

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. R. 4475

8 March 2024

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004
(ACT NO. 39 OF 2004)

DRAFT NATIONAL DUST CONTROL AMENDMENT REGULATIONS FOR PUBLIC COMMENT

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby, in terms of sections 32, 53(o), 55(3), 56 and 57 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), publish the draft National Dust Control Amendment Regulations for public comment, as set out in the Schedule hereto.

The purpose of the amendments is to address the regulatory shortfalls that were identified in the implementation of the existing National Dust Control Regulations. The proposed amendments are aimed at providing clarity by:

- (i) Defining activities that are applicable to the regulations.
- (ii) Updating the standard test method for the collection and measurement of dustfall to a locally accessible method as adopted by South African Bureau of Standards.
- (iii) Improving requirements for the development, implementation, and procedural matters with respect to dust management plans.
- (iv) Repealing the existing regulations published in Government Notice No. 827, Government Gazette No. 36974 of 1 November 2013.

Members of the public are invited to submit written comments within 30 (thirty) days from the date of publication of this notice in the *Government Gazette* or newspapers, whichever date is the last date, to the following addresses:

By post to: The Director-General: Department of Forestry, Fisheries and the Environment
Attention: Mr Mapitso Nkoko
Private Bag X477
PRETORIA
0001

By hand at: Ground Floor (Reception), Environment House, 473 Steve Biko Road, Arcadia
By email: MNkoko@dffe.gov.za

Any inquiries in connection with this Notice can be directed to Mr Victor Loate at Tel: 012 399 8507/ Cell: 066 081 6205 or by email: VLoate@dffe.gov.za

Comments received after the closing date may not be considered.


BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context indicates otherwise—

“**Dustfall**” means settleable particulate matter, including any material composed of particles small enough to pass through a 1 mm screen but large enough to settle by virtue of their weight into the sampling container from the ambient air;

“**Dust management plan**” means a plan with control measures for minimizing, managing and preventing dust emissions into the atmosphere;

“**Licensing authority**” means an authority referred to in sections 36(1), (2), 3A, (4) or (5) of the Act responsible for implementing the licensing system set out in chapter 5 of the Act;

“**Listed activity**” means an activity listed in terms of section 21 of the Act;

“**Mining activity**” has the meaning assigned to it in the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended;

“**Non-residential area**” means any area that its land is scheduled for agricultural, industrial and mining purposes as prescribed under schedule 2 of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“**Person**” means any natural or juristic person, including an organ of state;

“**Premises**” means any building or other structure together with the land on which it is situated, and any adjoining land occupied or used in connection with any activities carried on in that building or structure, and includes any land without any buildings or other structures from which dust may be generated;

“**Residential area**” means any area that its land is used for the purposes as prescribed under schedule 2 of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), excluding the land that is scheduled for agricultural, industrial and mining purposes;

“**SANAS**” means the South African National Accreditation System established by section 3 of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006);

“**SANS 1137**” means the latest version of South African National Standard 1137), which is the standard test method for the collection and measurement of dustfall (Settleable Particulate Matter); and

“The Act” means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).

2. Purpose of the Regulations

The purpose of these Regulations is to prescribe:

- (1) measures for the control of dust.
- (2) steps that must be taken to prevent nuisance by dust.

3. Application of the Regulations

These Regulations shall apply to any persons conducting activities that have the potential to generate dust, including —

- (1) any person conducting a mining activity.
- (2) any person conducting a listed activity.
- (3) a person conducting any other activity for a period exceeding 30 days.
- (4) any person storing and or handling stockpile materials of more than 8 000 tons throughput per month, that have the potential to generate dust.

4. Dustfall Standard Test Method

The standard test method for the collection and measurement of dustfall shall be SANS 1137. The latest version of this method shall apply.

5. Prescribed Dustfall Rates

Prescribed dustfall rates and permissible frequency of exceedances are set out in the table below -

Restriction Areas	Dustfall rate (D) (mg/m ² /day, 30-day period)	Permitted frequency of exceeding dustfall rate
Residential area	$D \leq 600$	Twice within a year, not occurring on sequential months.
Non-residential area	$D \leq 1200$	Twice within a year, not occurring on sequential months.

6. Dust Management Plan Development

- (1) A person in subregulation 3(1) must, within 30 days of the coming into operation of these Regulations, develop and submit a dust management plan to the relevant air quality officer for approval.

