

## TITLE 20

## Chapter 20:03

PREVIOUS CHAPTER**ATMOSPHERIC POLLUTION PREVENTION ACT**

Acts 33/1971, 25/1973, 26/1974, 42/1976, (s. 34), 12/1977, 39/1979, 8/1988, 12/1997 (s. 14), 22/2001.

## ARRANGEMENT OF SECTIONS

## PART I

## PRELIMINARY

## Section

1. Short title.
2. Interpretation.

## PART II

## AIR POLLUTION ADVISORY BOARD

3. Establishment of Air Pollution Advisory Board.
4. Functions of Advisory Board.

## PART III

## CONTROL OF NOXIOUS AND OFFENSIVE GASES

5. Gas control areas and specified processes.
6. Control of specified processes.
7. Application for registration certificate.
8. Special conditions attaching to registration certificate.
9. Application for permission of Chief Health Officer to alter or extend building, etc.
10. Notice to adopt certain measures.
11. Cancellation or suspension of registration certificate.
12. Powers of entry.
13. Appeals.
14. Effect of appeal.

## PART IV

## CONTROL OF ATMOSPHERIC POLLUTION BY SMOKE

15. Smoke control areas.
16. Vesting of authority in respect of smoke control areas.
17. Control of nuisance caused by smoke.
18. Enforcement of regulations.
19. Delegation of powers under this Part.
20. Power to enter upon premises.
21. Regulations for purposes of this Part.
22. Appeals.
23. Effect of appeal.

## PART V

## CONTROL OF ATMOSPHERIC POLLUTION BY DUST

24. Dust control areas.
25. Control of nuisance caused by dust.
26. Special measures.
27. Delegation of powers under this Part.
28. Closure of mine.
29. Entry upon premises.
30. Regulations for purposes of this Part.

31. Appeals.
32. Effect of appeal.

#### PART VI

#### CONTROL OF ATMOSPHERIC POLLUTION BY FUMES FROM INTERNAL COMBUSTION ENGINES

33. Control or operation of internal combustion engines.
34. Regulations for purposes of this Part.

#### PART VII

#### GENERAL

35. Disclosure of information.
36. Obstruction.
37. Declaration of noxious or offensive gas.
38. Regulations.

AN ACT to provide for the prevention and control of the pollution of the atmosphere; to provide for the establishment of an Air Pollution Advisory Board and to confer functions and powers on such Board; and for matters incidental to the foregoing.

[Date of commencement: 25th June, 1971.]

#### PART I

#### PRELIMINARY

##### 1 Short title

This Act may be cited as the Atmospheric Pollution Prevention Act [Chapter 20:03].

##### 2 Interpretation

(1) In this Act—

“Advisory Board” means the Air Pollution Advisory Board established by section three;

“area of jurisdiction”, in relation to a local authority means—

- (a) in the case of a municipal council, the municipal area;
- (b) in the case of a town council, the town area;
- (c) in the case of a local authority referred to in paragraph (b) of the

definition of “local authority”, the area specified in terms of subsection (2);

“Chief Health Officer” means the person appointed to be the Chief Health Officer in terms of section 5 of the Public Health Act [Chapter 15:09];

“dust” means any solid matter in a fine or disintegrated form which is capable of being dispersed or being suspended in the atmosphere;

“dust control area” means an area declared to be a dust control area in terms of section twenty-four;

“gas control area” means an area declared to be a gas control area in terms of subsection (1) of section five;

“local authority” means—

- (a) a municipal council or town council established or;

(b) local board, rural district council or any other authority or body declared in terms of subsection (2) to be a local authority for the purposes of this Act;

“Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“noxious or offensive gas” means—

(a) a gas containing or consisting of carbon monoxide, hydrocarbon, alcohol, phenol, tar, organic acid or a derivative thereof, halogen, organic nitrogen, sulphur, cyanide, cyanogen, ammonia, inorganic acid or acidic oxide;

(b) a fume containing or consisting of aluminium, antimony, arsenic, beryllium, cadmium, calcium, chromium, cobalt, copper, iron, lead, magnesium, manganese, mercury, molybdenum, nickel, phosphorus, potassium, selenium, silica,

sodium, sulphur, tellurium, tin, tungsten, vanadium or zinc;

(c) a dust consisting mainly of asbestos dust, cement dust, cotton dust, oxides of iron or phosphate or dust from a stone-crushing plant;

(d) an odour from a meat or fish processing factory, paper works, purification plant or tannery;

(e) smoke emitted from a specified process;

(f) any particulate matter, gas, fume, dust or odour not referred to in paragraphs (a) to (d) which is declared in terms of section thirty-seven to be a noxious or offensive gas;

“premises” means any building or construction together with the land on which such building or structure is situated;

“registration certificate” means a registration certificate issued in terms of section seven;

“smoke” includes fly ash, soot, grit and gritty particles emitted in smoke;

“smoke control area” means an area declared to be a smoke control area in terms of subsection (1) of section fifteen;

“specified process” means any process declared to be a specified process in terms of subsection (2) of section five.

