

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. R. 4843

17 May 2024

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004
(ACT NO. 39 OF 2004)CONSULTATION ON PROPOSED REGULATIONS FOR IMPLEMENTING AND ENFORCING
PRIORITY AREA AIR QUALITY MANAGEMENT PLANS

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby, under section 20, read with sections 56 and 57 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), give notice of my intention to publish the Regulations for implementing and enforcing priority area air quality management plans, as set out in the Schedule hereto.

These Regulations set out the requirements necessary for implementing and enforcing any approved priority area Air Quality Management Plans. The Regulations will provide for mandatory implementation of interventions; mechanisms for government to monitor and evaluate the effectiveness of the plans; transitional arrangements as well as the activation of enforcement measures where non-compliance is identified. They apply to all key stakeholders identified to be significant contributors to poor air quality in the respective air quality management plans, including listed activities; controlled emitters; mining operations and government stakeholders. This version now also includes reclamation of historic mine dumps which are included in the regulations as an identified stakeholder. In addition, the regulations include a reference to any special permission relating to emission standards which need to be considered.

Members of the public are invited to submit written comments, within 30 days from the date of the publication of this notice in the Government Gazette or in the newspaper, whichever is the later date, to the following addresses:

By post to: The Director-General: Department of Forestry, Fisheries and the Environment
Attention: Mr Olebogeng Matshediso
Private Bag X447
PRETORIA
0001

By hand at: 473 Steve Biko Road, Environment House, Arcadia, 0083
By email: OMatshediso@dfpe.gov.za

A copy of the socio-economic impact assessment report can be obtained on the Department's website at https://www.dfpe.gov.za/legislation/gazetted_notices

Any enquiries in connection with the notice can be directed to Mr Victor Loate at Tel: 012 399 8507 / Cell: 066 081 6205, or by email: VLoate@dfpe.gov.za

Comments received after the closing date may not be considered.

BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

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1. Definitions

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

“emission reduction and management plan” means an emission reduction and management plan contemplated in regulation 5 of these Regulations, to be prepared and submitted by an identified stakeholder for the purpose of minimising, preventing and managing emissions to contribute towards emission reduction targets as stipulated in the priority area air quality management plans;

“exploration operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act;

“historical mine dump” means debris, discard, residues, slimes, screening, slurry, tailings, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to prospecting, exploration, mining or production operations, which do not require any authorisation in terms of the Mineral and Petroleum Resources Development Act, 2002;

“identified stakeholder” means a stakeholder described in regulation 3(2) of these Regulations;

“mining operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act;

“National Air Quality Officer” means the officer designated as the national air quality officer in terms of section 14(1) of the Act;

“person” includes a juristic person and organ of state;

“production operation” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act;

“prospecting operations” has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act;

“reclamation” means obtaining materials of value from historical mine dump;

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

“these Regulations” means the Regulations for Implementing and Enforcing Priority Area Air Quality Management Plans, 2023.

2. Purpose

The purpose of these Regulations is to provide for the implementation and enforcement of a priority area air quality management plan approved and published in terms of sections 19(1)(b) and 19(5) of the Act.

3. Application

- (1) These Regulations apply to a priority area air quality management plan published by the Minister in terms of section 19(5)(a) of the Act.
- (2) These Regulations apply to a stakeholder assigned responsibility in terms of a priority area air quality management plan which include:
 - (a) Any person conducting a listed activity;

- (b) any person operating a controlled emitter;
- (c) any holder of a right or permit related to a prospecting operation, exploration operation, mining operation, or production operation as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
- (d) any person conducting reclamation; and
- (e) any department of state or administration in the national, provincial or local sphere of government.

4. Emission reduction targets

- (1) A priority area air quality management plan must, in addition to the requirements in section 19(6) of the Act, include measurable emission reduction targets.
- (2) Despite regulation 8, any priority area air quality management plan published prior to the commencement of these Regulations must, within two years of the commencement of these Regulations, be reviewed to include emission reduction targets.

