

FETAKGOMO TUBATSE LOCAL MUNICIPALITY MUNICIPALITY



DRAFT FTLM AIR QUALITY MANAGEMENT BY-LAW

SCHEDULE

The Fetakgomo Tubatse Local Municipality acting in terms of section 156(2) of the Constitution of the Republic of South Africa Act, 1996, read with section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and section 11 (1) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) has made the following Air Quality Management by-law hereunder:

TABLE OF CONTENTS

CHAPTER 1

DEFINITIONS, OBJECTIVES, OVERARCHING PRINCIPLES AND PERMITTING PROCEDURES FOR CONTROLLED ACTIVITIES

1. Definitions
2. Objectives
3. Application
4. Overarching principles
5. Permitting Procedures

CHAPTER 2

LOCAL EMISSION STANDARDS, MOTOR VEHICLE EMISSIONS, SMALL BOILERS AND CONTROLLED ACTIVITIES

Part 1: Local Emission Standards

6. Identification of substances and development of local emission standards
7. Consequences of identification
8. Public Participation Process

Part 2: Controlled Activities

9. Declaration of Pollution Control Zones
10. Emissions from compressed ignition powered vehicles
11. Small boilers, furnaces and incinerators
12. Dust, offensive fumes (odors) and/or dark smoke emissions activities
13. Emissions caused by open burning
14. Emissions caused by burning of industrial waste, domestic waste and garden waste
15. Emissions caused by tyre burning and burning of rubber products and cables in open spaces
16. Organic material burning
17. Pesticide spraying emissions
18. Spray painting emissions
19. Sand blasting, rock crushing and concrete mixing emissions
20. Noise pollution Management

Part 3: Air Quality Management Plan

CHAPTER 3

Part 1: General Matters

21. Emissions that cause a nuisance
22. Steps to abate nuisance
23. Contents of the Air Quality Management Plan
24. Reporting on Implementation of Air Quality Management Plan
25. Permit or License Amendments

26. Amendments Initiated by Council
27. License Amendment Process
28. Suspension, Withdrawal and Cancellation of permit or license
29. Appeals
30. Offences and penalties
31. Enforcement
32. Powers to question
33. Supervision of Licenses and permits
34. Infringement Notices
35. Enforcement Notices
36. Notification
37. Rectification of activities commenced illegally
38. Exemptions
39. Severability
40. State and Council Bound
41. Repeal of By-Laws
42. Short title
43. Commencement date

Part 2: Licensing and Listed Activities

SCHEDULES TO THE BY-LAW

- Schedule 1: List of substances and associated local emission standards
- Schedule 2: Criteria to identify and prioritize substances and to develop local emission standards
- Schedule 3: Application Form to operate small boiler, furnaces and incinerators
- Schedule 4: Application Form for open burning
- Schedule 5: Application Form to organic material burning
- Schedule 6: Application Form to undertake pesticide spraying
- Schedule 7: Permitting Procedures
- Schedule 8: Application form for rectification of activities commenced illegally
- Schedule 9: Spot or administrative Fines
- Schedule 10: By-laws repealed

CHAPTER 1

DEFINITIONS, OBJECTIVES AND OVERARCHING PRINCIPLES

1. Definitions

“Activity” means any action which results in any emission that has or may have an adverse effect on the environment, including health, social conditions, economic conditions, ecological conditions and cultural heritage;

“Adverse effect” means any actual or potential impact on the environment that Impairs, or could impair, the environment or any aspect of it;

“Ambient sound level” means the reading of an integrating sound level meter measured at the measuring point at the end of total period of at least 10 minutes after such integrating sound level meter has been put into corporation, during which period a noise alleged to be a disturbing noise is absent;

“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 Pollutant” means any substance specified in the definition of “Air Pollution” that causes or may cause air pollution;

“Air Quality Management Plan” means a plan referred to in section 15 of AQA;

“Air Quality Officer” means an officer appointed in terms of section 14 of the AQA;

“Atmosphere” means air that is not enclosed by a building, machine, chimney or other structure enclosing air;

“Authorized person” means any employee authorized by the municipality to implement any of the provision of this by-law and in possession of an appointment card issued by the municipality attesting thereto, including any member of the municipal police service or any other peace officer;

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

“Change” means any modification which is made to an existing structure, plant, road, land use, procedure, action etc. which may have an effect on the noise generation originating from such an activity;

“Chimney” means any structure or opening of any kind from or through which an air pollutant may be emitted;

“Combustible Liquid” means a liquid which has a close-cap flash point of 38 degrees Celsius or above;

“Compressed ignition powered vehicle” means a vehicle powered by an internal combustion, compression ignition, diesel or similar fuel engine;

“Constitution” means the Constitution of the Republic of South Africa Act, 1996;

"Control measure" means a technique, practice or procedure used to prevent or minimize the generation, emission, suspension and/or airborne transport of fugitive dust;

"Council" means Fetakgomo Tubatse Local Municipality;

"Dark Smoke" in respect of any other section other than section 10 (1) (c) of this By-law , means a smoke which when measured using a light absorption meter, obscuration measuring equipment or other similar equipment, has an obscuration of 20% or greater;

"Disturbing noise" means a specific noise level that exceeds either the outdoor equivalent continuous day/night rating level, the outdoor equivalent continuous day rating level and/or the outdoor equivalent continuous night rating level for the particular neighborhood indicated as the outdoor ambient noise in various districts in SANS10103;

"Erect" means alter, convert, extend or re-erect;

"Exempted vehicle" means a vehicle listed in Annexure-A to SANS 10281;

"Flammable gas" means a gas which at 20 degrees Celsius and a standard pressure of 101.3 kilopascals-

- (a) is ignitable when in a mixture of 13% or less by volume with air; or
- (b) Has a flammable range with air of at least 12% regardless of the lower flammable limit;

"Flammable liquid" means a liquid or combustible liquid which has a close-cap flash point of 100 degrees Celsius or below;

"Flammable substance" means any flammable liquid, combustible liquid or flammable gas;

"Free acceleration test" means the method prescribed in section 10(3) employed to determine whether vehicles are being driven or used in contravention of section 10(1);

"Integrating sound level meter" means a device integrating a function of sound pressure over a period of time and indicating the result in dB(A) indicating is a function of both the sound level and the duration of exposure to the sound during the period of measurement;

"Measuring point" relating to:

- (a) a piece of land from which an alleged disturbing noise emanates, or may emanate, means a point in or outside the property projection plane where an alleged disturbing noise shall be measured, or calculated in accordance with the provisions of SANS 10103;
- (b) a building with more than one occupant, means a point in or outside the building where an alleged disturbing noise shall be measured, or calculated in accordance with the provisions of SANS 10103; and
- (c) a stationary vehicle means a point as described in SANS 10181 where a measuring microphone shall be placed;

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

"Minister" mean the Minister of Environmental Affairs;

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"Municipality" means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"National Framework" means the National Framework for Air Quality Management in the Republic of South Africa, as published in terms of section 7(1) of the AQA;

"NEMA" means the National Environmental Management Act, 1998 (Act No 107 of 1998);

"Neighborhood" means an area which corresponds with a demarcated area of a municipal ward recognized by the municipality or a municipal ward, or wards of the municipality;

"Non-exempted vehicle" means a vehicle not listed in Annexure-A to SANS10281;

"Nuisance" means an unreasonable interference or likely interference caused by air pollution with:

- (a) The health and well-being of any person or living organism;
- (b) The use and/or enjoyment by an owner or occupier of his or her property and/or environment; and
- (c) The ordinary comfort, convenience, peace, quite.

"Obscuration" means the ratio of visible light attenuated by air pollutants suspended in the effluent streams to incident visible light, expressed as percentage;

"Offensive Odour" means any smell which is considered to be malodorous or a nuisance to the reasonable person.

"Organic Material Burning", for the purposes of this by-law, this means the burning of Veld or Forest Organic Material;

"Open burning" means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, excluding the burning of sugar cane;

"Organ of state" has the meaning assigned to it in section 239 of the Constitution;

"Pave" means to apply and maintain concrete or any other similar material to a road surface;

"Pest" means an injurious, noxious or troublesome living organism;

"Pesticide" means a micro-organism or material that is used or intended to be used to prevent, destroy, repel or mitigate a pest and includes herbicides, insecticides, fungicides and rodenticides;

"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 and any locomotives,

ship, boat or other vessel which operates or is present within the area under the jurisdiction of the Council;

“Prescribed” in relation to a fee, means a fee prescribed by the Bojanala Platinum District Municipality;

"Property projection plane" means a vertical plane on, and including the boundary line of a piece of land defining the boundaries of such piece of land in space;

"Public road" means a road which the public has a right to use;

"Recreational vehicle" means-

- a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;
- b) a model aircraft, vessel or vehicle;
- c) any aircraft or helicopter used for sport or recreational purposes;
- d) a vessel used for sport on water; or
- e) Any other conveyance vessel or model which is used for sport or recreational purposes.