(2) With the approval of the Minister responsible for local government, the Minister may by notice in the Gazette declare a local board or rural district council or any other authority or body to be a local authority for the purposes of this Act and shall specify the area which shall be the area of jurisdiction of such board, council, authority or body.

## PART II

### AIR POLLUTION ADVISORY BOARD

#### 3 Establishment of Air Pollution Advisory Board

(1) There is hereby established a board, to be known as the Air Pollution Advisory Board, which shall consist of not less than five and not more than seven members appointed by the Minister.

(2) The Minister shall designate one of the members as chairman of the Advisory Board.

(3) A member of the Advisory Board shall hold office for such period and on such conditions as the Minister may in his case fix.

(4) The members of the Advisory Board shall be paid out of moneys appropriated for the purpose by Act of Parliament such fees or allowances or both as the Minister, after consultation with the Minister responsible for finance, may from time to time determine.

#### 4 Functions of Advisory Board

The functions of the Advisory Board shall be—

(a) to advise the Minister on all matters relating to the control, abatement and prevention of air pollution;

(b) to study and report to the Minister on measures taken outside Zimbabwe for the control of air pollution;

(c) to stimulate interest in the problem of air pollution;

(d) to advise the Minister in regard to any matter relating to air pollution which he may refer to the Advisory Board.

## PART III

### CONTROL OF NOXIOUS AND OFFENSIVE GASES

#### 5 Gas control areas and specified processes

(1) The Minister may, by statutory instrument—

(a) declare any area to be a gas control area;

- (b) include any area in or exclude any area from a gas control area;
  - (c) revoke the declaration of any gas control area.
- (2) Subject to subsection (3), the Minister may, by statutory instrument—
- (a) declare any process from or in connection with which a gas, fume, dust, odour or particulate matter referred to in paragraph (a), (b), (c), (d) or ( f ) of the definition of “noxious or offensive gas” contained in section two results or is produced to be a specified process;
  - (b) revoke the declaration of any specified process.
- (3) Before declaring any process to be a specified process the Minister shall—
- (a) publish a notice in the Gazette which shall—
    - (i) state that it is proposed to make a declaration in terms of subsection (2);
    - (ii) give details of the process intended to be the subject of the declaration;
    - (iii) call upon any person who has any objection to the proposal to lodge his objection in writing with the Minister within the period of six weeks following the date of publication of the notice;
  - (b) consider every objection lodged in terms of subparagraph (iii) of paragraph (a).

#### 6 Control of specified processes

- (1) Subject to subsection (2), no person shall, within a gas control area—
- (a) carry on a specified process in or on any premises except in accordance with the terms and conditions of a registration certificate authorizing him to carry on that process in or on those premises;
- [amended by Act 22 of 2001, gazetted on the 1st February, 2002.]
- (b) without the permission in writing of the Chief Health Officer—
    - (i) erect or construct any new building or plant or materially alter or extend any existing building or plant which is intended to be used for carrying on a specified process, or
    - (ii) materially alter or extend any existing building or plant which is used for the carrying on of a specified process in or on any premises in respect of which a registration certificate has been applied for or issued.
- (2) Any person who, immediately before the date on which he is required, in terms of paragraph (a) of subsection (1), to hold a registration certificate in respect of any specified process, was carrying on such process, or any successor to such person, may continue to carry on such process without a registration certificate if such person or any successor to such person has, within three months of such date, made application for a registration certificate in respect of that process and his application has not been determined.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 7 Application for registration certificate

