



KWAZULU-NATAL PROVINCE  
KWAZULU-NATAL PROVINSIE  
ISIFUNDAZWE sAKWAZULU-NATALI

**Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe**

*(Registered at the post office as a newspaper) • (As 'n nuusblad by die poskantoor geregistreer)*  
*(Irejistiwee njengephephandaba eposihhovisi)*

**Vol: 19**

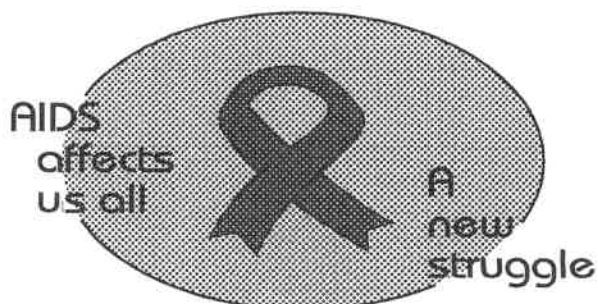
**PIETERMARITZBURG**

17 APRIL 2025  
17 APRIL 2025

**No: 2802**

**PART 1 OF 3**

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**Prevention is the cure**

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ISSN 1994-4551



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**Contents**

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
<b>MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS</b>			
559	Local Government: Municipal Property Rates Act, 2004 (6/2004): Dannhauser Local Municipality – KZ254: Public notice calling for inspection of Supplementary Valuation Roll No. 2, 01 March 2024 to 28 February 2025 and lodging of objections.....	2802	3
564	Dr Nkosazana Dlamini Zuma Local Municipality: Business Licensing and Registration By-Law .....	2802	4
565	Local Government Municipal Property Rates Act of 2004 (Act No. 6 of 2004): Public Notice for the Inspection of Supplementary Valuation Roll 4 and Lodging of Objections .....	2802	20
566	Local Government, Municipal Property Rates Act, 2004 (Act No. 6 of 2004), as amended: Public Notice Calling for inspection of the Supplementary Valuation Roll for Ray Nkonyeni Local Municipality (No. 2) relating to the General Valuation Roll for 2023-2028 and Lodging of Objections .....	2802	21
567	Local Government Municipal Property Rates Act 2004(Act No. 6 of 2004): Public Notice: Public Notice calling for inspection of Supplementary Valuation Roll No. 1 and Lodging of Objections .....	2802	23
568	National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004): uMhlathuze Air Quality Management By-law .....	2802	24
569	Local Government: Municipal Property Rates Act, 2004 (Act No 6 of 2004): Calling for Inspection of the Fifth Supplementary Valuation Roll and Lodging of Objections Against the Valuation of a Property .....	2802	78
570	Local Government: Municipal Property Rates Amendments Act, 2014 (Act No. 29 of 2014): Msunduzi Municipality: Section 49, Public notice calling for inspection of Supplementary Valuation Roll 02-2024/25 and lodging of objections .....	2802	79
571	Local Government: Municipal Property Rates Act, 2004 (Act No 6 of 2004): Public notice calling for inspection of the 2025 General Valuation Roll and lodging of objections .....	2802	81
<b>PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS</b>			
882	Local Government Municipal Property Rates Act No.6 of 2004: Public notice calling for an inspection of the Annual Supplementary Valuation Roll No. 2 and lodging of objections.....	2802	82
883	Local Government Municipal Property Rates Act, of 2004 (Act No.6 of 2004 as amended): Edumbe Municipality: Municipal Notice No. EDUMN-11/2024/25: Public notice calling for inspection of General Valuation Roll and Lodging of Objections.....	2802	83
884	Road Carrier Permits: KwaZulu-Natal .....	2802	84

## MUNICIPAL NOTICE 568 OF 2025

**uMHLATHUZE AIR QUALITY MANAGEMENT BY-LAW**

**To provide for air quality management within the Municipality; to provide for reasonable measures to prevent air pollution; to provide for local emission standards and air pollution control zones; to provide for smoke emissions from premises, vehicles and dwellings; to provide for the use and operation of fuel burning equipment; to provide for the installation and operation of obscuration measuring equipment; to provide for the prohibition of emissions that cause a nuisance; to provide for offences and penalties and to provide for matters incidental thereto.**

