

Sekhukhune District Municipality

SEKHUKHUNE DISTRICT MUNICIPALITY AIR POLLUTION BY- LAWS

The Municipal Manager of the Sekhukhune District Municipality hereby, in terms of section 13(a) in conjunction with section 75(1) of the Municipal Systems Act, 2000 (Act 32 of 2000), publishes the **Air Pollution By-laws for the Sekhukhune District Municipality**, to be approved by the Council, as set out hereunder.

CHAPTER 1

INTERPRETATION AND FUNDAMENTAL PRINCIPLES

1. Interpretation

1.1 In this by-law unless the context indicates a contrary intention, an expression which denotes:-

- (i) any gender includes the other gender;
- (ii) a natural person includes a juristic person and vice versa;
- (iii) the singular includes the plural and vice versa;

1.2 In this by-law the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings, unless such meanings are inconsistent with the context in which they occur.

2. Definitions

“Authorised Person” means any employee authorised 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 peace officer;

“Air Quality Management Plan” means a plan referred to in section 15 of the National Environment Management, Air Quality Act 2004, (Act No 39 of 2004);

“All Terrain Vehicles” means any self-propelled conveyance designed for off road use including but not limited to quad bikes, motor cycles and motor buggies;

Sekhukhune District Municipality

“AQA” means the Air Quality Monitoring (Act No 39 of 2004);

“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 (Act No 108 of 1996);

“Construction Activity” means any commercial or residential construction, highway construction, including land clearing, maintenance, soil or rock; excavation or removal, soil or rock hauling, soil or rock crushing, explosive blasting demolition or dismantling of buildings implosion the handling of building materials or mechanized trenching;

“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 the Council of the municipality or any statutory successor in title, or any of the Council’s committees or officials acting under powers, functions and duties lawfully delegated to them;

“Dark Smoke” means the three monthly running average opacity of monthly observations of visible emissions from fuel burning appliances and/or small boilers which do not exceed 40%;

“Free Acceleration Test” means the method described in subsection 18.3 employed to determine whether vehicles are being driven or used in contravention of subsection 18.1;

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

“Municipality” means a municipality established in terms of the Local Government Municipal System Act 1998 (Act No 117 of 1998);

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

“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 National Environmental Management: Air Quality

Act 2004 (Act No 39 of 2004);

“**NEMA**” means the National Environmental Management Act, 1998 (Act No 107 of 1998);

AIR

POLLUTION CONTROL BY-LAW

1 4

Sekhukhune District Municipality

“**Nuisance**” means an unreasonable interference or likely interference caused by air pollution with:

- (a) the health or well being of any person or living organism; or
- (b) the use and/or enjoyment by an owner or occupier of his or her property and/or environment;

“**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, avicides and rodenticides;

“**Public Road**” means road which the public has a right to use;

“**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;

“**Owner and/or Operator**” means any person who owns, leases, operates controls or supervises a fugitive dust source;

“**Repair Notice**” means a notice as referred to in subsection 15.4, regarding the re-testing of vehicle;

“**Rubber Product**” means anything composed of rubber including anything containing or coated with rubber;

“**Smoke**” means the gases, particulate matter and products of combustion emitted into the atmosphere when materials burned or subjected to heat and includes soot, grit and gritty particulates emitted in smoke;

“**Unpaved Road**” means a public or a private unpaved road and includes an unpaved alley, unpaved road easement or shoulder and any unpaved access roads for utilities;

“Unpaved Parking Lot” means an area which is not paved and used for parking, maneuvering, or storing of motor vehicles;

“Use” in relation to all terrain vehicles includes driving, operating or being conveyed by that vehicle;

POLLUTION CONTROL BY-LAW

AIR

15

Sekhukhune District Municipality

“Vacant Lots” means any vacant portions or residential or commercial lots that are immediately adjacent and owned and/or operated by the same person;

“Vehicle” means any motor car, motor carriage, motor cycle, 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;

3. Background

In terms of section 46 of the NEMA, the Minister may make model environmental management by-laws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality, which may be adopted by a municipality as municipal by-laws. The generic air pollution control by-law has been drafted in accordance with this enabling provisions of the NEMA, and is hereby published as a schedule in terms of the NEMA.