- (1) An application for a registration certificate shall be made to the Chief Health Officer in the prescribed form and manner.
- (2) When an application has been made to him in terms of subsection (1), the Chief Health Officer shall consult the local authority within whose area of jurisdiction the specified process is or will be carried on, as the case may be, and any other local authority in whose area of jurisdiction there are residents who may, in the opinion of the Chief Health Officer, be affected by the carrying on of the specified process to

which the application relates and may—

(a) if he is satisfied that—

(i) reasonable measures, having regard to local conditions and circumstances, the prevailing extent of technical knowledge and the costs involved are or will be properly maintained and operated for preventing or reducing the escape into the atmosphere of noxious or offensive gases which result or are produced from or in connection with the specified process concerned; and

(ii) the specified process in respect of which the application is made may reasonably be permitted to be carried on, having regard to the nature of that process, the character of the locality in question, the purposes for which other premises in the locality are used, whether the carrying on of the process would conflict with any town planning scheme in operation or in the course of preparation in the locality and any other considerations which, in his opinion, have a bearing on the matter;

issue to the applicant a registration certificate with such conditions, if any, as he may think fit to impose;

(b) where he is not satisfied as specified in paragraph (a), refuse to issue a registration certificate.

(3) A registration certificate shall be in the prescribed form and shall specify—

(a) the premises and the specified process to which it relates; and

(b) any conditions imposed thereon by the Chief Health Officer.

(4) When the Chief Health Officer issues a registration certificate he shall give notice thereof to every local authority which he consulted in terms of subsection (2) in connection with the application for the registration certificate.

8 Special conditions attaching to registration certificate

In addition to any conditions which may be imposed thereon by the Chief Health Officer, a registration certificate shall be subject to the conditions that—

(a) all plant and apparatus used for the purposes of carrying on the specified process to which the registration certificate relates shall at all times be properly maintained and operated;

(b) all appliances for preventing or reducing the escape into the atmosphere of noxious or offensive gases shall at all times be properly maintained and operated;

(c) the holder of the registration certificate shall ensure that all other reasonable and necessary measures are taken to prevent the escape into the atmosphere of noxious or offensive gases.

9 Application for permission of Chief Health Officer to alter or extend building, etc.

(1) An application for permission to do anything referred to in paragraph (b) of section six shall be made to the Chief Health Officer in the prescribed form and manner.

(2) Upon receipt of an application in terms of subsection (1) the Chief Health Officer shall consult the local authority within whose area of jurisdiction the specified process is being carried on and any other local authority within whose area of jurisdiction there are residents who may, in the opinion of the Chief Health Officer, be affected by the carrying on of the specified process to which the application relates and may—

(a) grant permission with or without such conditions as he may think fit to impose; or

(b) refuse to grant permission.

(3) Where the Chief Health Officer grants permission in terms of this section he shall notify the applicant in writing and every local authority which he consulted in terms

of subsection (2) in connection with the application.

#### 10 Notice to adopt certain measures

(1) The Chief Health Officer may, by notice in writing, require the holder of a registration certificate to adopt such reasonable measures and within such period as may be specified in the notice to ensure the more effective prevention of the escape into the atmosphere of noxious or offensive gases which result or are produced from or in connection with the specified process to which the registration certificate relates. [inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

(2) Any person who, without just cause, fails to comply with the requirements of a notice given to him in terms of subsection (1) within the time specified in the notice shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 11 Cancellation or suspension of registration certificate

If the holder of a registration certificate fails to comply with—

- (a) the conditions of his registration certificate; or
- (b) the conditions of any permission granted in terms of section nine; or
- (c) the requirements of a notice given to him in terms of section ten

within the time specified in the notice;

the Chief Health Officer may cancel the registration certificate or suspend the operation thereof for such period as he may think fit.

#### 12 Powers of entry

(1) The Chief Health Officer or any person authorized by him may enter upon any premises in a gas control area for the purpose of—

(a) ascertaining whether any specified process is being carried on and may require from the person in charge of the premises the production of any registration certificate issued in respect of the premises;

(b) investigating whether—

(i) the conditions imposed upon any registration certificate issued in respect of the premises;

(ii) the conditions of any permission granted in terms of section nine in respect of the premises;

(iii) the requirements of any notice issued in terms of section ten in respect of the premises;

are being complied with.

(2) A person authorized by the Chief Health Officer in terms of subsection (1) shall—

(a) be provided with a certificate which is signed by the Chief Health Officer and which states that authority in terms of subsection (1) has been granted to the holder;

(b) exhibit the certificate issued to him in terms of paragraph (a) on demand by a person who is affected by the exercise or performance of his powers or duties in terms of this Act.

