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# Government Gazette

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## THE PRESIDENCY

No. 390

19 May 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 20 of 2014: National Environmental Management: Air Quality Amendment Act, 2014**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**



- (b) by the substitution for the definition of “Department” of the following definition:  
“**‘Department’** means the Department [**of Environmental Affairs and Tourism**] responsible for environmental affairs;”;
- (c) by the deletion of the definition of “Environment Conservation Act”; and 5
- (d) by the substitution for the definition of “licensing authority” of the following definition:  
“**‘licensing authority’** means an authority referred to in section 36(1), (2), [**(3) or 3A**, (4) or (5) responsible for implementing the licensing system set out in Chapter 5;”;
- (e) by the substitution for the definition of “Minister” of the following definition:  
“**‘Minister’** means the Minister [**of Environmental Affairs and Tourism**] responsible for environmental affairs.”. 10

**Amendment of section 13 of Act 39 of 2004**

- 2. Section 13 of the principal Act is hereby amended— 15
  - (a) by the substitution for subsection (1) of the following subsection:  
“(1) The Minister [**may**] must, by notice in the *Gazette*, establish [**a**] the National Air Quality Advisory Committee [**as a subcommittee of the National Environmental Advisory Forum, established in terms of the National Environmental Management Act, to advise the Minister on the implementation of this Act**] in terms of this Act.”. 20
  - (b) by the substitution in subsection (2) for paragraph (d) of the paragraph:  
“(d) may [**determine**] prescribe any other matter relating to the Committee.”; and
  - (c) by the addition of the following subsection: 25  
“(3) The object of the Committee is to advise the Minister on any air quality related matter as the Minister may determine from time to time.”.

**Insertion of section 22A of Act 39 of 2004**

- 3. The following section is hereby inserted in the principal Act after section 22:  
  
**“Consequences of unlawful conduct of listed activity resulting in atmospheric emission” 30**  
  
**22A.** (1) Section 24G of the National Environmental Management Act, 1998, as amended, applies to the commencement, without an environmental authorisation, of a listed activity or the activity specified in item 2 in Listing Notice 1 and items 5 and 26 in Listing Notice 2, relating to air quality in terms of Chapter 5 of the National Environmental Management Act, 1998. 35  
(2) Subsections (4) to (10) are applicable to the operating, without a provisional registration or registration certificate, of a scheduled process in terms of the Atmospheric Pollution Prevention Act, 1965, at any time prior to the commencement of this Act. 40  
(3) Subsections (4) to (10) are applicable to the conducting, without a provisional atmospheric emission licence or an atmospheric emission licence, of an activity listed in terms of section 21 of this Act which results in atmospheric emission. 45  
(4) On application by a person who conducted an activity contemplated in subsection (2) or (3), the licensing authority may direct the applicant to—
  - (a) immediately cease the activity pending a decision on the application submitted in terms of this section;

- (b) investigate, evaluate and assess the impact of the activity on the environment, including the ambient air and human health;
  - (c) remedy any adverse effect of the activity on the environment, including the ambient air, and human health;
  - (d) cease, modify or control any act, activity, process or omission causing atmospheric emission; 5
  - (e) eliminate any source of atmospheric emission;
  - (f) compile a report containing—
    - (i) a description of the need and desirability of the activity;
    - (ii) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment, including the ambient air, and human health of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity; 10
    - (iii) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment, including the ambient air, and human health of the activity; 15
    - (iv) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;
    - (v) an environmental management programme; or 20
  - (g) provide such other information or undertake such further studies as the licensing authority may deem necessary. 25
- (5) The licensing authority must consider any reports or information submitted in terms of subsection (4) and thereafter may—
- (a) refuse to issue an atmospheric emission licence; 30
  - (b) issue an atmospheric emission licence to such person to conduct the activity subject to such conditions as the licensing authority may deem necessary, which atmospheric emission licence shall only take effect from the date on which it has been issued; or
  - (c) direct the applicant to provide further information or take further steps prior to making a decision in terms of paragraphs (a) or (b). 35
- (6) The licensing authority may as part of the decision contemplated in subsection (5), direct a person to—
- (a) rehabilitate the environment within such time and subject to such conditions as the licensing authority may deem necessary; 40
  - (b) prevent or eliminate any source of atmospheric emission from the activity within such time and subject to such conditions as the licensing authority may deem necessary; or
  - (c) take any other steps necessary under the circumstances. 45
- (7) A person contemplated in subsection (4) must pay an administrative fine, which may not exceed R5 million and which must be determined by the licensing authority, before the licensing authority may act in terms of subsection 5(a) or (b).
- (8) In considering a decision contemplated in subsection (5)(a) or (b), the licensing authority may take into account whether or not the applicant complied with any directive issued in terms of subsections (4) or (5)(c). 50
- (9) The submission of an application in terms of subsection (4) or the issuing of an atmospheric emission licence in terms of subsection 5(b) or the payment of the administrative fine in terms of subsection (7) shall—
- (a) in no way derogate from the environmental management inspector's or the South African Police Services' authority to investigate any transgression of this Act; or 55
  - (b) in no way derogate from the National Prosecuting Authority's legal authority to institute any criminal prosecution; and