"Repair notice" means a notice as referred to in section 12(4), regarding the re-testing of vehicle;

"Rubber product" means anything composed of rubber including anything containing or coated with rubber;

"SANS 10103" means the latest edition of Standards South Africa publication No. 10103 titled: "The measurement and rating of environmental noise with respect to land use, health, annoyance and to speech communication" as amended from time to time or its corresponding replacement;

"SANS 10181" means the latest edition of Standards South Africa publication No. 10181 titled: "The measurement of noise emitted by road vehicles when stationary", as amended from time to time or its corresponding replacement;

"SANS 10281" means the latest edition of Standards South Africa publication No. 10281 titled: "Engine speed (S values), reference sound levels and permissible sound values of stationary road vehicles", as amended from time to time or its corresponding replacement;

"SANS 10328" means the latest edition of Standards South Africa publication No. 10328 titled: "Methods for environmental noise impact assessments", as amended from time to time or its corresponding replacement;

"Small boiler" for the purposes of this by-law means a small combustion installation, with a design capacity of less than 10MW thermal input, which burns solid, liquid and gas fuels primarily for steam raising or electricity generation not contemplated under section 23 of the Air Quality Act;

“Small Furnace and Incinerator” for the purposes of this by-law, this refer to any small furnace and small incinerator not contemplated under section 21 of the Air Quality Act;

"Smoke" means the gases, particulate matter and products or combustion emitted into the atmosphere when material is burned or subjected to heat and includes soot, grit and gritty particulates emitted in smoke;

"Use" in relation to all-terrain vehicles includes driving, operating or being conveyed by that vehicle; and

"Vehicle" means any motor car, motor carriage, motorcycle, bus motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power.

2. Objectives

- (1) The objectives of this by-law are to-
 - (a) give effect to the right contained in section 24 of the Constitution by regulating air pollution within the area of the municipality`s jurisdiction;
 - (b) provide in conjunction with any other applicable law, an effective legal and administrative framework within which the Council can manage and regulate activities that have a potential to adversely impact the environment, public health and well-being; and
 - (c) Ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimized.
- (2) Any person exercising a power under this by-law must exercise such power in order to give effect to the objectives as set out in subsection (1) above.

3. Application

- (1) This by-law must be read with any applicable provisions of the National Environmental Management: Air Quality Act, 2004, The National Dust Regulations and the National Framework for Air Quality Management in the Republic of South Africa.
- (2) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the municipality, regulates air pollution the provisions of this by-law shall prevail to the extent of the inconsistency.
- (3) The overarching principles set out in section 4 below, must be considered and applied by any person:
 - (a) exercising a power or function or performing a public duty under this by-law; and
 - (b) The municipal area which is likely to have an effect on public health and well-being and/or the environment within that area.

4. Overarching Principles

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures:
 - (a) to prevent any potential of air pollution from occurring; and
 - (b) to mitigate, as far as reasonably possible, any air pollution that may occur.
- (2) The Council may direct any person in writing who fails to take the measures required under subsection (1)-
 - (a) To commence taking specific reasonable measures before a given date;
 - (b) To diligently continue with those measures; and
 - (c) To complete them before a specified reasonable date.
- (3) Prior to making such a decision as contemplated in subsection (2), the Council must give the affected person adequate opportunity to inform the municipality of their relevant interests.
- (4) Should a person fail to comply, or inadequately comply, with a directive under subsection (2), the Council may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.
- (5) Provided such person failed to take the measures required of him under subsection (2), the Council may recover costs for reasonable remedial measures to be undertaken under subsection (4) above, before such measures are taken and all costs incurred as a result of it acting under subsection (4) from any person who is or was responsible for, or who contributed to, the air pollution.
- (6) No person may-
 - a) unlawfully and intentionally or negligently commit any act or omission which causes or is likely to cause air pollution; or
 - b) Refuse to comply with a directive issued under subsection (2).
- (7) Any person who fails to comply with subsection (6) above commits an offence.

5. Permitting Procedures

- (1) The Council has developed basic permitting procedures or guidelines to be followed during the permitting of activities (i.e. spray painting, small boilers etc.) regulated and/or controlled by this by-law.
- (2) Any person who wishes to apply for the activities mentioned under (1) above must follow the prescribed permitting procedures, as set out in Schedule 7 of this by-law.
- (3) The application form to be lodged with the Council for undertaking any of the activities regulated by this by-law must be accompanied by an application fee prescribed by the Council.

CHAPTER 2

LOCAL EMISSION STANDARDS, MOTOR VEHICLE EMISSIONS, SMALL BOILERS, SMALL FURNACES, SMALL INCINERATORS AND CONTROLLED ACTIVITIES

Part 1: Local Emissions Standards

6. Identification of Substances and Development of Local Emission Standards

- (1) The Council may identify substances in ambient air and for each substance develop emission standards, as set out in Schedule 1 of the by-law.
- (2) The Council may apply the criteria, as set out in Schedule 2 of the by-law, when identifying and prioritizing the substances and when developing the local emission standards.

7. Consequences of identifying

- (1) Any person emitting those substances or mixtures of substances must comply with the emission standards established in terms of section 6(1) above.
- (2) Any person who fails to comply with the emission standards established in terms of section 6(1) of the by-law commits an offence.

8. Public Participation Process

For the purposes of the publication of the local emission standards, the Council must follow the Public Participation Process as set out in section 13 of the Municipal Systems Act, 2000.

9. Declaration of Air Pollution Control Zone

- a) The whole area within the area of jurisdiction of the Municipality is hereby declared an air pollution control zone.
- b) The Council may, within the air pollution control zone, from time to time by notice in the Provincial Gazette –
 - (i) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;
 - (ii) prohibit or restrict the combustion of certain types of fuels;
 - (iii) declare smokeless zones, in which smoke with an obscuration of more than 10% may not be emitted; and
 - (iv) Prescribe different requirements in an air pollution control zone relating to air quality in respect of different geographical portions, specified premises, classes of premises, premises used for specified purposes and mobile sources.
- c) The Council may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.

- d) The Council may in writing exempt certain premises, classes of premises or premises used for specified purposes from this section.

Part 2: Motor Vehicle Emissions, Small Boilers and Controlled Activities

10. Emissions from Compressed Ignition Powered Vehicles

(1) Prohibition

- (a) No person may on a public road drive or use, causes to be driven or used, a compressed ignition powered vehicle that emits dark smoke.
- (b) If dark smoke is emitted in contravention of subsection (1) (a) above the owner of the vehicle commits an offence.
- (c) For the purposes of this section, “dark smoke” means:
 - (i) smoke emitted from the exhaust outlets of naturally aspirated compression ignition engines which has a density of 50 Hartridge smoke units or more or a light absorption co-efficient of more than 1.6m^{-1} ; and
 - (ii) Smoke emitted from the exhaust outlets of turbo charged compression ignition engines which has a density of 56 Hartridge smoke units or more or a light absorption co-efficient of more than 1.10m^{-1} .

(2) Stopping of vehicles for inspection and testing

- (a) In order to enable an authorized person to enforce the provisions of this Part, the driver of a vehicle must comply with any reasonable direction given by an authorized person:
 - (i) to stop the vehicle; and
 - (ii) To facilitate the inspection or testing of the vehicle.
- (b) Any person who fails to comply with a direction given under subsection (2) (a) commits an offence.
- (c) When a vehicle has stopped in compliance with a direction given under subsection (2) (a), the authorized person may-
 - (i) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:
 - (a) At or as near as practicable to the place where the direction to stop the vehicle is given; and
 - (b) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction

(3) Testing procedure

(a) An authorized person must use the following method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of section 10(1) (a) above:

- (i) when instructed to do so by the authorized person, the driver of the vehicle must start the vehicle, place it in neutral gear and engage the accelerator throttle pedal;
- (ii) when instructed to do so by the authorized person, the driver of the vehicle must smoothly and completely depress the accelerator throttle pedal of the vehicle, provided that the authorized person may do so himself or herself if the driver fails or refuses to comply with the authorized person's reasonable instructions;
- (iii) while the throttle pedal is depressed, the authorized person must measure the smoke emitted from the vehicle's emission system in order to determine whether or not it is a dark smoke;
- (iv) The driver of the vehicle may only release the throttle pedal of the vehicle when the engine reaches cut-off speed, or when directed to do so by the authorized person.