- (2) A person in subregulation 3(1) must within 30 days of the approval of a dust management plan, incorporate an approved dust management plan into the environmental management programme.
- (3) An air quality officer may, through a written notice instruct a person in regulation 3(2) or 3(3) to develop and submit a dust management plan for approval, if an air quality officer reasonably suspects that the activity may cause nuisance by dust.
- (4) The dust management plan contemplated in subregulation 6(3), must be submitted for approval, to an air quality officer within 30 days of the written notice.
- (5) An air quality officer must incorporate the approved dust management plan into the atmospheric emission license of a person in subregulation 3(2) for implementation.
- (6) The dust management plan contemplated in these Regulations must include the following—
 - (a) Person responsible for implementation.
 - (b) All possible sources of dust and activities that generate dust within the premises.
 - (c) Detailed and time-bound best practicable control measures to be undertaken to minimize, manage and prevent dust into the atmosphere.
 - (d) Measures that must be taken to prevent nuisance by dust.
 - (e) Records and management of the dust complaints.
 - (f) Dustfall monitoring programme.
 - (g) Any other relevant information as an air quality officer or the relevant authority may deem necessary.
- (7) The dustfall monitoring programme contemplated in subregulation 6(f) must include:
 - (a) Procedure for the collection and measurement of dustfall in terms of the standard test method.
 - (b) Dust monitoring sampling points sufficient in number to monitor identified or likely sensitive receptor locations in the vicinity of the premises.

7. Dust Management Plan Implementation and Reporting

- (1) A person in regulation 3 must commence with the implementation of an approved dust management plan within 30 days of approval.
- (2) A person in regulation 3 must submit report on the implementation of the dust management plan to an air quality officer or the relevant authority at three months intervals.

- (3) The implementation report contemplated in subregulation 7(2) must include—
- (a) Measures undertaken to minimize, prevent and manage dust emissions into the atmosphere.
 - (b) Actions taken and responses to address the dust complaints.
 - (c) Dustfall monitoring report that must comprise of:
 - i. information on the location of sampling sites, including latitudinal and longitudinal coordinates, and a position indicator on a topographic map.
 - ii. dustfall monitoring results, including a tabular summary of dustfall rates for the monitoring period compared to the limit values set out in regulation 5, and a comparison with monthly historical results for at least the previous year for each site, where historical data is available.
 - iii. meteorological information on wind speed; wind direction and rainfall for the sampling site.
 - iv. proof of SANAS accreditation on the use of SANS 1137 test method.
 - v. identification of sensitive receptors, if applicable.
 - vi. any other relevant information that might influence the monitoring results.

8. Dust Management Plan Monitoring and Review

- (1) An air quality officer or relevant authority must continuously evaluate the implementation of the dust management plan.
- (2) An air quality officer or relevant authority may, through a written notice, request a person contemplated in regulation 3 to review the approved dust management plan if:
 - (a) The report contemplated in subregulation 7(2) indicates non-compliance with the dustfall rates.
 - (b) There is reasonable suspicion that dust control measures in the approved plan are not adequately minimizing, managing and preventing dust including preventing nuisance by dust.
- (3) The approved dust management plan contemplated in subregulation 8(2), must be submitted to the air quality officer, licensing authority or relevant authority within 30 days of the written notice.

9. Offences

- (1) A person is guilty of an offence if that person contravenes or fails to comply with a provision of regulation 6(1); 6(2); 6(4); 7(1); 7(2) and 8(3).

10. Penalties

- (1) A person convicted of an offence referred to in regulation 9 is liable to a fine not exceeding R5 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 or imprisonment for a period not exceeding 10 years or in both instances to both such fine and imprisonment.

11. Transitional provisions

- (1) Any requirements or matter relating to dust control pending before an air quality officer prior to the promulgation of these Regulations, must be concluded by an air quality officer in terms of the repealed Regulations as provided for by regulation 12.
- (2) A person in regulation 3(1) operating without a dust management plan, prior to the promulgation of these Regulations; must submit a dust management plan in line with these Regulations to an air quality officer or relevant authority for approval, within three months of the coming into operation of these Regulations.
- (3) A person in regulation 3, in possession of an approved dust management plan prior to the promulgation of these Regulations; must submit a reviewed plan in line with these Regulations to an air quality officer or relevant authority for approval, within three months of the coming into operation of these Regulations.
- (4) Pending the approval of the reviewed dust management plan prior to the coming into operation of these Regulations, the existing approved dust management plan shall remain valid with full legal force and effect.
- (5) A person in regulation 3, in possession of ASTM D1739: 1970 or equivalent method approved by any internationally recognized body; must obtain and use the SANS 1137 method within three months of the coming into operation of these Regulations.
- (6) Pending the obtainment of the SANS 1137 method, ASTM D1739: 1970 or equivalent method approved by any internationally recognized body shall remain valid for three months of the coming into operation of these Regulations.

12. Repeal of the Regulations

The National Dust Control Regulations, 2013 promulgated by Government Notice No. R. 827, published in *Government Gazette* No. 36974 of 1 November 2013 are hereby repealed.

13. Short title and commencement

These Regulations are called the National Dust Control Regulations, 2024 and will come into operation on the date of publication in the *Government Gazette*.