4. 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 the Council can manage environment and public health; and

(c) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimised.

(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).

5. Application

(1) This by-law is applicable:-

(a) within the area of jurisdiction of the municipality; and

(b) in addition to any applicable national or provincial legislation.

Sekhukhune District Municipality

(2) The overreaching principles set out in section 6 below, must be considered and applied by any person:-

(a) exercising a power or function or performing a duty under this by-law; and

(b) exercising a public power or function or performing a public duty in the municipal area which is likely to have a significant effect on public health and the environment within that area.

6. Overreaching Principles

Duty of Care

(1) Any person who is wholly or partially responsible for causing significant air pollution or creating a risk of significant air pollution occurring must take all reasonable measures:-

(a) to prevent any potential significant air pollution from occurring; and

(b) to mitigate, as far as reasonably possible any significant 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 investigate, evaluate and assess the impact of specific activities and report thereon;

(b) to commence taking specific reasonable measures before a given date;

(c) to diligently continue with those measures; and

(d) 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 them of their relevant interests and may consult with any other organ of state.

(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.

(5) Provided such person failed to take the measures required of him under subsection (2), the Council may recover all

POLLUTION CONTROL BY-LAW
Sekhukhune District Municipality

AIR
17

reasonable costs incurred as a result of it acting under subsection (4) from any or all of the following persons:-

(a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;

(b) the owner of the land at the time when air pollution or the potential for air pollution occurred, or that owner's successor in title;

(c) the person in control of the land or any person who has or had a right to use the land at the time when:-

(i) the activity or the process in question is or was performed or undertaken; or

(iii) the situation came about; or

(d) any person who negligently failed to prevent:-

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about.

(6) If more than one person is liable under subsection (4), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsection (1) and (2).
In dealing with air pollution matters, the Council must:-

- (a) adopt a cautious and risk adverse approach; and
- (b) take into account the interests of future generations.

(7) Conflict with other Legislation

(1) In the event that the by-law conflicts with the provisions of the NEMA or AQA, the provisions of the latter will prevail.

(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 provision of this by-law shall prevail to the extent of the inconsistency.

CHPATER 2

APPOINTMENT OF AIR QUALITY OFFICERS

8. Designation of an air Quality Officer

(1) The Council must, subject to the laws governing the public service, designate an official within its administration to be styled as the air quality officer.

(2) Subject to subsection 8(1), the air quality officer may also be designated as an environmental management inspector, as contemplated in section 31C of the NEMA, as amended.

(3) The air quality officer shall, under the directions of the Council, exercise the duties and powers assigned to him under this by-law.

9. Designation as Environmental Management Inspectors

(1) The MEC may, subject to the laws governing the public service, designate so many persons, as he may consider necessary, within the administration of the municipality as environmental management inspectors.

(2) Before the designation as environmental management inspectors, such persons must complete the training as prescribed by the Minister in terms of the NEMA Regulations relating to qualification criteria, training and identification of, and forms to be used by environmental management inspectors, published under Government Notice R494, in Government

Gazette 28869 of 2 June 2006, as amended.

(3) The designation of environmental management inspectors must be in accordance with section 31c to 31f of the NEMA, as amended.

(4) A designated environmental management inspector shall have all the functions and powers as set out in section 31G to 31L of the NEMA, as amended.

10. Duties and Functions of the Air Quality Officer

POLLUTION CONTROL BY-LAW Sekhukhune District Municipality

AIR
19

(1) The air quality officer must co-ordinate and develop the municipality's Air Quality Management Plan for inclusion as a chapter in its Integrated Development Municipal Plan, in accordance with Chapter 5 of the Local Government Municipal System Act, 2000 (Act No 32 of 2000)

(2) The air quality officer must prepare the Municipal Air Quality Officer's Annual Report. The report must, amongst others, include the municipality's progress towards the implementation of its Air Quality Management Plan.

(3) The air quality officer must submit the Municipality's report to the Provincial Air Quality Officer as contemplated in paragraph 5.2.3.4 of the National Framework.

(4) The air quality officer may require a person to appoint an Emission Control Officer, as contemplated in section 48 of the AQA, as amended.

