ten minute average instant peak of 0.191 parts per million measured at 25⁰ Celsius and normal atmospheric pressure;
 - (ii) an instant peak 500 micrograms per cubic meter (µg/m³) measured at 25⁰ Celsius and normal atmospheric pressure
 - (iii) a twenty four hour average of 0.048 parts per million or 125 micrograms per cubic meter (µg/m³) measured at 25⁰ Celsius and normal atmospheric pressure;
 - (iv) an annual average of 0.019 parts per million or 50 micrograms per cubic meter (µg/m³) measured at 25⁰ Celsius and normal atmospheric pressure;
- (e) ambient concentrations of lead (Pb) may not exceed a one month average of 2.5 micrograms per cubic meter (µg/m³);
- (f) ambient concentrations of particulate matter with a particle size of less than 10 microns (µ) in size (PM₁₀) may not exceed –
 - (i) a twenty four hour average of 180 micrograms per cubic meter (µg/m³) and the 24 hour limit may not be exceeded more than three times in one year;

- (ii) an annual average of 60 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$);
 - (g) ambient concentrations of total suspended solids may not exceed –
- (i) a twenty four hour average of 300 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and the 24 hour limit may not be exceeded more than three times in one year;
- (ii) annual average of 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

Short title and commencement

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