(b) If, after having conducted the test above, the authorized person is satisfied that the vehicle:

- (i) is not emitting dark smoke, then the authorized person must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of subsection (1)(a); or
- (ii) is emitting dark smoke, the authorized person must issue the driver or the vehicle with a repair notice in accordance with subsection (4) below.

(4) Repair notice

(a) A repair notice must direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period.

(b) The repair notice must contain, amongst others, the following information:

- (i) the make, model and registration number of the vehicle;
- (ii) the name address and identity number of the driver of the vehicle; and
- (iii) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.

(c) A person commits an offence under this section if that person fails:

- (i) to comply with the repair notice referred to in subsection(4)(a);
- (ii) to take the vehicle for re-testing as referred to in subsection (4) (a);

- (d) It shall not be a defense in proceedings under subsection (4) (c) to avert the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- (e) If the owner of the vehicle fails to take the vehicle for re-testing as referred to in subsection (4)(a), then the authorized person must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

11. Small Boilers, Furnaces and Incinerators

- (1) No person may install, alter, extend or replace any small boiler, furnace and/or incinerator on any premises without the prior written authorization of the Council, which may only be given after consideration of the relevant plans, specifications and any applicable emission standards set for controlled emitters that have been determined in terms of section 23 of the NEMAQA.
- (2) Application for an authorization to operate a small boiler, furnace and/or incinerator shall be made as provided for in schedule 3 of the bylaw.
- (3) Where a small boiler, furnace and/or incinerator has been installed, altered, extended or replaced on premises in contravention of subsection (1) -
 - a) the owner and occupier of the premises and the installer of the small boiler, furnace and/or incinerator are guilty of an offence;
 - b) the Council may, on written notice to the owner of the premises order the removal of the small boiler, furnace and/or incinerator from the premises at the expense of the owner and within the period stated in the notice.
- (4) In considering an application submitted in terms of subsection (1), the air quality officer may require the applicant to furnish such information as the air quality officer may require.
- (5) After considering the application submitted in terms of subsection (1), the Council must either-
 - (a) grant an application and issue a permit, subject to any conditions that may be imposed;
or
 - (b) Refuse an application with reasonable reasons.
- (6) The authorization issued in terms of subsection (1) above must specify-
 - (a) the product name and model of the small boiler, furnace and/or incinerator;
 - (b) the premises in respect of which it is issued;
 - (c) the person to whom it is issued;
 - (d) the period for which the authorization is issued;
 - (e) the periods at which the authorization may be reviewed;

- (f) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
- (g) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
- (h) any other matters which are necessary for the protection or enforcement of air quality.
- (i) Any person who contravenes subsection (1) commits an offence.

12. Dust, offensive fumes / odours and/or dark smoke emissions

(1) Any person conducting certain activities which customarily produce emissions of dust, offensive fumes / odours and/or smoke or dark smoke that may be harmful or toxic to public health, well-being and/or cause a nuisance shall take control measures to prevent and/or minimize such emissions into the atmosphere.

(2) For the purposes of this section, “dust” means:

- (j) any solid matter in a fine of disintegrated form which is capable of being dispersed or suspended in the atmosphere; and
- (ii) includes dust from mine dumps, stockpiles and raw materials

(3) Any person who undertakes any activity that causes dust emissions must implement one or more of the following control measures:

- (i) pave;
- (ii) use dust palliatives or dust suppressants;
- (iii) uniformly apply and maintain any surface gravel;
- (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
- (v) use ground covers;
- (vi) re-vegetation which is similar to adjacent undisturbed native conditions; or
- (vii) any alternative control measure approved in writing by the air quality officer.

(4) The provisions of this section are not applicable to:

- (i) landscaping activities by a person at his place of residence;
- (ii) emergency maintenance activities on publicly maintained roads, road shoulders and rights of way;
- (iii) unpaved, gravel and asphalt roads having vehicular traffic of less than 200 vehicles per day;

- (iv) non-commercial and non-institutional private driveways;
- (v) Horse trails, hiking paths, bicycle paths or other similar paths; and
- (iv) any other path that has been designate as an exclusive use area for purposes other than travel by motor vehicle.

(5) Any person who contravenes subsection (1) commits an offence.

13. Emissions Caused by Open Burning

(1) Any person/s who carries out or permits open burning of any material on any land or premises are guilty of an offence and is liable to a penalty, unless:

- (a) the prior written authorization the Council has been obtained, which authorization may be granted by the Council with conditions;
- (b) the person requesting authorization has investigated and assessed every reasonable alternative of reducing, reusing or recycling the material in order to minimize the amount of material to be open burned, to the satisfaction of the Council;
- (c) the person requesting authorization has investigated and assessed every reasonable alternative for removing the material from the land or premises, to the satisfaction of the Council;
- (d) the person requesting authorization has investigated and assessed the impact that the open burning will have on the environment, to the satisfaction of the Council;
- (e) the open burning will not pose any potential hazard to human health or safety, private or public property and the environment;
- (f) that person has notified in writing the owners and occupiers of all adjacent properties of:
 - (i) All known details of the proposed open burning; and
 - (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the municipality within 7 days of being notified; and
 - (iii) the prescribed administrative fee that has been paid to the Council.

(2) The Council may not authorize open burning:

- (a) unless it is satisfied that the requirements set out in subsection (1) above have been adequately addressed or fulfilled;
- (b) where a warning under section 10(1) (b) of the National Veld and Forest Act, 1998 (Act No. 101 of 1998) has been published for the region; and
- (c) Where fire breaks in tends to be made in accordance to the National Veld and Forest Act, 1998 (Act No. 101 of 1998).

(3) The provisions of this section shall not apply to:

- (a) recreational outdoor barbeque or braai activities on private premises; and
- (b) Small controlled fires on dwellings for purposes of heating within the dwelling, cooking, heating water and other domestic purposes.

14. Emissions Caused by Burning of Industrial Waste, Domestic Waste and Garden Waste

A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste, is guilty of an offence unless the industrial, domestic or garden waste is legally disposed of in terms of the National Environmental Management: Waste Act, 2008 (At No. 59 of 2008).

15. Emissions Caused by Tyre Burning and Burning of Rubber Products and Cables in Open Spaces

- (1) No person may carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for the purposes of recovering the scrap metal or fiber reinforcements, or of disposing of tyres, of the rubber products or cables as waste.
- (2) Any person who contravenes subsection (1) above commits an offence.

16. Organic material burning

- (1) Any person who burns organic material shall comply, in addition to the burning requirements provisions of the National Veld and Forest Act, 1998 (Act No. 101 of 1998), with the following control measures:
 - (a) No person shall burn organic material unless prior written authorization of the Council has been obtained, this authorization may be granted by the Council with conditions; and
 - (b) A person must notify in writing the owners and occupiers of all adjacent properties (including surrounding communities within 150 meters) of:
 - (i) The details of the proposed area to be burned;
 - (ii) The reason for the organic material burning;
 - (iii) the date and approximate time of the organic material burning;
 - (iv) in the event of inclement weather conditions, an alternative date or dates on which the organic material burning may occur;
 - (v) the right of owners and occupiers (including surrounding communities within 150 meters) of adjacent properties to lodge written objections to the proposed organic material burning with the municipality within 7 days of being notified; and

- (vi) the prescribed administrative fee that has been paid to the municipality.

(2) The Council may not authorize organic material burning:

- (a) unless it is satisfied that the requirements set out in subsection (1) above have been adequately complied with; and

- (b) where a warning notice in terms of section 10(1) of the National Veld and Forest Act, 1998 (Act No. 101 of 1998) has been published for the region.

(3) Any person who contravenes subsection (1) above commits an offence.

(4) The provisions of this section are not applicable to any defined area to which the Council may declare as such.

17. Pesticide Spraying Emissions

(1) No person may carry out or permit the spraying of a pesticide, herbicide or other related material unless such pesticide, herbicide or material is registered in terms of section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

(2) A person who carries out the spraying of pesticide, herbicide or other related material either by tractor or aerial, within the municipal jurisdiction, must comply with the following control measures:

- (a) the prior written authorization of the Council has been obtained, which authorization may be granted by the Council with conditions, including:

- (i) the area of land on which the pesticide, herbicide or other related material may be applied; and

- (ii) the time in which the pesticide, herbicide or other related material may be applied.