CHAPTER 3

LOCAL EMISSIONS STANDARDS, NORMS AND STANDARDS AND CONTROLLED APPLIANCES AND ACTIVITIES

Part I: Local Emission Standards

11. Legal Mandate

(1) The Council may, by notice in the Provincial Gazette:-

(a) identify substances or mixtures of substances in ambient air which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the reasonably believes present such a threat; and

(b) in respect of each of those substances or mixtures of substances, establish local standards for emissions from point, non-point or mobile sources in the municipality.

(2) The Council shall take the following factors as identified in paragraph 5.4.3.1 of the National Framework into consideration in setting local emission standards:-

(a) health safety and environmental protection objectives;

(b) analytical methodology;

(c) technical feasibility;

AIR POLLUTION CONTROL BY-LAW
Sekhukhune District Municipality

20

(d) monitoring capability; and

(e) socio-economic consequences.

Part II: Norms and Standards

12. Substances Identification Process

(1) the municipality must apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:-

(a) 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;

(b) ubiquitous and high concentrations of the substance in the atmosphere;

(c) 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;

(d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or foods chains;

(e) the impact of the substance taking the following factors into consideration:-

(i) size of the exposed population, living resources or ecosystems;

(ii) the existence of particularly sensitive receptors in the zone concerned.

(f) Substances that are regulated by international conventions.

(2) The municipality, using the criteria set out in subsection (1) above, must compile a list of substances.

(3) The list of substances must form part of the formal request, by the Municipality, to the Standards South Africa, a division of the South African Bureau of Standards, to develop local emissions standards for the identified substances.

Sekhukhune District Municipality

13. Local Emission Standards Setting Process

(1) The municipality must, following the identification of the substances as set out in subsection (1) above, formally request the Standards South Africa, a division of the South African Bureau of Standards, to develop local emission standards for the identified substances.

(2) The Standards South Africa, in accordance with its processes, will develop and recommend, to the municipality, local emission standards for the identified substances.

(3) When developing the standards, the following standards setting process is applicable:-

(a) identification of critical factors for public health impacts;

(b) identification of sensitive sub-populations;

(c) reviewing available databases for public health status;

(d) reviewing available databases for ambient air quality information; and

(e) reviewing and assessing international guidelines and standards.

(4) The Standards South Africa, when developing the emission standards, must also consider the criteria for setting local emission standards as set out in section 11(2) of this by-law.

14. Publication of Local Emission Standards

For the purpose of the publication of the emission standards, the municipality must follow the public participation process as set out in section 13 of the Local Government Municipal System Act, 2000 (Act No. 32 of 2000)

Sekhukhune District Municipality

Par III: Controlled Appliances and Activities

15. Emission from Compressed Ignition Powered Vehicles

15.1 Prohibition

(a) No person may on a public road drive outside, or cause to be driven or use, a compressed ignition powered vehicle that emits dark smoke.

(b) If dark smoke is emitted in contravention of subsection 15.1 (a) above the owner and the driver of the vehicle shall each be guilty of an offence.

(c) For the purposes of this section, "dark smoke" means

(i) smoke which has a density of 60 Hartridge smoke units or more, provided that in relation to emissions

from turbo-charged compressed ignition powered engines, it means a density 66 Hartridge smoke units or more; or

(ii) smoke which has a light absorption co-efficient of more than 2.125m^{-1} , provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a light absorption co-efficient of more than 2.51m^{-1}

(d) For purpose of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

15.2 Stopping of Vehicles for Inspection and Testing

(a) In order to enable an authorised person to enforce the provisions of this Part, the driver of a vehicle must comply with any reasonable direction given by an authorised person;

(i) to stop the vehicle; and

(ii) to facilitate the inspection or testing of the vehicle.

(b) Failure to comply with a direction given under subsection 15.2(a) is an offence.

(c) When a vehicle has stopped in compliance with a direction given under subsection 15.2(a), the authorized person may;

(i) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:

(aa) at or as near practicable to the place where the direction to stop the vehicle is given; and

(bb) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or

(ii) conduct a visual inspection of the vehicle and, if the authorised person reasonably believes that an offence has been committed under subsection

15.1(b), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specific period of time, for inspection and testing in accordance with subsection 15.3.