#### 13 Appeals

Any person who is aggrieved by the decision of the Chief Health Officer in regard to—

(a) the refusal to grant a registration certificate or the imposition of any conditions thereon by the Chief Health Officer; or

(b) the refusal to grant permission in terms of section nine or the imposition of any condition thereon by the Chief Health Officer; or

(c) the giving of a notice in terms of section ten; or

(d) the cancellation or suspension of a registration certificate in terms of section eleven;

may, within thirty days of that decision or, in the case of the giving of notice, within thirty days of the service of the notice upon him, appeal against that decision to the Administrative Court in the prescribed form and manner.

(2) A local authority which was consulted by the Chief Health Officer in terms of subsection (2) of section seven or subsection (2) of section nine and which is aggrieved by the decision of the Chief Health Officer in regard to the grant of a registration certificate or permission in terms of section nine, as the case may be, may, within thirty days of that decision, appeal against that decision to the Administrative Court.

#### 14 Effect of appeal

The grant, cancellation or suspension of any registration certificate or permission in terms of section nine or the operation of any notice which is the subject of an appeal in terms of section thirteen shall be suspended pending a decision on that appeal.

### PART IV

#### CONTROL OF ATMOSPHERIC POLLUTION BY SMOKE

#### 15 Smoke control areas

(1) Subject to subsection (2), the Minister may, by statutory instrument—

- (a) declare any area to be a smoke control area;
- (b) include any area in or exclude any area from a smoke control area;
- (c) withdraw the declaration of any smoke control area.

(2) No area situated within the area of jurisdiction of a local authority shall be declared or included within a smoke control area except—

- (a) with the consent of that local authority; or
- (b) where the Minister is satisfied that, by reason of the emission or emanation of smoke in that area which is causing a nuisance, it is expedient that the area be declared or included within a smoke control area.

#### 16 Vesting of authority in respect of smoke control areas

(1) The Minister may, by statutory instrument, vest authority in respect of a smoke control area—

- (a) which is within the area of jurisdiction of a local authority—
  - (i) in the local authority; or
  - (ii) at the request of the local authority, in the Chief Health Officer;
- (b) which is not within the area of jurisdiction of a local authority—
  - (i) in the Chief Health Officer; or
  - (ii) in a local authority whose area of jurisdiction adjoins the smoke control area after consultation with, or at the request of, that local authority.

(2) Where the Minister is satisfied that a local authority in which authority in respect of a smoke control area has been vested has failed adequately to exercise the powers conferred upon it by this Part in relation to that smoke control area he may, by statutory instrument, transfer authority in respect of that smoke control area to, and vest that authority in, the Chief Health Officer.

(3) In relation to a smoke control area in respect of which authority has been vested in the Chief Health Officer, the Chief Health Officer may exercise the powers conferred upon a local authority in terms of this Part and any reference in this Part to a local authority shall be construed as a reference to the Chief Health Officer.

(4) Where authority in respect of a smoke control area has been vested in the Chief Health Officer—

- (a) in terms of subparagraph (ii) of paragraph (a) of subsection (1); or
- (b) in terms of subsection (2);

the Minister may recover from the local authority at whose request the authority was vested or from whom the authority was transferred, as the case may be, any cost incurred in respect of the smoke control area by the Chief Health Officer in the exercise of the powers conferred upon him by this Part.

(5) Where a local authority has paid the Minister the costs referred to in subsection (4), that local authority shall be entitled to take cession from the Chief Health Officer of any right of action that he has to recover those costs or part thereof from any person.

(6) Where authority in respect of a smoke control area has been vested in a local authority referred to in subparagraph (ii) of paragraph (b) of subsection (1), that local authority may recover from the Minister, from moneys appropriated for the purpose by Act of Parliament, any costs incurred by the local authority in the exercise of the powers conferred upon it by this Part in respect of the smoke control area.

(7) Where the Minister has paid a local authority the costs referred to in subsection (6) he shall be entitled to take cession from that local authority of any right of action that the local authority has to recover those costs or part thereof from any person.

(8) Where by virtue of the vesting of authority in terms of this section in respect of a smoke control area the Chief Health Officer or a local authority succeeds another local authority, anything done under that authority by the local authority which has been succeeded shall be deemed to have been done by the successor.

(9) The Minister may, by statutory instrument, revoke any statutory instrument made in terms of subsection (1) or (2).