- (b) that person must notify in writing the owners and occupiers of all adjacent properties within 150 meters of the treatment area of:

- (i) the details of the proposed treatment area;

- (ii) the reason for pesticide, herbicide or other related material use;

- (iii) the active ingredient of pesticide, herbicide or other related material;

- (iv) the date and approximate time of pesticide, herbicide or other related material use;

- (v) in the event of inclement weather conditions, an alternative date or dates on which the use of pesticide, herbicide or other related material may occur;

- (vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
 - (vii) the right of the owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Council within 7 days of being notified; and
 - (viii) Proof of the administrative fee that has been paid to the municipality.
- (3) Any person who contravenes subsection (2) above commits an offence.
- (4) A person may apply to the Council for an exemption if the spraying of the pesticide is for:
- (i) the management of pests that transmit human diseases or adversely impact agriculture or forestry;
 - (ii) the management of pests that threaten the integrity of sensitive ecosystems; or
 - (iii) the need for the use of the pesticide is urgent.
- (5) The provisions of this section are not applicable to:
- (a) residential areas of farms;
 - (b) buildings or inside buildings and the domestic use of pesticides; or
 - (c) any other defined area or defined activity to which the Council has declared this section not to apply.

18. Spray Painting Emissions

- (1) No person shall, within the municipality's jurisdiction, spray, coat, plate, or epoxy-coat any vehicle, article, object or allow them to be sprayed, coated, plated or epoxy-coated with any flammable substance outside the approved spray painting room, booth or temporal structure. In cases where the size of the article or object to be sprayed cannot be sprayed within the designated spraying room or booth, a temporal structure (i.e. tent, net etc) must be instituted in order to prevent and/or minimize the escape of spraying particles to the atmosphere.
- (2) No person may spray, coat, plate or epoxy-coat any vehicle, article, object, or building or part thereof or allow them to be sprayed, coated, plated, or epoxy-coated with any flammable substance unless-
- (a) that person is in a possession of a spraying permit contemplated in subsection (1) above;
 - (b) the spraying, coating, plating or epoxy-coating as the case maybe is conducted in a spraying room, booth or a temporal structure approved by the designated Fire Officer, in consultation with the Air Quality Officer, on premises registered for that purpose.
- (3) Any person who contravenes subsection (1) and (2) above commits an offence.

- (4) Any person who wishes to obtain a spraying permit must complete and submit to the designated fire officer an application form for such permit in the form and manner as prescribed.
- (5) The designated fire officer may cancel the spraying permit if there is reason to believe that the holder of the spraying permit contravenes or fails to comply with any provision of this by-law.
- (6) Subject to subsection (8) below, before the designated fire officer cancels the spraying permit as contemplated in subsection (6), that officer must-
 - (a) give the holder of the spraying permit written notice of the intention to cancel the spraying permit and the reasons for such cancellation;
 - (b) give the holder a period of at least 21 days to make written representations regarding the matter to the municipality.
- (7) If the designated fire officer has reason to believe that the failure to cancel the spraying permit may endanger any person, that officer may cancel the spraying permit without prior notice to the holder as contemplated in subsection (7) above.
- (8) If the designated fire officer cancels the spraying permit in terms of subsection (7) above, that officer must-
 - (a) furnish the holder of the spraying permit with written notice of the cancellation;
 - (b) give the holder of the spraying permit a period of at least 21 days to make written representations regarding the matter to the municipality.
- (10) The provisions of this section are not applicable to:
 - (a) small scale spray painting of any articles, objects and structures other than vehicles taking place on any residential areas or properties;
 - (b) spray painting of articles, objects and structures that were installed on any site prior to the promulgation of this by-law; and
 - (c) any other defined areas or defined activities to which the Council has declared this section not to apply.

19. Sand Blasting, Rock Crushing and Concrete Mixing Emissions

1. Any person conducting sand blasting, rock crushing and concrete mixing activities which customarily produce emissions of dust and/or smoke or dark smoke that may be harmful or toxic to public health, well-being and/or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
2. Any person who undertakes any sand blasting, rock crushing and concrete mixing activities that causes dust emissions must implement the following control measure:
 - (a) Dust extraction control measure;

(b) Appropriate bag-house filters or scrubbing system; and

(c) Any alternative dust control measure approved in writing by the air quality officer.

3. Any person who contravenes subsections (1) and (2) above commits an offence.

20. Noise pollution Management

(1) Prohibition of disturbing noise or noise nuisance

No person shall make, produce or cause a disturbing noise, or allow it to be made, produced or caused by any person, machine, device or apparatus or any combination thereof.

(2) Noise Planning Management

No person may –

- (a) Establish any township unless a noise impact assessment has been undertaken in accordance with SANS10328, and it is shown that either the outdoor equivalent continuous day/night rating level, the outdoor equivalent continuous day rating level and/or the outdoor continuous equivalent night rating level set out in SANS 10103 will not be exceeded at any position within the boundaries of the proposed boundaries.
- (b) Construct or erect any building or develop a property which will house an activity which is not conformity with the neighborhood for which the activity is established, unless it is shown that the building, after being erected is adequately insulated against external noise, so that the sound level inside the building will not exceed the maximum rating levels for indoor ambient noise for the appropriate areas of occupancy/activity as set out in SANS 10103.
- (c) Construct or erect any building or develop a property which will house an activity that is not in conformity with the neighborhood for which the activity is established, unless it is shown that the building or property, after being erected or developed, is adequately insulated against the transmission of sound, so that either the outdoor equivalent continuous day/night rating level, the outdoor equivalent continuous day rating and/or the outdoor equivalent continuous night rating level determined in accordance with SANS 10103, at any position on the property projection plane of the building or property will not exceed the appropriate value for the particular neighborhood rating level.
- (d) Make changes to existing facilities or existing uses of land or buildings, or erect new buildings, if these will house or cause activities that will, after such changes or erection, cause a disturbing noise, unless precautionary measures are put in place.

- (e) Construct a road or change an existing road, or alter the speed limit on a road, if this will cause, at any position in the particular neighborhood in which the road is situated, either the outdoor equivalent continuous day/night rating level, the outdoor equivalent continuous day rating level and/or outdoor equivalent continuous night rating level to exceed the values given for the appropriate outdoor neighborhood rating level set out in SANS10103. Where the equivalent continuous day/night rating level, the equivalent continuous day rating level, and/or the equivalent continuous night rating level already exceeds the appropriate outdoor neighborhood rating level set out in SANS 10103, before the change is implemented, noise mitigation procedures shall be implemented to reduce the rating level to within the levels given for the appropriate neighborhood rating level in SANS 10103.
- (f) Construct or resurface a road which runs within, or at a distance of less than 100m from land zoned for residential purposes with a surfacing not consisting of a material having low noise generation characteristic such as compacted smooth, or low noise porous bitumen asphalt concrete containing aggregates not exceeding 10mm, or another surfacing procedure having similar low noise generation characteristics.
- (g) Install, replace or modify a plant with a total input power exceeding 10kilowatts on any premises, unless the municipality has been notified by the owner of the plant in writing at least 14 days before such installation, replacement or modification of –
 - i) The particulars of the plant;
 - ii) The number, street address and title deed description of the premises concerned ; and
 - iii) The nature of the date on which the installation, replacement or modification shall commence.

Provided that if an existing plant had to be replaced by necessity without preceding notification to the municipality, the municipality shall be notified thereof by the owner of the plant in writing within 14 days after the replacement of the plant.

- (h) The municipality may –
 - i) Before changes are made to existing facilities or existing uses of land or building or before new buildings are erected, in writing require that noise impact assessments or tests be conducted to the satisfaction of the municipality by the owner, developer, tenant or occupant of the facilities, land or buildings and that reports or certificates relating to the noise impact to the satisfaction of the municipality providing that either the outdoor equivalent continuous day/night rating level, the outdoor equivalent continuous day rating level and/or the outdoor equivalent continuous night rating level at any position on or outside the property projection plan of the existing facility, existing use of land or building will not exceed the appropriate level for the neighborhood as set out in SANS 10103, be submitted by the owner.

- ii) The noise impact assessments, if required must be conducted in accordance with SANS 10328 and the tests, if required shall be conducted in accordance with SANS 10103.
- iii) If excavation work, earthmoving work, pumping work, drilling work, construction work, or demolition work, or any similar activity, power generation or music causes or may cause a noise nuisance or a disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until such conditions as the municipality may deem necessary for such activities to be continued with.