15.3 Testing procedure

(a) An authorised person must use the free acceleration method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of subsection 15.1(a).

(b) The following procedure must be adhered to in order to conduct a free acceleration test:-

(i) when instructed to do so by the authorised person, the driver of the vehicle must start the vehicle, place it in neutral gear and engage the clutch;

(ii) while the vehicle is idling, the authorised person must conduct a visual inspection of the emission system of the vehicle;

(iii) when instructed to do so by the authorised person, the driver of the vehicle must in less than one

AIR POLLUTION CONTROL BY-LAW Sekhukhune District Municipality

24

second smoothly and completely depress the accelerator throttle pedal of the vehicle, provided that the authorised person may do so himself or herself if the driver fails or refuses to comply with the authorised person's reasonable instructions;

(iv) 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 dark smoke;

(v) 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 authorised person.

(c) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle:-

(i) is not emitting dark smoke, then the authorised 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 15.1(a); or

(ii) is emitting dark smoke, the authorized person must issue the driver of the vehicle with a repair notice in accordance with subsection 15.4.

15.4 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 inter alia 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 15.4(a);

(ii) to take the vehicle for re-testing as referred to in subsection 15.4(a).

(d) It shall be a defense in proceedings under subsection 15.4(c) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

16. Dust Emissions

(a) Any person who causes dust emissions shall take all reasonable precautions to prevent excessive emissions into the atmosphere that may be harmful to public health and well-being.

(b) Any person conducting certain activities identified in this section, which customarily produce excessive emissions of dust, shall be required to adopt control measures as prescribed by the authorised person prior to the commencement of activities, to abate and prevent excessive emissions.

16.1 Construction Activities

(a) A person who engages in or carries out any construction activity or operation on any land or premises is guilty of an offence, unless that person complied with other applicable legislation and has notified in writing the owners and occupiers of all adjacent properties of:

(i) all known details of the proposed construction activity or operation;

(ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed construction activity or operation with the Council within seven days of being notified; and

(iii) the prescribed fee has been paid to the council.

(b) 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.

16.2 Unpaved roads

(a) Owners and/or operators of unpaved roads must implement reasonable control measures to prevent excessive emissions of dust into the atmosphere that may be harmful to public health and well-being.

(b) Owners and/or operators must implement one or more of the following control measures:-

(i) pave;

(ii) the use of dust palliatives or dust suppressants;

(iii) uniformly apply and maintain surface gravel, and/or

(iv) any alteration control measure approved in writing by the air quality office.

(c) Any person subject to the requirements of this section shall compile and retain records of any control measures implemented including:-

(i) the type of control measure;

(ii) the extent of coverage; and/or

(iii) the date applied.

(d) Copies of the records required in subsection 16.2(c) above shall be retained for a period of at least two years.

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

(i) unpaved roads having vehicular traffic of less than 150 vehicles per day;

(ii) non-commercial and non-institutional private driveways;

(iii) horse trails, hiking paths, bicycle paths or other similar paths; and/or

(iv) any other path that has been designated as an

exclusive use area for purpose other than travel by motor vehicle.

16.3 Vacant Lots

(a) Owners and/or operators of vacant lots of which have 1 square kilometer or more of disturbed surface area and remain unoccupied, unused, vacant or undeveloped for a period of more than ninety days must implement reasonable control measures to prevent excessive emissions into the atmosphere that may be harmful to health and well-being.

(b) Owners and/or operators must implement one of the following control measures:-

(i) erect physical barriers and signs to prohibit access to the disturbed areas by motor vehicles;

(ii) the use of ground covers;

(iii) the use of dust palliatives or dust suppressants;

(iv) re-vegetation which is similar to adjacent undisturbed native condition and/or

(v) any alteration control measure approved in writing by the air quality officer.

16.4 Unpaved Parking Areas

(a) Owners and/or operators of unpaved parking lots on which more than 100 vehicles are parked for more than 150 days per year must implement reasonable control measures to prevent excessive emission into the atmosphere that may be harmful to the public health and well-being.