#### 17 Control of nuisance caused by smoke

(1) Where a local authority is satisfied that smoke emanating or being emitted from any premises, other than those in respect of which a registration certificate has been applied for or issued, in a smoke control area in respect of which authority is vested in that local authority is causing a nuisance either within or outside the smoke control area, the local authority may serve a notice in writing on the person responsible for the nuisance, calling upon him within a period to be specified in the notice to abate the nuisance and to take all necessary steps to prevent a recurrence thereof.

(2) For the purposes of subsection (1), the person responsible for a nuisance shall be deemed to be—

(a) in the case of a nuisance which is due to defects in any building erected or adapted by the owner or predecessor in title of the premises in question for the carrying on of the activities giving rise to the nuisance or to any plant or appliance installed by the owner or predecessor in title or for the maintenance of which the owner is responsible, the owner of such premises;

(b) in any other case, the occupier of such premises.

(3) Without derogation from subsection (4), if a person upon whom a notice referred to in subsection (1) has been served fails to comply with such notice, the local authority which served the notice may enter upon the premises concerned and may execute such works, install such appliances and take such other steps as it may consider necessary to abate the nuisance which is the subject of the notice and prevent the recurrence thereof and may recover the costs thereby incurred from such person.

[amended by Act 22 of 2001, gazetted on the 1st February, 2002.]

(4) Any person who, without just cause, fails to comply with a notice served on him in terms of subsection (1) within the period specified in the notice shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 18 Enforcement of regulations

(1) If any person in a smoke control area causes or permits any smoke to be emanated or emitted from any premises in contravention of any regulations made in terms of section thirty-eight, the local authority in which authority in respect of the smoke control area is vested may, subject to the provisions of subsection (2), serve a notice in writing on that person calling upon him to bring about the cessation of the emanation or emission of the smoke within a period to be specified in the notice.

(2) No notice referred to in subsection (1) shall, without the consent of the Chief Health Officer, be served in respect of any premises in which a specified process is being carried on.

(3) If a person on whom a notice referred to in subsection (1) has been served fails to comply with such notice, the local authority which served that notice may enter upon the premises concerned and may execute such works, install such appliances and take such steps as it may consider necessary to bring about the cessation of the emanation or emission of the smoke which is the subject of the notice and may recover the costs incurred thereby from such person.

(4) The exercise of any powers in terms of this section by a local authority shall not affect the liability of any person to any prosecution for a contravention of any regulations made in terms of section thirty-eight.

#### 19 Delegation of powers under this Part

(1) A local authority may, in such manner and subject to such conditions as it may think fit, delegate to any of its officers or employees or to any committee constituted by it any of the powers conferred upon it by this Part.

(2) Any person who is aggrieved by any notice served upon him in terms of section seventeen or eighteen by an officer, employee or committee of a local authority to whom or to which powers have been delegated in terms of subsection (1) may, within fourteen days after receipt of such notice, appeal in writing to the local authority, which shall have the power to confirm, vary or withdraw the notice.

(3) Pending the decision of the local authority on an appeal made in terms of subsection (2) the operation of the notice, which is the subject of the appeal, shall be suspended.

#### 20 Power to enter upon premises

(1) A local authority may authorize any person to enter upon any premises, other than those in respect of which a registration certificate has been applied for or issued, in a smoke control area in respect of which authority is vested in the local authority for the purpose of making any investigation in connection with the emission or emanation of smoke or in connection with any fuel-burning appliance or for the purpose of executing any work or installing any appliance or taking any steps which the local authority is authorized by this Part to execute or take.

(2) Any person authorized in terms of subsection (1) to—

(a) be provided with a certificate which is signed by an officer designated for the purpose by the local authority and which states that authority in terms of subsection (1) has been granted to the holder;

(b) exhibit the certificate issued to him in terms of paragraph (a) on demand by any person who is affected by the exercise or performance of his powers or duties in terms of this Act.