**Preamble**

**WHEREAS** the Municipality has competence in terms of Section 156 (2) of the Constitution of the Republic of South Africa to make and administer By-law for the effective administration of the matters which it has the right to administer;

**WHEREAS** the Municipality has competence in terms of Part B of Schedule 4 of the Constitution relating to air pollution;

**WHEREAS** the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) provides measures for the protection and enhancement of the quality of air and the prevention of air pollution and ecological degradation;

**WHEREAS** the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) binds all organs of state to provide reasonable measures for the protection and enhancement of the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people;

**AND WHEREAS** the Municipality seeks to manage air quality within its area of jurisdiction to ensure that air pollution is avoided and, where it cannot be altogether avoided, is minimised and remedied;

**NOW THEREFORE** the Municipal Council of the uMhlathuze Local Municipality, acting in terms of Section 156 read with Schedule 4, Part B of the Constitution of the Republic of South Africa, and read with Section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

**Contents**

CHAPTER 1 .....	5
Interpretation and objectives .....	5
1. Definitions .....	5
2. Interpretation of By-law .....	11
3. Objects of By-law .....	11
4. Application of By-law .....	12
5. Powers of authorised officials .....	12
CHAPTER 2 .....	20
Reasonable measures to prevent air pollution .....	20
6. Duty of care .....	20
CHAPTER 3 .....	21
7. Regulation of product and/or commodity merchants and distributors .....	21
CHAPTER 4 .....	22
Legal mandate .....	22
8. Local emission standards, norms and standards and air pollution control zones .....	22
9. Substances identification process .....	22
10. Publication of local emission standards .....	23
11. Declaration of air pollution control zone .....	23
CHAPTER 5 .....	24
Application .....	24
12. Smoke emissions from premises other than dwellings .....	24
13. Smoke emissions from dwellings .....	25
Prohibition of emission of dark smoke from dwellings .....	25
CHAPTER 6 .....	26
Scheduled activities .....	26
14. Air Pollution from Premises .....	26
15. Permits for scheduled activities .....	26
16. Lapsing of permits .....	28
17. Changing of scheduled activities .....	28
18. Termination of permits .....	29
19. Emissions from compressed ignition powered vehicles .....	29
20. Installation and operation of fuel-burning equipment .....	31
21. Monitoring and sampling .....	33
22. Reporting requirements .....	33
23. Temporary exemption .....	34
CHAPTER 7 .....	35
Dust emissions .....	35
24. Dust emissions caused by open burning and burning of material .....	35
25. Prohibition of emissions caused by open burning and burning of material .....	36
26. Authorisation of emissions caused by open burning and burning of material .....	36

27. Prohibition of tyre burning and burning of rubber and other material for the recovery of metal	38
28. Emissions from Sugar cane burning.....	38
CHAPTER 8 .....	39
Control of emissions that cause a nuisance .....	39
29. Emissions that cause a nuisance.....	39
CHAPTER 9 .....	40
Control of offensive odours .....	40
30. Offensive Odours.....	40
CHAPTER 10.....	40
31. Enforcement.....	40
1) Inspections.....	40
2) Entry into premises.....	41
3) Compliance notices .....	42
4) Prohibition notice .....	43
5) Withdrawal of prohibition notice.....	44
6) Municipal remedial work and recovery of costs .....	45
7) Cost orders .....	45
32. Abatement notice.....	45
33. Steps to abate nuisance .....	46
34. Offences.....	46
35. Penalties .....	46
36. Appeals .....	47
CHAPTER 11 .....	48
General matters.....	48
37. Reporting of emissions in the National Atmospheric Emission Inventory System (NAEIS).....	48
38. Exemptions.....	48
39. Delegations.....	49
40. Indemnity .....	49
41. Transitional provisions .....	50
42. Short title and commencement.....	50
ANNEXURE A .....	54
<b>NOTICE TO BE PUBLISHED BY APPLICANT FOR PERMISSION OF THE COUNCIL TO USE PREMISES FOR THE CARRYING ON OF A SCHEDULED TRADE .....</b>	<b>51</b>
ANNEXURE B .....	52
<b>LIST OF SCHEDULED TRADES/ ACTIVITIES .....</b>	<b>52</b>