(c) not indemnify the applicant from liability in terms of section 51(1)(a) for having contravened section 22.

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

(a) the National Prosecuting Authority has decided not to institute prosecution in respect of such contravention or failure;

(b) the applicant concerned is acquitted or found not guilty after prosecution in respect of such contravention or failure has been instituted; or

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

#### Amendment of section 29 of Act 39 of 2004

4. Section 29 of the principal Act is hereby amended by the addition of the following subsection:

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

#### Amendment of section 36 of Act 39 of 2004

5. Section 36 of the principal Act is hereby amended—

(a) by the deletion of subsection (3);

(b) by the insertion of the following subsections after subsection (3):

“(3A) (a) In accordance with sections 125(2)(b) and 156(1)(b) of the Constitution whenever a licensing authority fails to take a decision on an application for an atmospheric emission licence within the time period set out in section 40(3) or (3A) of this Act, the person that applied for an atmospheric emission licence may apply to the Minister or MEC, as the case may be, to take the decision.

(b) The person contemplated in paragraph (a) must notify the licensing authority in writing of the intention to exercise the option in paragraph (a) at least 30 days prior to the exercising of such option.

(c) The application contemplated in paragraph (a) must, at least, contain all the documents submitted to the licensing authority in order to enable the Minister or MEC, as the case may be, to take a decision.

(d) Before taking a decision as contemplated in paragraph (a), the Minister or MEC must request the licensing authority to provide him or her with a report within a specified time period on the status and causes of delay in the application.

(e) After having received the report referred to in paragraph (d) or in the event that no response or no satisfactorily response or cooperation is received from the licensing authority within the specified time period the Minister or MEC, as the case may be, must, where appropriate—

(i) inform the person that applied for an atmospheric emission licence in the event that the licensing authority has complied with the relevant prescripts;

(ii) assist the licensing authority in accordance with sections 125(3) and 155(7) of the Constitution to fulfil its obligations under this Act; or

(iii) direct the licensing authority to take the decision and such other steps as the Minister or MEC, as the case may be, may deem necessary, within a specified time period.

(f) In the event that the licensing authority fails to take the decision within the specified time period or in any other manner fails to comply with the directive contemplated in paragraph (e)(iii), the Minister or MEC, as the case may be, must take the decision within a reasonable period of time.

(g) The Minister or MEC, as the case may be, must, simultaneously with the submission of the annual report contemplated in section 40(1)(d)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a report to Parliament or Provincial Legislature, as the case may be, setting out the details regarding the exercise of the power referred to in this section during the previous financial year.