#### 21 Regulations for purposes of this Part

Without derogation from the generality of section thirty-eight regulations made in terms of that section for the purposes of this Part may relate to—

(a) regulating, restricting or prohibiting the emission or emanation from any premises of smoke which is of a darker colour or greater density than is specified in the regulations;

(b) regulating, restricting or prohibiting the installation in any premises or the alteration or extension of any fuel-burning appliance which does not comply with such requirements as may be specified in the regulations or determined by a person authorized thereto by or in accordance with the regulations or otherwise than in accordance with and subject to such conditions as may be so specified or determined;

(c) requiring or authorizing the removal of any fuel-burning appliance which has been installed, extended or altered or is being used in contravention of the regulations or otherwise than in accordance with any condition imposed by or under the regulations;

(d) regulating, restricting or prohibiting the use or sale of fuel which does not comply with such requirements as may be specified in the regulations or determined by a person authorized thereto by or in accordance with the regulations except in such cases and on such conditions as may be so specified or determined, and providing for the returns relating to the sale of fuel to be rendered by any person who sells fuel;

(e) providing for the records to be kept and the returns to be rendered by any person who has in his possession or under his control any fuel-burning appliance as to the quantity, nature and type of fuel consumed by such appliance;

(f) providing for the inspection of fuel-burning appliances, whether or not installed in any premises, and the powers and functions of persons engaged in such inspection;

(g) requiring the owner or occupier of any premises in or on which any fuel-burning appliance is used, or in or on which any fuel is consumed, at the rate or above the rate specified in the regulations to install, maintain and use at his own expense such apparatus as may be specified in the regulations or determined by a person specified in the regulations for the purpose of indicating or recording the colour, density or content of such smoke as may emanate from the premises in or on which it is used or may be emitted by the fuel so consumed, or for the purpose of facilitating the observance of such smoke with a view to determining its colour, density or content and requiring such owner to make available any results recorded by or ascertained by means of such apparatus;

(h) regulating or restricting the installation or provision of heating or cooking facilities in buildings and prohibiting the installation in any building of any appliances other than types of appliances specified in the regulations or any appliances which do not comply with such requirements as may be prescribed in the regulations;

(i) generally, the effective control of the emission or emanation of smoke from any premises.

## 22 Appeals

Any person who is aggrieved by the decision of a local authority or the Chief Health Officer in regard to—

(a) the giving of a notice in terms of section seventeen or eighteen; or

(b) the confirmation or variation of any notice in terms of section nineteen;

may, within thirty days after the service of such notice upon him or the confirmation or variation thereof, as the case may be, appeal against the decision to the Administrative Court in the prescribed form and manner.

## 23 Effect of appeal

The operation of any notice which is the subject of an appeal in terms of section twenty-two shall be suspended pending a decision on that appeal.

## PART V

## CONTROL OF ATMOSPHERIC POLLUTION BY DUST

### 24 Dust control areas

The Minister may, by statutory instrument—

- (a) declare any area to be a dust control area;
- (b) include any area in or exclude any area from a dust control area;
- (c) revoke the declaration of any dust control area.

### 25 Control of nuisance caused by dust

(1) Subject to this Part, where—

(a) any person is carrying on any activity in or on any premises in a dust control area which is causing or is likely to cause a nuisance on account of dust originating from such activity; or

(b) any person deposits or causes or permits to be deposited in or on any premises in a dust control area any matter of such a nature or quantity as causes or is likely to cause a nuisance on account of dust originating from such matter; or

(c) dust is originating in or on any premises in a dust control area in circumstances where paragraph (a) or (b) does not apply and such dust is causing a nuisance;

the local authority within whose area of jurisdiction the dust originates or is likely to originate or the Chief Health Officer in any other case may serve a notice in writing on the person referred to in paragraph (a) or (b) or the owner or occupier of premises referred to in paragraph (c), as the case may be, requiring such person, owner or occupier to adopt such measures as may be specified by the local authority or the Chief Health Officer in the notice, within a period to be specified in the notice, to abate the nuisance and to prevent the recurrence thereof.

(2) Where a local authority or the Chief Health Officer specifies any measures in terms of subsection (1), regard shall be had to—

- (a) local conditions and circumstances;
- (b) the prevailing extent of technical knowledge;
- (c) the cost likely to be involved in adopting those measures.

(3) No notice referred to in subsection (1) shall be served upon an occupier of premises referred to in paragraph (c) of that subsection, who is not the owner thereof, unless the local authority or the Chief Health Officer, by whom the notice is intended to be served, is of opinion that the dust in question is caused by the activities of the occupier or, having regard to all the circumstances, it is equitable that such occupier should be served with the notice.

(4) Without derogation from subsection (4a), where a person upon whom a notice has been served in terms of subsection (1) fails to comply with the notice, the local authority which or the Chief Health Officer who served the notice may enter the premises concerned and may adopt such measures as it or he may consider necessary to abate the nuisance and to prevent the recurrence thereof and may recover the costs incurred thereby from that person.