(3) General prohibitions

Any person who –

- (a) Fails to comply with a written condition, instruction or notice issued by the municipality in terms of the noise pollution management section of this by-law;
- (b) Tampers with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or noise placed in a position by or on behalf of the municipality;
- (c) In respect of a duly authorised person of the municipality –
 - i) Fails or refuses to grant admission to such official to enter and to inspect the premises;
 - ii) Fails or refuse to give information which may lawfully be required of him or her to such official;
 - iii) Hinders or obstruct such official in the execution of his or her duties; or
 - iv) Gives false or misleading information to such official knowing that it is false or misleading.

Is guilty of an offence.

(4) General Powers of the municipality

The municipality –

- (a) For the purposes of applying the noise pollution management section of this by-law, at any reasonable time enter premises upon reasonable noise –
 - i) To conduct any appropriate examination, inquiry or inspection thereon as it may deem expedient; and
 - ii) To take any steps it may deem necessary.

- (b) If a noise emanating from a building premises, vehicle, recreational vehicle or private area is a disturbing noise or noise nuisance or may in the opinion of the authorised person be a disturbing noise or noise nuisance, instruct in writing the person causing such noise or who is responsible for the infringement, or the owner or occupant of such building, premises, vehicle, recreational vehicle or private area from which or from where such noise emanates or may emanate, or all such persons to discontinue or cause to be discontinued such noise or to take steps to lower the level of such noise to a level conforming to the requirements of this by-law within the period stipulated in the instruction: Provided that the provisions of this by-law shall not apply in respect of a disturbing noise or noise nuisance caused by rail, vehicles or air traffic or on a public road, by vehicles that are not used as recreational vehicle.
- (c) Impose such appropriate conditions as it deems fit when granting any permission or exemption, including the specification of times and days when activities that may cause noise are permitted or prohibited.
- (d) Subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices at any place within the municipality`s jurisdiction for the enforcement of the provisions of this by-law: Provided that road traffic signs and notices shall be on private property only with the permission of the owner.

21. Emissions that cause a nuisance

(1) Prohibition

Any occupier or owner of premises from which a nuisance emanates, or where a nuisance exists, commits an offence.

(2) Abatement notice

An authorized person may serve an abatement notice on any person, whom the authorized person reasonably believes is likely to commit or has committed an offence under subsection (1), calling upon that person:

- (a) To abate the nuisance within a period specified in the notice;
- (b) To take all necessary steps to prevent a recurrence of the nuisance; or
- (c) To comply with any other conditions contained in the notice.

(3) For the purpose of subsection (2) above, an authorized person may form a reasonable belief based on his own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the abatement notice is to be served.

(4) An abatement notice under subsection (2) above may be served:

- (a) Upon the owner of any person, by -

- i) Delivering it to the owner, or if the owners cannot be traced or is living abroad that person`s agent;
 - ii) Transmitting it by registered post to the owner`s last known address, or the last known address of the agent; or
 - iii) Delivering it to the address where the premises are situated, if the owner`s address and the address of the agent are unknown.
- (b) Upon the occupier of the premises, by
- i) Delivering it to the occupier;
 - ii) Transmitting it by registered post to the occupier at the address at which the premises are situated.
- (5) Any person who fails to comply with an abatement notice served in terms of subsection (4) above commits an offence.
- (6) In addition to any other penalty may be imposed, a court may order a person convicted of an offence under subsection (5) above to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

22. Steps to abate nuisance

After been notified at any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

Part 3: Air Quality Management Plan

The Municipality must include in its Integrated Development Plan an Air Quality Management Plan as contemplated in Chapter 5 of the Municipal Systems Act. The Air Quality Management Plan is binding on the Local Council and all other persons, authorities and institutions exercising powers or performing duties under this By-law.

23. Contents of the Air Quality Management Plan

The Municipality`s Air Quality Management Plan must

- a) within the domain of the Municipality, seek:
 - i. to give effect, in respect of air quality, to Chapter 3 of NEMA to the extent that such a Chapter is applicable to it;
 - ii. to improve air quality in the jurisdiction of the Municipality;
 - iii. to identify and reduce the negative impact of poor air quality on human health and the environment;
 - iv. to address the effects of emissions from industrial sources;

- v. to address the effects of emissions from any point or non-point source of air pollution other than those contemplated in subparagraph (iii) or (iv) above;
 - vi. to implement the Republic's obligation in respect of international agreements;
 - vii. to give effect to best practice in air quality management; and
 - viii. to contribute to climate change mitigation.
- b) describe how the Municipality will give effect to its air quality management plan; and
 - c) Comply with such other requirements as may be prescribed by the Minister.

24. Reporting on implementation of Air Quality Management Plan

The annual report which the Municipality must submit in terms of section 16 (1) (b) of the NEMA must contain information on the implementation of its air quality management plan, including information on:

- a) air quality management initiatives undertaken by the Municipality during the reporting period;
- b) the level of compliance with ambient air quality standards;
- c) measures taken to secure compliance with ambient air quality standards;
- d) its air quality monitoring activities; and
- e) Its climate change mitigation efforts.

CHAPTER 3

Part 1: General Matters

25. Permit or License Amendments

A permit or license issued by the Council may be at any time amended on written application by the permit holder or on the initiative by the Municipality. If amendments are of substantial in nature, an appropriate public participation process may be required. The Council must, within 14 days acknowledge an amendment application and within 30 days decide on the outcome of such application.

A permit or license may be amended by –

- a) attaching an additional condition or requirement;
- b) changing raw material/s, significantly increasing production and processes or procedures that existed at the time of granting of the permit or license;
- c) substituting a condition or requirement;
- d) removing a condition or requirement;
- e) changing a condition or requirement;
- f) correcting a technical or editorial error; and
- g) Updating or changing any detail on the permit or license.

26. Amendments on initiative by the Council

The Council may amend a permit if it is necessary or desirable –

- a) to prevent deterioration or further deterioration of the permit or license;
- b) to achieve prescribed environmental standards relevant to the authorized activity; and
- c) to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands.

27. If the Council initiates permit or license amendment, the following process must be followed –

- a) the Council must, in writing, notify the permit or license holder of the proposed amendment; and
- b) the Council must give a permit or license holder an opportunity to submit written representations on the proposed amendment within a prescribed timeframe;
- c) upon submission of such representations by the permit or license holder, the Council must within 30 days decide on the outcome of this process.

Any permit or license amendment application must be accompanied by adequate motivation or reasons for such amendment/s. The Council may further request the applicant to furnish additional information in support of the submitted permit or license amendment application.

28. Suspension, Withdrawal and Cancellation of permit or license

The Council may, subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 34 of 2000), suspend, withdraw or cancel any permit or license issued in terms of this by-law if the permit or license holder continuously fails or refuses to comply with any condition or provision contained in the permit or license. Should the Council decide to completely suspend, withdraw or cancel the permit or license, the permit or license holder must immediately cease operation on site and maybe instructed (if deemed necessary by the Council) to demolish and/or remove the structures and rehabilitate the site to the satisfaction of the Council.

29. Appeals

Any person may appeal against a decision taken by an authorized person under this by-law by giving written notice of the appeal in accordance with the provisions of section 62 of the Municipal System Act, 2000.

30. Offences and penalties

This section shall only apply if the Council decides to take any person/s to a Court of Law. In other instances, schedule 9 of spot or administrative fines shall apply.

(1) Any person who –

- (a) contravenes or fails to comply with any provision of this by-law;
- (b) refuses or fails to comply with any notice addressed to him or her in terms of or for the purposes of this by-law;

- (c) refuses or fails to comply with the terms or conditions of any permit issued or otherwise imposed in terms of this by-law;
- (d) obstruct, hinders or interferes with an authorized official in the exercise of any power or the performance of any duty under this by-law;
- (e) fails or refuses to furnish the authorized official with any documentation or information required for the purposes of this by-law or furnishes a false or misleading document or information;
- (f) fails or refuses to comply with any instruction given by the authorized official for the purposes of this by-law;
- (g) pretends to be an authorized official;
- (h) Illegally commence with an activity requiring any permit/s from the Council in terms of this by-laws.

is guilty of an offence and –

- i. liable on conviction by the Court of Law to a fine not exceeding R5million or in default of payment to imprisonment for a period not exceeding 5 years or both a fine and imprisonment; and
- ii. in the case of a continuing offence, to a further fine not exceeding R5 million or in default of payment to imprisonment not exceeding one day for every day during the continuance of such offence after a written notice has been served on him or her by the Council requiring the discontinuance of such offence.