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

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

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

(c) by the addition of the following subsections:

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

(a) a provincial organ of state, which has been delegated the power to perform the licensing authority function in terms of subsection (2) by the metropolitan or district municipality, applies for an atmospheric emission licence;

(b) the listed activity falls within the boundaries of more than one province;

(c) the listed activity forms part of a matter declared as a national priority in terms of a Cabinet decision and notice referred to in section 24C(2B) of the National Environmental Management Act, 1998, as amended by the National Environmental Management Laws Second Amendment Act, 2013;

(d) the listed activity relates to the activities listed in terms of section 24(2) of the National Environmental Management Act, 1998, or in terms of section 19(1) of the National Environmental Management: Waste Act, 2008, or the Minister has been identified as the competent authority; or

(e) the listed activity relates to a prospecting, mining, exploration or production activity as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), in the area for which the right has been applied for, and the Minister responsible for mineral resources has been identified as the competent authority in terms of section 24C of the National Environmental Management Act, 1998.

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

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

- (a) the relevant provisions of this Act, the National Environmental Management Act, 1998, and the National Environmental Management: Waste Act, 2008, have been complied with; and
- (b) the integrated environmental authorisation specifies the provisions in terms of which it has been issued.

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

#### Amendment of section 38 of Act 39 of 2004

6. Section 38 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Section 24 of the National Environmental Management Act [**and section 22 of the Environment Conservation Act apply**] applies to all applications for atmospheric emission licences, which are subject to an environmental impact assessment in terms of section 24 of the National Environmental Management Act, and both an applicant and the licensing authority must comply with [**those sections**] that section and any applicable notice issued or regulation made in relation to [**those sections**] that section.”;

- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

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

- (c) by the insertion in subsection (3)(b) of the following subparagraph after subparagraph (ii):

“(iiA) indicating where a copy of the application can be obtained.”.

#### Amendment of section 39 of Act 39 of 2004

7. Section 39 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) section 24 of the National Environmental Management Act [**and section 22 of the Environment Conservation Act**] and any applicable [**notice issued**] environmental impact assessment done, the decision taken on the application of the environmental authorisation, and any applicable notice issued or regulation made pursuant to [**those sections**] that section.”.

#### Amendment of section 40 of Act 39 of 2004

8. Section 40 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) section 24 of the National Environmental Management Act [**and section 22 of the Environment Conservation Act**] and any applicable environmental impact assessment done, the decision taken on the application for the environmental authorisation, and any applicable notice issued or regulation made pursuant to [**those sections**] that section.”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) If [**an authorisation notice is issued**] the decision on the relevant application for an environmental authorisation has been made in terms of section 24 of the National Environmental Management Act [**or section 22 of the Environment Conservation Act in respect of an application**], the licensing authority must decide the application within 60 days

of the date on which the **[notice]** decision on the application for the environmental authorisation has been **[issued]** made.”; and

(c) by the insertion after subsection (3) of the following subsection:

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

#### **Amendment of section 41 of Act 39 of 2004**

9. Section 41 of the principal Act is hereby amended by the addition of the following subsection:

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

#### **Amendment of section 49 of Act 39 of 2004**

10. Section 49 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) that person has been a director or senior manager who is or was a director or manager of a company, a juristic person or firm to whom paragraph (a) or (b) applies; **[and]** or”.

#### **Amendment of section 51 of Act 39 of 2004**

11. Section 51 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) contravenes a provision of section 22, 25, 28 or 35(2);”.

#### **Amendment of section 53 of Act 39 of 2004**

12. Section 53 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) any matter necessary to give effect to the Republic’s obligations in terms of an international agreement relating to air quality and climate change;”;

(b) by the insertion of the following paragraph after paragraph (a):

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

(c) by the insertion of the following paragraph after paragraph (l).

“(lA) the procedure and criteria to be followed in the determination of an administrative fine in terms of section 22A.”.

#### **Repeal of section 62 of Act 39 of 2004**

13. Section 62 of the principal Act is hereby repealed.

#### **Repeal of section 63 of Act 39 of 2004**

14. Section 63 of the principal Act is hereby repealed.

#### **Repeal of Schedule 2 to Act 39 of 2004**

15. Schedule 2 to the principal Act is hereby repealed.

**Amendment of Table of Contents of Act 39 of 2004**

16. The Table of Contents of the principal Act is hereby amended by the insertion after item 22 of the following item:

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

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**Short title and commencement**

17. This Act is called the National Environmental Management: Air Quality Amendment Act, 2014, and takes effect on the date of publication in the *Gazette* as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996.”.