[amended by Act 22 of 2001, gazetted on the 1st February, 2002.]

(4a) Any person who, without just cause, fails to comply with a notice served on him in terms of subsection (1) within the period specified in the notice shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

(5) In this section—

“premises” does not include premises in respect of which a registration certificate has been applied for or issued.

### 26 Special measures

(1) Where in the opinion of a local authority or the Chief Health Officer, as the case may be, it would be impracticable or inequitable in the circumstances to require a person referred to in paragraph (b) of subsection (1) of section twenty-five to adopt the measures referred to in that subsection, the local authority or the Chief Health Officer may adopt those measures and for the purpose may enter upon the premises concerned.

(2) Where a local authority or the Chief Health Officer has adopted measures in terms of subsection (1), the cost thereof shall be a debt due, where the local authority adopted the measures, to the local authority or, where the Chief Health Officer adopted the measures, to the Minister, and may be recovered in full or, at the discretion of the local authority or the Minister, as the case may be, in part from the person referred to in paragraph (b) of subsection (1) of section twenty-five who might have been required in terms of that subsection to adopt those measures.

(3) Where, upon the representations of a local authority, the Minister is of the opinion that the whole or any part of the costs of measures adopted in terms of subsection (1) by a local authority should be borne by the State, he may refund such costs or any part thereof to the local authority from moneys appropriated for the purpose by Act of Parliament.

#### 27 Delegation of powers under this Part

(1) A local authority may, in such manner and subject to such conditions as it may think fit, delegate to any of its officers or employees or to any committee constituted by it any of the powers conferred upon it by this Part.

(2) Any person who is aggrieved by any notice served upon him in terms of section twenty-five by an officer, employee or committee of a local authority to whom or to which powers have been delegated in terms of subsection (1) may, within fourteen days after receipt of such notice, appeal in writing to the local authority which shall have the power to confirm, vary or withdraw the notice.

(3) Pending the decision of the local authority on an appeal made in terms of subsection (2) the operation of the notice which is the subject of the appeal shall be suspended.

#### 28 Closure of mine

(1) Where the miner of any mine which is situated in a dust control area and on which mining operations are being carried out intends to close down the mine, he shall give not less than thirty-one days' notice in writing to the Chief Health Officer of such intended closure.

(2) Where a mine which is situated in a dust control area is or is intended to be closed down, the Chief Health Officer may serve a notice in writing on the former miner or miner, as the case may be, requiring him to adopt within a period to be specified in the notice such measures as may be prescribed or, until regulations are made, as may be specified by the Chief Health Officer in the notice for preventing or minimizing the origination of dust from any matter deposited in or upon the mine by the former miner or miner, as the case may be.

(3) Any person who<sup>3/4</sup>

(a) fails without just cause to give the notice require by subsection (1); or

(b) fails to comply with a notice served on him in terms of subsection (2);

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 29 Entry upon premises

(1) The Chief Health Officer or any person authorized by him or by a local authority

may enter upon any premises, other than those in respect of which a registration certificate has been applied for or issued, for the purposes of—

- (a) investigating whether a nuisance by dust is originating or is likely to originate in or from such premises or from any matter deposited on such premises;
- (b) investigating whether the requirements of any notice referred to in section twenty-five or twenty-eight are being complied with;
- (c) adopting any measures which may be taken in terms of section twenty-five or twenty-six.

(2) A person authorized by the Chief Health Officer or a local authority in terms of subsection (1) shall—

- (a) be provided with a certificate which is signed by the Chief Health Officer or by a person designated for the purpose by the local authority, as the case may be, and which states that authority in terms of subsection (1) has been granted to the holder;
- (b) exhibit the certificate issued to him in terms of paragraph (a) on demand by a person who is affected by the exercise or performance of his powers or duties in terms of this Act.

30 Regulations for purposes of this Part

Without derogation from the generality of section thirty-eight, regulations made in terms of that section for the purposes of this Part may relate to—

- (a) the measures to be adopted to prevent the creation or continuation of a nuisance originating from dust or to minimize such nuisance;
- (b) regulating, restricting and prohibiting the depositing of matter of such a nature or quantity as to cause or to be likely to cause a nuisance originating from dust;
- (c) restricting, regulating and prohibiting the carrying on of any activity which causes or is likely to cause a nuisance originating from dust.