31. Enforcement

The Council may appoint an authorized person/s as it may consider necessary to be responsible for the enforcement of this by-law. The authorized person/s shall take all lawful, necessary and practicable measures to enforce the provisions of this by-law.

Administrative Enforcement Provisions

32. Powers to question

- (1) In order to monitor or enforce compliance with this by-law, an authorized official, may, subject to the requirements of the Bill of Rights, and any other law including the common law, require a licensee or any other person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which this by-law relate, require that the disclosure be made on oath or affirmation.
- (2) An authorized official may be accompanied by an interpreter and/or any other person reasonably required in carrying out an inspection.
- (3) An authorized official may, on request, produce his/her official identification as an authorized official.

33. Supervision of licenses and permits

- (1) Authorized officials must inspect the premises of a licensee not less than twice a year, and such an authorized official is permitted to have access to the premises of a licensee for this purpose.
- (2) Such an inspection must be conducted in conformity with the requirements of the Bill of Rights, and any other law, and in particular, an authorized official in conducting an inspection under subsection(1) must do so with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.
- (3) If an authorized official is of the opinion, after such an inspection, that a licensee is complying with this by-law, he may issue the licensee with a certificate confirming compliance, which must state: -
 - (a) the name, residential and postal address of the licensee;
 - (b) the time, date and scope of the inspection; and
 - (c) any remarks which in the opinion of the authorized official may be relevant.
- (4) If a licensee fails to obtain a certificate confirming compliance at three inspections over a period of two years, the authorized official may recommend that the Council review the license or permit, and should there be reasonable grounds, the Council may revoke the license or permit in terms of this by-law, provided that the consecutive inspections occur at not less than four months intervals.
- (5) Authorized officials must keep a register recording each inspection that has been undertaken.

34. Infringement notices

- (1) If, in the opinion of the authorized official, a person is –
 - a. As licensee, failing to comply with the terms or conditions of a license or permit granted in terms of this by- law; or
 - b. as owner or occupier, has failed to satisfy an obligation in terms of any provision of this by-law, the authorized official may issue or cause to be issued on that person an infringement notice in terms of this section.
- (2) An infringement notice issued under this section must state –
 - (a) the name and also the residential and postal address, if either or both of these be known, of the affected person;
 - (b) the nature of the nuisance, harm to human health or damage to the environment that the affected person is causing or is likely to cause;
 - (c) the steps required to prevent or remediate the nuisance, harm to human health or damage to the environment in sufficient detail to enable compliance with the enforcement notice and a demand that the affected person complies without further notice and not later than 21 calendar days of the notice;
 - (d) that the affected, person must not later than 21 calendar days from the date on which the enforcement notice is issued, take steps to comply with the notice;
 - (e) that failure to comply with the requirements of the enforcement notice within the period contemplated in paragraph above may result in civil liability; and

- (f) that written representations may be made to the Council or a designated committee or internal functionary to which powers under this by-law have been delegated, at a specified place, within 21 calendar days of receipt of the notice.
- (3) If a person fails to comply with an infringement notice, the Council or any one authorized by the Council, may perform the steps required in the infringement notice, provided that the Council does so in conformity with the requirements of the Bill of Rights and any other law, in particular, an authorized official must act with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy.
- (4) Where the Council incurs any expenditure as a result of performing such steps, the Council may recover any reasonable expenditure from the person who failed to act as directed or, where criminal proceedings have not been instituted, by means of civil proceedings.
- (5) Any licensee who fails to comply in terms of subsection (1) (b) and has, within the last five years, been in non-compliance more than once, maybe declared as a serial non-compliance under this by- law and its license will be revoked with immediate effect.

35. Enforcement notices

- (1) If, in the opinion of the authorized official, a person is -
 - a. causing a nuisance, harm to human health or damage to the environment; or
 - b. contravening any provision of this by-law, the authorized official may serve or cause to be served on that person an enforcement notice in terms of this section instead of a notice contemplated in section 56 and amendments of the Criminal Procedure Act 51 of 1977.
- (2) The enforcement notice must –
 - (a) specify, at the time when the notice is issued, the name and also the residential and postal address, if either or both of these be known, of the person on whom the infringement notice is served;
 - (b) state the particulars of the infringement;
 - (c) specify the amount of the penalty payable in respect of that infringement and the place where the penalty may be paid; and
 - (d) inform the person on whom the infringement notice is served that, not later than 60 calendar days after the date of service of the infringement notice, he/she may –
 - i. pay the penalty; or
 - ii. inform the Council in writing that he/she elects to be tried in court on a charge of having committed an offence.
- (3) Where a person makes an election under subsection 2 (d), the section on offences and penalties of this by-law applies.

36. Notification

- (1) In the event of a contravention of any provision of this by-law, the Council must issue

a notification in writing alleging that a person has committed an offence by contravening this by-law, at a place, upon a date, at a time or during such period specified in the notification.

- (2) Every notification must set forth:
 - (a) the particulars of the alleged offence; and
 - (b) the appropriate amount of fine imposed upon an offender.
- (3) If the notified person within 30 days after receipt of notification delivers or transmits the notification together with the sum of money equal to what is stated therein to the local authority, such notified person must not be prosecuted for having committed such offence.
- (4) Not later than seven days after receipt of any sum of money as provided in subsection 2(b), the Council must forward to the relevant magistrate of the district or area wherein the offence is alleged to have been committed a copy of the notification relating to the payment in question.
- (5) If the Council receives notification from the magistrate that the amount specified in the notification exceeds the required amount the Council must immediately refund the amount of such excess to the person concerned.

37. Rectification of activities commenced illegally

The process to be followed in the rectification of activities commenced illegally shall consist of the following steps:

Step 1:

A person or a company must ascertain whether he/she/they are responsible for the commencement or continuation of an activity requiring authorization in terms of this by-law without the necessary license or permit.

Step 2:

If a person or company ascertains that he/she/they are responsible for an illegal commencement or continuation of an activity as outlined under step 1 above, an application for rectification must be submitted by hand to the Council.

Step 3:

The rectification application must be accordingly reviewed by the Council. This review may include site inspection to verify information provided by the applicant. Based on the review of the application, the Municipality must advise the applicant on further information required to consider the application.

Step 4:

The Council must advise the applicant of further procedural and information requirements by means of a notice. This may include the compilation of a report after conducting prescribed public

consultation. The Council must also advise the applicant on the administration fine payable and details of the account where monies must be deposited.

Step 5:

The applicant must submit the required reports together with proof of payment of the fine to the Council. Reports submitted without proof of payment or exemption from payment will not be processed.

Step 6:

After careful consideration of the reports, the Council must make a decision and communicate such decision to the applicant within 30 days: The Council could either decide to:

- (i) issue the applicant with a permit or license with such conditions as deemed necessary; or
- (ii) issue the applicant with a directive to cease the activity and rehabilitate the environment.

Lodging an application for rectification does not necessarily imply that the activity will be authorized. The Council may either conditionally authorize the activity or issue a directive for the activity to cease and for the environment to be rehabilitated to the satisfaction of the Council and other affected spheres of government. An application form for rectification of activities commenced illegally is included as schedule 8 of this by-law.

38. Exemptions

- (1) Any person may, in writing, apply for exemption from the provisions of this by-law to the Council.
- (2) An application in terms of subsection (1) above must be accompanied by substantive reasons.
- (3) The Council may grant a temporary exemption in writing from one or all of the provisions of this by-law, provided that the Council:
 - (a) Is satisfied that granting the exemption will not significantly prejudice the objectives referred to in section 2(1) of this by-law; and
 - (b) Grants any exemption subject to conditions that promote the attainment of the objectives referred to in section 4(1) of the by-law.
- (4) The Council must not grant an exemption under subsection (1) until the Council has:
 - (a) Taken measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
 - (b) Proof that all interested & affected parties were provided with a reasonable opportunity to raise their comments or objections to the application; and

(c) Duly considered and taken into account any objections raised.

(5) The Council may –

- (a) From time to time review any exemptions granted in terms of this section; and
- (b) On good grounds withdraw any exemption.

39. Severability

If a section, subsection, sentence, clause or phrase of this by-law is declared invalid by a competent court, the invalid portion shall be severed and shall not affect the validity of the remaining portions of this by-law.

40. State and Council Bound

This by-law is binding on the state and the Council except so far as any criminal liability is concerned.