(b) Owners and/or operators must implement one of the following control measures:-

(i) pave;

(ii) apply dust palliative or dust suppressants;

(iii) uniformly apply and maintain surface gravel, and/or

(iv) any alternative control measure approved in writing by the air quality officer.

16.5 All-Terrain Vehicles

(a) Any person who uses an all-terrain vehicles shall take all reasonable precautions to prevent creating a public nuisance and materially interfere with the ordinary comfort and convenience of other people.

(b) No person may use an all-terrain vehicles unless such use:-

(i) is a permissible use in terms of the NEMA Regulations on the control of vehicles in the coastal zone, published under Government Notice 1399, Government Gazette No. 22960 of 21 December 2001, as amended;

(ii) is authorised for use on a public road;

(iii) is on private land by the owner or with permission of the owner or lawful occupier of the land;

(iv) takes place within a designated recreational all terrain vehicle use area; or

(v) takes place in an emergency situation in order to safeguard human life or health property or the environment.

17. Emission Caused by Open Burning

(1) A person who carries out or permits open burning of any material on any land or premises are guilty of an offence, unless:-

(a) the prior written authorisation of the Council has been obtained, which authorisation may be granted by the Council with conditions, and

(b) 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

Sekhukhune District Municipality

(ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the Council within seven days of being notified; and

(ii) the prescribed fee has been paid to the Council.

(c) the land on which that person intends to open burn the material is state land, a farm or small-holding, or land within a proclaimed township that is not utilised for residential purposes.

(2) The Council may not authorise open burning:-

(a) unless it is satisfied that the requirements set out in subsection (1) have been adequately addressed or fulfilled; and

(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.

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

(a) recreational outdoor braai activities on private premises;

(b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or

(c) any other defined area or defined activity to which the Council has declared this section not to apply.

18. Emission Caused by Burning of Domestic and Garden Waste in Waste Bin or Skips

A person who carries out or permits the burning of any domestic or garden waste, for the purpose of disposing of that waste, is guilty of an offence unless the domestic or garden waste is disposed of in terms of section 20 of the Environment Conservation Act, (Act No 73 of 1989), as amended.

19. Sugar Cane Burning Emissions

Any person who burns sugar cane as part of harvesting shall comply

with the burning requirement provisions of the National Veld and Forestry Act, 1998, (Act No 101 of 1998), as amended, and the Code of

Burning Practice of the South Africa Sugar Association as issued for the South African sugar industry from time to time.

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

(1) No person may carry out or permit the burning of any tyres or rubber products, on any land or premises for the purpose of recovering the scrap metal or fibre reinforcements, or of disposing of tyres or of the rubber products as waste.

(2) Any person who contravenes subsection (1) is guilty of an offence.

21. Pesticide Spraying Emissions

(1) No Person may carry out or permit the spraying of pesticides, except as permitted by section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No 36 of 1947).

(2) Any person who contravenes subsection (1) of this by-law is guilty of an offence, as set out in section 18(1) (c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 1947 (Act No 36 of 1947).

(3) A person who carries out or permits the spraying of pesticides, within the municipal jurisdiction, must also comply with the following controlled measures:-

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

(i) the area of land on which the pesticide may be applied; and

(ii) the period of time in which the pesticide 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 the pesticide use;

AIR POLLUTION CONTROL BY-LAW
Sekhukhune District Municipality

31

(iii) the active ingredient;

(iv) the date and approximate time of the pesticide use;

(v) in the event of inclement weather conditions, an alternative date or dates on which the pesticide use 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 owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Council within seven days of being notified; and

(viii) the prescribed fee has been paid to the Council.

(4) Any person who contravenes subsection (3) is guilty of an offence.

(5) A person may apply to the Council for an exemption if the spraying of the pesticides 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.

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

(a) residential areas of farms;

- (b) buildings or inside buildings; or
- (c) any other defined area or defined activity to which the

Council has declared this section not to apply.

22. Emission that Cause a Nuisance

22.1 Prohibition

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

AIR POLLUTION CONTROL BY-LAW

32

Sekhukhune District Municipality

22.2 Abatement notice

(1) An authorised person may serve an abatement notice on any person whom the authorised person reasonably believes is likely to commit or has committed an offence under section 22.1 above, 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.