31 Appeals

Any person who is aggrieved by the decision of a local authority or the Chief Health Officer in regard to—

- (a) the giving of a notice in terms of section twenty-five or twenty-eight;
- or
- (b) the confirmation or variation of any notice in terms of section twenty-seven may within thirty days of the service upon him of the notice or the confirmation or variation thereof, as the case may be, appeal against that decision to the Administrative Court in the prescribed form and manner.

32 Effect of appeal

The operation of any notice which is the subject of an appeal in terms of section thirty-one shall be suspended pending a decision on that appeal.

PART VI

CONTROL OF ATMOSPHERIC POLLUTION BY FUMES FROM INTERNAL COMBUSTION ENGINES

33 Control or operation of internal combustion engines

(1) No person shall operate an internal combustion engine—

- (a) unless it has installed or incorporated on or in it such internal combustion systems or devices, designed to lessen or prevent the emission into the atmosphere of any air contaminants, as may be prescribed; or
- (b) which emits into the atmosphere any air contaminants in a quantity or density greater than as may be prescribed.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

(2) Any person who contravenes paragraph (a) or (b) of subsection (1) shall be guilty

of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 34 Regulations for purposes of this Part

Without derogation from the generality of section thirty-eight, regulations made in terms of that section for the purposes of this Part may relate to—

(a) classifying internal combustion engines for the purposes of any regulations and exempting any class or type of internal combustion engine from the regulations;

(b) requiring internal combustion engines or any class or type thereof to have installed or incorporated therein or thereon one or more systems or devices specified in the regulations to prevent or lessen the emission into the atmosphere of any air contaminants;

(c) providing for the testing and inspection of any system or device referred to in paragraph (b);

(d) providing for the issue by such person or authorities as may be specified in the regulations of certificates of approval of systems or devices referred to in paragraph (b);

(e) defining and designating new internal combustion engines for the purposes of any regulations;

(f) regulating, restricting or prohibiting the type and quantity of fuel that may be used in connection with internal combustion engines;

(g) providing for the testing and examination of internal combustion engines and the prohibition of operation of any internal combustion engine, the operation of which would involve a contravention of the regulations;

(h) generally restricting, regulating or controlling the emission into the atmosphere of any air contaminants from internal combustion engines.

### PART VII

#### GENERAL

#### 35 Disclosure of information

(1) No person shall disclose any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him under this Act unless the disclosure is made—

(a) with the consent of the person carrying on that undertaking; or

(b) for the purpose of legal proceedings arising out of this Act.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 36 Obstruction

Any person who hinders or obstructs a local authority, the Chief Health Officer or any other person authorised in terms of section twelve, twenty or twenty-nine, as the case may be, in the exercise of functions conferred or imposed in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[substituted by Act 22 of 2001, gazetted on the 1st February, 2002.]

#### 37 Declaration of noxious or offensive gas

(1) Where in the opinion of the Minister any gas, fume, dust or odour, other than a gas, fume, dust or odour specified in paragraph (a), (b), (c) or (d) of the definition of

“noxious or offensive gas” contained in section two, or any other particulate matter whatsoever is noxious or offensive, the Minister may, by statutory instrument, declare such gas, fume, dust, odour or particulate matter to be a noxious or offensive gas for the purposes of this Act.

(2) The Minister may, by statutory instrument, amend or revoke any declaration made in terms of subsection (1).

### 38 Regulations

(1) Subject to subsections (3) and (4), the Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to provide for the carrying out of or giving effect to the provisions of this Act.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the manner in which an application for a registration certificate shall be made and the information to be submitted with such application;

(b) classifying sources of pollution of the atmosphere and exempting any class or classes of persons from the provisions of this Act;

(c) the fees which shall be paid in connection with any application or appeal in terms of this Act;

(d) the forms of notices which may be served in terms of this Act;

(e) regulating the quality of fuels that may be used for heating, generating steam or electricity or any industrial process;

(f) prescribing the ambient or quality criterion to be used in controlling, regulating or prohibiting the emission of any air contaminant into the atmosphere and the standards thereof;

(g) generally regulating, restricting or prohibiting the emission of any air contaminant into the atmosphere from any source of pollution or any class thereof.

(3) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[substituted by Act 22 of 2001, gazetted on the 1st February, 2002.]

(4) Before making any regulation relating to the imposition of fees the Minister shall consult with the Minister responsible for finance.

[Go To Top Page](#)

[NEXT CHAPTER](#)