5. Emission reduction and management plan

- (1) An identified stakeholder in regulation 3(2)(a) to (d) must, within six months of the publication of a priority area air quality management plan or reviewed plan as contemplated in regulations 4(2) or 8(1), submit an emission reduction and management plan for approval to the relevant licensing authority in respect of identified stakeholders in regulation 3(2)(a) or air quality officer in respect of identified stakeholders in regulation 3(2)(b) to (d).
- (2) An identified stakeholder in regulation 3(2)(e) must within six months of the publication of a priority area air quality management plan or reviewed plan as contemplated in regulations 4(2) or 8(1), submit an emission reduction and management plan for the activities for which it is responsible, to the Minister for noting.
- (3) An identified stakeholder in regulation 3(2)(e) who also falls within regulation 3(2)(a), (b) (c) or (d) must submit an emission reduction and management plan in terms of both subregulation (1) and (2).
- (4) An emission reduction and management plan must include the following:
 - (a) measures to achieve emission reduction and management;
 - (b) emissions reduction targets aligned to the priority area air quality management plan;

- (c) implementation timeframes to achieve emission reduction targets; and
 - (d) any other requirements determined by the licensing authority, air quality officer or Minister, where applicable.
- (5) The relevant licensing authority or air quality officer must–
 - (a) within 60 days of submission of the emission reduction and management plan contemplated in subregulation (1)–
 - (i) approve the plan; or
 - (ii) refer the plan back to the identified stakeholder to be amended; and
 - (b) have regard to regulation 11(2), when deciding to approve a plan or refer it back for amendment.
- (6) The licensing authority must incorporate an approved emission reduction and management plan into the relevant atmospheric emission licence as contemplated in section 46(1) of the Act.
- (7) Once approved or noted an emission reduction and management plan must be implemented by the identified stakeholder within the timeframes specified in that plan which must align with those in the priority area air quality management plan.

6. Funding and resources for implementation of priority area air quality management plans

An identified stakeholder must provide adequate financial support, funding and necessary resources to ensure the implementation of a priority area air quality management plan.

7. Reporting requirements

- (1) An identified stakeholder must by 31 March of every calendar year, submit a progress report in the format specified by the National Air Quality Officer, to the National Air Quality Officer on the implementation of its emission reduction and management plan for the preceding calendar year.
- (2) Where 31 March falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the following day which is not a Saturday, Sunday or public holiday.

- (3) Where any progress report contemplated in subregulation (1) includes a report on emissions inventory, the emissions inventory report must comply with the National Atmospheric Emission Reporting Regulations promulgated in terms section 12(b) and (c) of the Act.
- (4) The National Air Quality Officer must consolidate the stakeholders' annual progress reports for inclusion in the report required in terms of section 17 of the Act on the implementation of priority area air quality management plans.

8. Review and monitoring of priority area air quality management plans

- (1) Priority area air quality management plans must be reviewed every five years or as deemed necessary by the Minister and submitted for approval.
- (2) Once the reviewed priority area air quality management plan is approved by the Minister, the identified stakeholder must review its emission reduction and management plan to align with the reviewed priority area air quality management plan and submit such plan in terms of regulation 5 of these Regulations within six months of the publication of such reviewed priority area air quality management plan.

9. Offences

An identified stakeholder commits an offence if it —

- (a) provides incorrect or misleading information in an emission reduction and management plan submitted in terms of regulation 5(1);
- (b) fails to submit or implement an emission reduction and management plan submitted in terms of regulation 5(1) within the specified timeframes set out in these Regulations; or
- (c) fails to submit the required annual progress report in terms of regulation 7 of these Regulations in respect of an emission reduction and management plan submitted in terms of regulation 5(1).

10. Penalties

A person convicted of an offence in terms of regulation 9 of these Regulations is liable—

- (a) in the case of a first conviction to a fine not exceeding five million rand or to imprisonment for a period not exceeding five years; or

(b) in the case of a second or subsequent conviction, to a fine not exceeding ten million rand or imprisonment for a period not exceeding ten years; and
in respect of both paragraphs (a) and (b) to both a fine and imprisonment.

11. General

- (1) The control of dust in priority areas must be managed in line with the Regulations published in terms of section 32 of the Act.
- (2) Any special permission or arrangement relating to emissions standards, granted to an identified stakeholder, in terms of the Act, must be considered when implementing these Regulations.

12. Repeal of regulations

The Vaal Triangle Priority Area AQMP Implementation Regulations, 2009 published under Government Notice R. 614 of *Government Gazette* 32254 on 29 May 2009, are hereby repealed.

13. Short title and commencement

These Regulations are called the Regulations for Implementing and Enforcing Priority Area Air Quality Management Plans, 2024, and come into operation on its date of publication in the *Gazette*.