## CHAPTER 1

### Interpretation and objectives

#### 1. Definitions

In this By-law, unless the context indicates otherwise—

**"Act"** means the National Environment Management: Air Quality Act, 2004 (Act No. 39 of 2004);

**"Adverse effect"** means any actual or potential impact on the environment that impairs or would impair the environment or any aspect of it to an extent that is more than trivial or insignificant;

**"Air pollutant"** includes soot, dust, fly ash, cinders, solid particles of any kind, aerosols, odorous substances, smoke, fumes and gas that causes or may cause air pollution;

**"Air pollution"** means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on the environment, human health or well-being, or will have such an effect in the future;

**"Air quality officer"** means the air quality officer designated as such in terms of Section 14 of the National Environmental Management: Air Quality Act, 2004 (Act No.39 of 2004)

**"Ambient air"** means "ambient air" as defined in Section 1 of the National Environmental Management: Air Quality Act, 2004 (Act No.39 of 2004);

**"Atmosphere"** means air that is not enclosed by a building, machine, chimney or other similar structure;

**"Atmospheric emission"** means any emission or entrainment process emanating from a point, non-point or mobile source that result in air pollution;

**"Authorised official"** means a person authorised to implement the provisions of this By-law, including but not limited to-

- (a) peace officers as contemplated in Section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) Environmental Management Inspector as contemplated in Chapter 7, Section 31B and C of the Environmental Management Act, 1998 (Act No. 107 of 1998)
- (c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

**"Best practicable environmental option"** means the option that provides the most benefit, or causes the least damage to the environment as a whole, at a cost acceptable to society in the long term as well as in the short term;

**"Chimney"** means any structure or opening of any kind from which or through which air pollutants may be emitted;

**"Compression ignition powered vehicle"** means a vehicle powered by an internal combustion, compression ignition, diesel or similar fuel engine;

**"Council" or "municipal council"** means —

- (a) the Municipality, exercising its legislative and executive authority through its municipal council;
- (b) its successor-in-title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in Section 59 of Systems Act; and
- (d) a service provider fulfilling a responsibility under this By-law;

**"Dark smoke"** means—



(a) in respect of this By-law, smoke which when measured using a light absorption meter, obscuration measuring equipment or other similar equipment, has an obscuration of 20% or greater;

(b) in respect of this By-law—

- (i) smoke emitted from the exhaust outlets of naturally aspirated compression ignition engines which has a density of 50 Hartridge smoke units or more or a light absorption co-efficient of more than  $1.6\text{m}^{-1}$  or 18.57 percentage opacity;
- (ii) smoke emitted from the exhaust outlets of turbo charged compression ignition engines which has a density of 56 Hartridge smoke units or more or a light absorption co-efficient of more than  $1.91\text{m}^{-1}$  or 21.57 percentage opacity;

**"Dust"** means any material composed of particles small enough to pass through a 1 mm screen and large enough to settle by virtue of their weight into the sampling container from the ambient air.

**"Dwelling"** means any building or structure, or part of a building or structure, used as a place of residence and any outbuildings ancillary to it.