(2) For the purposes of subsection (1) above, an authorised person may **from** a reasonable belief based on his or her 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.

(3) An abatement notice under subsection (1) above may be served:-

(a) upon the owner of any person; by

(i) delivering it to the owner, or if the owner 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

(ii) 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 occupiers;

(ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

AIR POLLUTION CONTROL BY-LAW
Sekhukhune District Municipality

33

(4) Any person who fails to comply with an abatement notice served on that person in terms of subsection (1) above is guilty of an offence.

(5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (4) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

22.3 Steps to Abate Nuisance

(1) At any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy 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.

CHAPTER 4

LICENSING OF LISTED ACTIVITIES

23. Establishment of Air Quality Management Licensing System

The Council hereby establishes an air quality licensing management system as contemplated in Chapter 5 of the AQA.

24. Purpose of Air Quality Management Licensing System

(1) The purpose of the air quality management licensing system is to:-

(a) identify and register all sources of air pollution in the municipal area;

(b) regulate and ensure compliance with the license conditions;

(c) gather information for the purposes of compiling the municipality's air quality management plan, as contemplated in section 15 of the AQA;

(d) undertake strategic planning; and

(e) provide information to any person in order to:-

Sekhukhune District Municipality

(i) facilitate monitoring of the performance of the municipality, and if applicable, licensee;

(ii) stimulate research by acknowledged institution;
And

(iii) assist the municipality to achieve the main objectives of this by-law.

25. Application for Atmosphere Emission License

(1) No person shall undertake a listed activity, as published in terms of section 21 of the AQA, without an atmospheric emission license.

(2) An application for an atmospheric emission license must be:-

(a) made in writing on the prescribed form published in terms of section 53 of the AQA;

(b) accompanied by documents or information as may be required by the municipality; and

(c) on payment of the prescribed application fee.

(3) The municipality must on receipt of an application for an atmospheric emission license:-

(a) acknowledge receipt, within fourteen days, of the

application form;

(b) acknowledge receipt, within fourteen days, of the payment of the prescribed fee;

(c) check whether the application is properly completed and contains the information required in the applicable form; and

(d) is accompanied by the required information or documents required in terms of this by-law.

(4) Before considering an application made in terms of subsection (2), the municipality may require the applicant to furnish additional information and/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 AQA.

Sekhukhune District Municipality

26. Factors to be taken into Account

(1) The municipality must, in addition to the factors set out in section 39 of the AQA, consider each application having regard to the following factors:-

(a) compliance with the AQA and this by-law, where relevant; And

(b) the environmental, health and safety record of the applicant.

27. Decisions

(1) After considering the application in terms of section 25 of this by-law, the municipality must, within sixty days, either:-

(a) approve the application by issuing an atmospheric emission license, subject to such conditions as the municipality may impose; or

(b) reject the application.

(2) If the municipality fails to grant or rejects an atmospheric emission license within ninety days after considering the

application in terms of section 25 of this by-law, it 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 to grant or reject the application.

28. Terms and Conditions of the Atmospheric Emission License

(1) When issuing an atmospheric emission license, the municipality may, impose reasonable conditions, as it may deem necessary.

(2) Atmospheric emission license issued under this section must:-

(a) comply with section 43 of the AQA;

(b) contain a requirement that the license holder must comply with, and ensure compliance by his employees, agents and sub-contractors, with this by-law and other applicable national and/or provincial legislation; and

(c) require the license holder to submit emission reports as required in terms of the section 21 notice under the AQA.

29. Variation of Atmospheric Emission License

No building, plant or works used by a license holder shall be materially extended, altered or added to and no changes in process, procedures or significant production increase that will significantly alter impacts may be undertaken without the prior approval of the municipality.

30. Cancellation of Atmospheric Emission License

The person must on cessation of operations notify the municipality of the decommissioning of the plant.

CHAPTER 5

OFFENCES AND PENALTIES

31. Offences

(1) A person is guilty of an offence if that person:

(a) contravenes a provisions of section 15(1) (b), 15(2) (b),

17(1), 18, 20(2), 21(4), 22.1, 22.2(4).