41. Repeal of by-laws

The by-laws set out in Schedule 10 to this by-law are repealed to the extent set out in that Schedule.

42. Short Title

This by-law shall be called the Air Quality Management By-law.

43. Commencement Date

- (1) This by-law will come into operation on a date or dates to be determined by the Council through publications in the Provincial Gazette.
- (2) Different dates may be determined in terms of subsection (1) above for different provisions of this by-law.

Part 2: Licensing and Listed Activities

44. Establishment of Air Quality Management Licensing System

The Council hereby establishes an air quality licensing management system as contemplated in Chapter 5 of the National Environmental Management: Air Quality Act, 2004.

45. Purpose of the Air Quality Management Licensing System

The purpose of the air quality management licensing system is to –

- (a) identify and register all sources of air pollution in the jurisdiction of the Municipality;
- (b) regulate and ensure compliance with the Atmospheric Emission License conditions;

- (c) gather information for the purposes of compiling the Municipality's Air Quality Management Plan as contemplated in section 15 of the Air Quality Act;
- (d) undertake strategic planning; and
- (e) provide information to any person in order to –
 - (i) facilitate monitoring of the performance of the Municipality, and if applicable, a licensee;
 - (ii) stimulate research by acknowledged institutions; and
 - (iii) assist the Municipality to achieve the main objectives of this by-law.

46. Application for Atmospheric Emission License

- 1) No person shall undertake a listed activity, as published in terms of section 21 of the Air Quality Act, without an Atmospheric Emission License from the Municipality.
- 2) An application for the Atmospheric Emission License must be –
 - (a) made in writing on the prescribed form published in terms of section 53 of the Air Quality Act;
 - (b) accompanied by documents or information as may be required by the Municipality; and
 - (c) on payment of the prescribed processing fee.
- 3) The Municipality must on receipt of an application for atmospheric emission license:
 - (a) acknowledge receipt, within 14 days, of the application together with the prescribed fee;
 - (b) check whether the application is properly completed and contains all necessary information; and
 - (c) is accompanied by the required information or documents as required in terms of the Air Quality Act and this by-law.
- 4) Before consideration of the application made in terms of subsection (2), the Municipality may require the applicant to furnish additional information or specialist study.
- 5) Any person who undertakes a listed activity without an Atmospheric Emission License is guilty of an offence and is subject to the penalties as set out in section 52 of the Air Quality Act.

47. Decisions on Atmospheric Emission License

- 1) After considering the application, the Municipality must, within 60 days of receipt of the application, either –
 - (a) approve the application by issuing a provisional or final Atmospheric Emission License, subject to such conditions as the Municipality may impose; or
 - (b) refuse the application.

- 2) If the Municipality fails to grant or refuse an Atmospheric Emission License within 60 days, the Municipality must inform the applicant in writing that the period for consideration is extended and must inform the applicant of the date by which a decision will be made.

48. Cessation of Atmospheric Emission License

The License holder must on cessation of operation to which the license relates notify the Municipality of such cessation.

49. Monitoring and Sampling

Proper records for monitoring and sampling results must be kept and be made available to the authorized officials upon request.

50. Calibration sampling equipment

Air pollution measuring equipment/s must be calibrated as per the relevant standards and procedures prior to the sampling or measuring process.

Schedule 1

List of substances and its Associated Local Emission Standards

Schedule 2

Criteria to Identify and Priorities Substances and to Develop Local Emission Standards

A. Criteria to identify and prioritize substances

The Council may apply the following criteria when identifying and prioritizing the substances in ambient air that present a threat to public health, well-being or the environment-

- (1) The possibility, severity and frequency of effects, with regard to human health and the environment as a whole, with irreversible effects being of special concern;
- (2) Widespread and high concentrations of the substance in the atmosphere;
- (3) Potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;
- (4) Persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
- (5) The impact of the substance taking the following factors into consideration:
 - (a) Size of the exposed population, living resources or ecosystems;
 - (b) The existence of particularly sensitive receptors in the zone concerned;
- (6) Substances that are regularly by international conventions.

B. Criteria to develop local emission standards

- (1) The Council may, when developing the standards:
 - (a) Identify the critical factors for public health impact;
 - (b) Identify sensitive sub-population;
 - (c) Review available databases for public health status;
 - (d) Review available databases for ambient air quality information; and
 - (e) Review and assess international guidelines and standards.

- (2) The Council may take the following factors into consideration in setting local emission standards:
 - (a) Health, Safety and environmental protection objectives;
 - (b) Analytical methodology;
 - (c) Technical feasibility;
 - (d) Monitoring capability; and
 - (e) Socio-economic consequences.

Schedule 3

Application Form to Operate Small Boiler

Name _____ **of** _____ **Enterprise:**

Declaration of accuracy of information provided:

I, _____,
 declare that the information provided in this application is in all respect factually true and correct.

Signed at _____ on the _____ day of _____

SIGNATURE

CAPACITY OF SIGNATORY

I, _____ owner/occupier of
 the land/property known as _____
 (Registered name) within the municipality`s jurisdiction hereby applying for permission to operate
 a small boiler on the said property.

1. Contact details

Responsible Person
 Name
 Telephone Number
 Cell Phone Number
 Fax Number
 E-mail address

2. Product name and model of the small boiler

Product Name	Product model

3. Raw materials used

Raw materials used	Maximum permitted consumption rate (volume)	Design consumption rate (volume)	Actual consumption rate (volume)	Units (quantity/period)

4. Energy used

Energy source	Sulphur content of fuel (%) (if applicable)	Ash content of fuel (%) (if applicable)	Maximum permitted consumption rate (volume)	Design consumption rate (volume)	Actual consumption rate (volume)	Units (quantity/period)

5. Signatures:

 Signature of the applicant

Date of Application:

6. Office Use only

6.1 Authorised person: Site inspection Observations

6.2 Authorised person: Recommendations

6.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, subject to the following conditions:

- a)
- b)
- c)
- d)
- e)

The application is not approved for the following Reasons:

- a)
- b)
- c)
- d)
- e)

Air Quality Officer Signature

Date: _____

Schedule 4

APPLICATION FORM FOR OPEN BURNING

I, _____
owner/occupier of the land/property known as _____
_____ (Registered name) within the
municipality`s jurisdiction hereby applying for permission to burn the following materials on the
said property.

1. Contact details

Responsible person
Telephone Number
Cell Phone Number
Fax Number
E-mail address

2. Description of the extent of the open area

3. Types of materials to be burnt in the open area

- A.
- B.
- C.
- D.
- E.

4. Reasons for burning materials in open area

5. Approximate date and time to burn materials

Date	Time
------	------

6. Notification of adjacent owners and occupiers (including surrounding communities with 150 meters)

The applicant must attach proof that the adjacent owners and occupiers have been notified of the open burning, and their rights to lodge any written objections to the municipality.

7. Signature

Signature of the Applicant

Date of Applications

8. Office Use Only

8.1. Authorized Person: Site Inspection Observations

8.2. Authorized Person: Recommendations

8.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, Subject to the following conditions:

- a)
- b)
- c)
- d)
- e)

The application is not approved for the following reasons:

- (a)
- (b)
- (c)
- (d)
- (e)

Air Quality Officer Signature:

Date: _____

Schedule 5

Application Form to Burn Organic material (section 16(1) (a))

I, _____
owner/occupier of the land/ property known as _____
_____ (registered name) within the
municipality's jurisdiction hereby apply for permission to burn organic material on the said
property.

1. Contact details

Name of the responsible person
Telephone number
Cell Phone Number
Fax Number
E-mail address

2. Description of the extent of the area to be burned

3. Reasons for the organic material burning

4. Approximate date and time to burn organic material

Date	Time

Alternative date	time	event of inclement weather conditions	

5. Notification of adjacent owners and occupiers (including surrounding communities within 150 meters)

The applicant must attach proof that the adjacent owners and occupiers have been notified of the proposed burning of organic material, and their rights to lodge any written objections to the municipality. The notification must clearly specify (a) the extent of the area to be burned; (b) reasons for the organic material burning; (c) approximate date and time for the organic material burning; (d) alternative dates and time, in the event of inclement weather conditions; (e) adjacent owners and occupiers` right to lodge written objections within 7 days to the municipality.

6. Signature

Signature of the Applicant: Date of Application

7. Office Use Only

7.1. Authorized Person: Site Inspector Observations

7.2. Authorized Person: Recommendations

7.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, Subject to the following conditions:

- a)
- b)
- c)

The application is not approved for the following reasons:

- (a)
- (b)
- (c)

Air Quality Officer Signature:

Date: _____

Schedule 6

Application Form to Undertake Pesticide Spraying (Section 17(2) (a))

I, _____
owner/Occupier of the land/property known as _____
_____ (registered name) within the
municipality`s jurisdiction hereby apply for permission to spray pesticides on the said property.