**"Environment"** means the surroundings within which humans exist and that are made up of—

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

**"Fuel-burning equipment"** means any furnace, boiler, heater, burner, incinerator, or other equipment, including a chimney—

- (a) designed to burn or capable of burning liquid, gas or solid fuel;
- (b) used to dispose of any material or waste by burning; or

(c) used to subject liquid, gas or solid fuel to any process involving the application of heat; and excludes standby generators and temporary standby generators producing a combined generation capacity of equal to or less than 50kVa per premises;

**"Light absorption meter"** means a measuring device that uses a light sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

**"Listed activity"** Means an activity which result in atmospheric emissions which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage listed in terms of the National Environmental Management: Air Quality Act, 2004 (Act No.39 of 2004).

**"Mobile source"** means a single identifiable source of atmospheric emission which does not emanate from a single location.

**"Municipality"** means the uMhlathuze Municipal Council, a category B Municipality, established in terms of Section 155(1)(b) of the Constitution, 1996;

**"Municipal Manager"** means the official of the Municipality appointed as contemplated in Section 54A of the Municipal Systems Act as the head of administration of the Municipal Council and includes any person acting in that capacity.

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

**"National Atmospheric Emission Inventory System" or "NAEIS"** means the internet-based emissions reporting system, which is a component of the South African Air Quality Information System;

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

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

**"Non-point source"** means a source of atmospheric emission which cannot be identified as having emanated from a single identifiable source or fixed location and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

**"Nuisance"** means an unreasonable interference or likely interference caused by air pollution with the—

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

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

**"Offensive odour"** means any smell which is considered to be malodorous or a nuisance to a reasonable person

**"Open burning"** means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and "burning in the open" and "burning of material" has a corresponding meaning;

**"Operator"** means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants;

**"Person"** means a natural person or a juristic person.

**"Point source"** means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys.

**"Premises"** includes—

- (a) any building or other structure.
- (b) any adjoining land occupied or used in connection with any activities carried on in that building or structure.
- (c) any vacant land; and
- (d) any locomotive, ship, boat, other vessel or movable structure which is used for a scheduled trade within the area of the jurisdiction of the Municipality.

**“Product and/or commodity”** is a raw material that can be used in the production process to manufacture finished goods while a product is a finished good sold to consumers.

**“Prohibition notice”** means a notice issued to stop the activity which causes negative impact to the environment.

**“Responsible person”** means the owner, occupier or person in charge of the premises.

**“Ringelmann chart”** is a chart used to define dark smoke. The chart has 5 shades of grey with 0 being clear and 5 being black. Smoke is considered 'dark' if it is shade 2 or darker.

**“Scheduled activity”** means the commencement or carrying on, or causing or permitting to be commenced with or carried on in any premises or elsewhere in the Municipality, of any of the trades, businesses, occupations, callings, activities or processes listed in Annexure B to this By-law, and includes any erection of or extension, addition or alteration to, any building, structure, plant or works used or for the purpose of using them in connection with any such trade, business, occupation, calling, activity or process.

**“Scheduled Trade Permit”** means a permit issued to regulate facilities regarding the utilization of premises for potential hazardous activities.

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

**"Specialist study"** means any scientifically based study relating to air quality conducted by an expert or recognized specialist of appropriate qualifications and competency in the discipline of air quality management.

**"Spray area or spray booth"** means an enclosure area used for spray painting.

**"Township"** means an area of land divided into erven which may be combined with public places and roads as indicated on a general plan, which is used and developed mainly for residential, business, commercial, industrial, institutional, educational or other similar purposes as contained in a Land Use Scheme or it is intended to be so used and developed.

**"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.

## **2. Interpretation of By-law**

- 1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.
- 2) In the event of any conflict between this By-law and any other By-law or policy which directly or indirectly, within the jurisdiction of the Municipality, regulates air quality, the provisions of this By-law shall prevail to the extent of the inconsistency.

## **3. Objects of By-law**

The objects 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) give effect to the Act and ensure that ambient air quality standards are maintained.
- (c) provide, in conjunction with any other applicable law, an effective legal and administrative framework within which the Municipality can manage and

- regulate activities that have the potential to adversely impact the environment, public health and well-being; and
- (d) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimised.