32. Penalties

(1) A person convicted of an offence referred to in section 31(1)(a) above is liable to a fine, or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(2) A fine contemplated in subsection (1):-

(a) may not exceed an amount prescribed in terms of legislation regulating maximum fines for criminal offences;
and

(b) must be determined with due consideration of:-

(i) the **severity** of the offence in terms of its impact, or potential impact, on health, well-being, safety and the environment;

(ii) the monetary or other benefits which accrued to the convicted person through the commission of the offence; and

(iii) the extent of the convicted person's contribution to the overall pollution load of the area under normal working conditions.

CHAPTER 6

GENEARAL MATTERS

33. Compliance Monitoring

For the purpose of compliance monitoring, the designated municipal environmental management inspectors must exercise the powers as set out in section 31G to 31L of the NEMA, as amended.

34. Enforcement

(1) The authorised person shall take all lawful necessary and

reasonable practicable measures to enforce the provisions of this by-law.

(2) The municipality may also develop enforcement procedures, which should take into consideration any national or provincial enforcement procedures.

35. Appeals

(1) Any person may appeal against a decision taken by an authorized person under this by-law by giving written notice of the appeal, in which the reasons for the appeal are stated, to the municipal manager within thirty days of the date on which that person receives notification of the decision.

(2) Pending confirmation, variation or revocation of the decision in terms of subsection (4), any person appealing a decision in terms of subsection (1), unless the municipality provides otherwise:-

(a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and

(b) may not exercise any rights that may have accrued as a result of the decision that is subject of the appeal application, provided that no other person may exercise any right that may have accrued either.

(3) Within ten days of receipt of the notice of appeal, the municipal manager must:-

AIR POLLUTION CONTROL BY-LAW Sekhukhune District Municipality

38

(a) submit the notice of appeal to the Council;

(b) take all reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the appeal application, including any persons registered as interested and affected parties, are notified in writing of the notice of appeal and advised of their right to:-

(i) obtain a copy of the notice of appeal; and

(ii) submit written objections to the notice of appeal to the municipal manager within fourteen days of date of notification.

(4) After the expiry of the fourteen day period referred to in subsection 3(b) (ii), the Council must consider the appeal and any objections raised to it, and confirm, vary or revoke the decision.

(5) When the appeal is against a decision taken by:-

(a) an authorized person other than the municipal manager, then the municipal manager is the appeal authority; or

(b) the municipal manager, then the Council is the appeal authority.

(6) An appeal authority must commence with the appeal within thirty days of receiving notification and must decide the appeal within ninety days.

36. Exemptions

(1) Any person may in writing apply for exemption from the application of a provision of this by-law to the Council.

(2) No exemption from the provisions of Chapter 4 of this by-law shall be granted in terms of subsection (1).

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

(4) The Council may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant interested and affected persons and the public.

Sekhukhune District Municipality

(5) The steps contemplated in subsection (4) must include the publication of a notice in at least two newspapers, one circulating provincially and one circulating within the Municipality's jurisdiction:-

(a) giving reasons for the application; and

(b) containing such other particulars concerning the application as the Council may require.

(6) The Council may:-

(a) from time to time review any exemption granted in terms of this section; and

(b) on good grounds withdraw any exemption.

CHAPTER 7

MISCELLANEOUS

37. 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.

38. Jurisdiction

Notwithstanding anything to the contrary contained in any law relating to the magistrate court, a magistrate shall have jurisdiction, on application of the Council to make an order for the enforcement of any of the provisions of these by-laws or of any approval, refusal or condition granted in terms hereof.

39. Repeal of By-Laws

The by-laws set out in Schedule 1 of this by-law are repealed to the extent set out in that Schedule.

40. Short Title

This by-law shall be called the air pollution control by-law.

41. Penalties

Any person convicted of a breach of these bylaws shall be liable for a fine of R500,00 in the case of a first conviction or, in the case of a second or subsequent conviction for the same offence, a fine not exceeding R1000,00 or in default of payment of any fine imposed in either case, imprisonment for a period not exceeding six (6) months.

42. Commencement Date

This by-law shall come into operation on the date of publication in the Provincial Gazette.