1. Contact details

Responsible Person
Name
Telephone Number
Cell Phone Number
Fax Number
E-mail address

2. Description of the extent of the proposed treated area

3. Type of product label to be used

- (a)
- (b)
- (c)
- (d)
- (e)

4. Approximate date and time for pesticide spraying

Date	Time

Alternative date	time	event of inclement weather conditions	

5. Notification of adjacent owners and occupiers (including surrounding communities within 150 meters)

The applicant must attach proof that the adjacent owners and occupiers have been notified of the proposed pesticide spraying, and their rights to lodge any objections to the municipality. The notification must clearly specify (a) the extent of the proposed treatment area; (b) reasons for pesticide use; (c) the active ingredient; (d) approximate date and time for pesticide spraying; (e) alternative dates and time, in the event of inclement weather conditions; (f) time, if any, indicated on the product label specifying when the area can safely be entered after application; (g) adjacent owners and occupiers` right to lodge written objections within 7 days to the municipality.

6. Signature

Signature of the Applicant

Date of Application

7. Office Use Only

7.1. Authorized Person: Site Inspection Observations

- a)
- b)

7.2. Authorized Person: Recommendations

7.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, Subject to the following conditions:

- a)
- b)
- c)
- d)
- e)
- f)
- g)

The application is not approved for the following reasons:

- a)
- b)
- c)
- d)

- e)
- f)

Air Quality Officer Signature

Date: _____

Schedule 7

Permitting Procedures

1. Application Process:

- a) The applicant must fill the prescribed application form for the proposed activity. The application form must be filled in full and accompanied by the prescribed application fee.
- b) The application form can be directly obtained from the Council offices or Website.
- c) The application form must be submitted together with all relevant supporting documentation, including information required by the Council for that particular activity.
- d) The Council must, within 14 days of receipt of the application, in writing:
 - i. Acknowledge receipt of and accept the application, if the application is in order;
or
 - ii. Acknowledge receipt and reject the application, if it is not in order.
- e) The applicant may accordingly correct the rejected application and resubmit to the Council for further consideration.

2. Background Information Document

- a) As one of the major supporting documentation, the applicant must compile a Basic Background Information Document (BID). The BID must include the following, but not be limited to:
 - i. The project location;
 - ii. Description of the surrounding land users;
 - iii. Description of the need of the proposed activity;
 - iv. Detailed description of the proposed activity or project;
 - v. Relevant Specialist Studies(if applicable to the proposed project);
 - vi. Description of all raw materials to be used and the manner in which such materials will be stored, handled and used;
 - vii. The type of energy or fuel to be used (if applicable to the proposed project);
 - viii. Description of the environmental aspects (i.e. air, water, soil, community etc) that may be affected by the proposed activity;
 - ix. Description and assessment of all environmental impacts (e.g. air & noise pollution, waste etc) associated with the proposed project or activity. The proposed mitigation and management measures to address or reduce such impacts must be provided;
 - x. Proposed waste disposal measures (if applicable);
 - xi. Proof that Interested & Affected Parties (I&AP) positioned within 100m radius of the proposed site were consulted and given an opportunity to raise their comments or inputs on the proposed activity as prescribed by the Council; and
 - xii. Any comments or inputs, including objections raised by I&APs during Public Consultation and the manner in which such objections were addressed by the applicant.

3. Public Participation Process

- a) The applicant must, as a minimum undertake the following steps relating to public consultation:
 - i. Interested & Affected Parties located within 100m radius of the proposed site must be informed about the proposed activity or project;
 - ii. The applicant must open and maintain a register where the people can register as I&APs;
 - iii. I &APs must be informed or consulted either by letters, emails (if possible) and through public meetings;
 - iv. I&APs must be provided with all documentations (especially BID) relating to the proposed activity for comments or inputs and objections;
 - v. A 20 days commenting period must be provided to I&APs;
 - vi. The application, including all supporting documentations must be placed in public areas (e.g. community halls, clinics, libraries etc);
 - vii. The Word Councilor where the proposed project or activity will be undertaken must be informed in writing and directly provided with all copies relating to the activity;
 - viii. After the lapsing of the 20 days commenting period, the applicant must accordingly address all concerns, inputs or objections raised by I&APs and submit the final documents to the Council for consideration; and
 - ix. In cases whereby other I&APs continuously shows dissatisfaction with the manner in which their concerns or objections were addressed by the applicant, the applicant should submit such reports or documents to the Municipality for the Council to decide the outcome of the application.

4. Decision on application

- a) The Council must, within 30 days of submission of the application including all supporting documentation as required, consider the application and in writing:
 - i. Grant the permit for the activity applied for, subject to any conditions or requirements as deemed necessary by the Council; or
 - ii. Refuse the permit with sound reasons included in the refusal document.

Schedule 8:

Application form for Rectification of activities commenced illegally

FOR OFFICIAL USE ONLY

Date received:	
Reference Number	

Section A: Personal Information and Contact details

Applicant:	
Company/closed Corporation Registration Name & Number (if applicable):	
Contact person:	
Position in a company:	
ID Number of contact person/applicant:	
Physical address:	
Telephone & Cell Numbers:	
Fax number:	
Email address:	
Registered Land Owner:	
Contact person:	
Postal Address:	
Physical address:	
Telephone number:	
Email address:	
Fax number:	

Section D: Motivation for rectification application

Please explain why this activity commenced or continued with in contravention with this by-law.

Please motivate why your application in terms of this by-law should be considered favorably:

Section E:

Certified copies of the following documents must accompany your application:

- i. Identification page from ID document of the applicant in cases where an individual is the applicant or of the contact person where a company /closed corporation apply;
- ii. Registration certificate of the company / closed corporation; and
- iii. Proof of ownership of the land or alternatively, proof of owner’s consent to undertake activity on the relevant land.

Section F: Declaration

Please complete the declaration below:

I.....duly authorized to act on behalf of.....hereby declare that the information provided herein is according to my knowledge complete and accurate.

Signed at.....on this.....day of.....20....

.....
On behalf of the applicant

.....
Witness 1

.....
Witness 2

Schedule 9

SPOT OR ADMINISTRATIVE FINES

Section Clause	Description of offence	Proposed Penalty	By-law
4 (1) a	Not taking all reasonable measures to prevent potential air pollution from occurring	R 2000	
4 (1) b	Not taking all reasonable measures to mitigate and, as far as reasonably possible, to remedy air pollution that has occurred	R 2000	
12 (1)	Emitting smoke and/or dark smoke from any premises (other than dwellings) for an aggregate period exceeding three minutes during the continuous period of thirty minutes	R 2000	
11 (1)	Installing/altering/extending/replacing/operating fuel-burning equipment on premises without the prior written authorization from the municipality	R 3000	
49	Failure to record monitoring and sampling results and keep such records	R 1000	
50	Failure to produce records of monitoring for inspection by an authorized person	R 1000	
13 (1)	Carrying out open burning of material on land or premises without prior written authorization from the municipality	R 3000	
10 (1) a	Driving/using, or causing to be driven or used, a compressed ignition powered vehicle that emits dark smoke	R 3000	
10 (2) a & b	Not complying with reasonable direction given by an authorized person to stop the vehicle and to facilitate the inspection/testing of the vehicle	R 2000	
10 (4) c, i & ii	Failing to comply with a repair notice	R 3000	
21 (1)	Creating or permitting emissions that cause a nuisance	R 3000	
12 (1)	Not taking all reasonable steps to prevent the emission of any offensive odour, dust and fumes caused by any activity on premises	R 3000	

30 (1) e	Supplying false information to an authorized person in respect of any issue pertaining to the by-law	R 3000	
30 (1) f	Refusing to co-operate with the request of an authorized person made in terms of this by-law	R 2000	
30 (1) b	Failing to comply with a notice, direction or instruction referred to in the by-law	R 3000	
30 (1) h	Illegal commencement with an activity requiring any permit from the Council in terms of this by-laws	R 3000	
14	Burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste	R 2000	
17 (1)	Spraying of pesticide, herbicide or other related material not registered in terms of section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).	R 2000	
145(1)	Tyre Burning and Burning of Rubber Products and Cables in Open Spaces	R 3000	

Schedule 10

By-laws Repealed