#### **4. Application of By-law**

- 1) This By-law applies within the area of jurisdiction of the Municipality.
- 2) This By-law does not remove the need for any other permit, licence, consent or authorisation in respect of air quality management that may be required under any other applicable legislation.

#### **5. Powers of authorised officials**

- 1) The Council must designate or appoint employees of the Municipality to be responsible for:
  - (a) co-ordinating matters pertaining to air quality management.
  - (b) granting or rejecting Atmospheric Emission Licences or Provisional Atmospheric Emission Licences in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), within the municipality's jurisdiction.
  - (c) implementing and monitoring the short term plans and objectives of National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), the Regulations and this By-law.
  - (d) identifying, implementing, managing and reporting on the air quality projects to the national level.
  - (e) implementing procedures, systems and controls to regulate specific work sequences, general practices and processes as defined in the legislation.
  - (f) manage, coordinate and ensure compliance with statutory requirements of air quality licensing.
  - (g) manage and implement strategies aimed at creating awareness and provide education in terms of statutory requirements and air quality practice.

- (h) manage, supervise, coordinate, liaise and provide direction on specific administrative and reporting requirements associated with air quality.
  - (i) monitoring and overseeing the implementation and enforcement of this By-law; and
  - (j) any other responsibilities related to air quality management.
- 2) For the purpose of discharging his or her duty in terms of this By-law, an authorised official may exercise the powers of an Environmental Management Inspector as set out in Sections 31D (3), 31 (g), 31 (h), 31 (i), 31 (j), 31 (k) and 31 (l) of National Environmental Management Act, 1998 (NEMA).

**(a) Section 31 (d) (3) of NEMA stipulated mandates of Environmental Management Inspector as:**

“A person designated as an Environmental Management Inspector may exercise any of the powers given to Environmental Management Inspector in terms of NEMA that are necessary for the inspector's mandate and that may be specified by the Minister, the Minister responsible for water affairs or MEC by notice in writing to the inspector”

**(b) Section 31 (g) of NEMA stipulated the functions of Environmental Management Inspector as:**

An Environmental Management Inspector within his or her mandate in terms of Section 31D- “

- (i) must monitor and enforce compliance with a law for which he or she has been designated in terms of that Section.
- (ii) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute an offence in terms of such law; a breach of such law; or a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.
- (iii) must carry out his or her duties and exercise his or her powers in accordance with any instructions issued by the Minister or MEC, as the

case may be; and subject to any limitations and in accordance with any procedures that may be prescribed.

(iv) may be accompanied by an interpreter or any other person whose assistance may reasonably be required.

(v) must exercise his or her powers in a way that minimises any damage to, loss or deterioration of any premises or thing.

**(c) Section 31 (h) of NEMA stipulated general powers of Environmental Management Inspector as:**

An Environmental Management Inspector, within his or her mandate in terms of Section 31D of NEMA, may:

(i) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute an offence in terms of a law for which that inspector has been designated in terms of that Section; a breach of such law; or a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.

(ii) issue a written notice to a person who refuses to answer questions, requiring that person to answer questions put to him or her. The issued notice must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.

(iii) inspect, or question a person about, any document, book or record or any written or electronic information which may be relevant for the purpose of investigation.

(iv) copy, or make extracts from, any document, book or record or any written or electronic information or remove such document, book, record or written or electronic information in order to make copies or extracts.

(v) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information.

(vi) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable



suspicion, may have been used in committing an offence in terms of the law for which that inspector has been designated in terms of Section 31D of National Environmental Management Act.

- (vii) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection.
- (viii) dig or bore into the soil.
- (ix) take samples.
- (x) remove any waste or other matter deposited or discharged in contravention of the law for which that inspector has been designated in terms of Section 31D of NEMA or a term or condition of a permit, authorisation or other instrument issued in terms of such law.
- (xi) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific Environmental Management Act (NEMA).
- (xii) provide a receipt for any document, book, record or written or electronic information removed or any specimen, article, substance or other item removed and return anything removed within a reasonable period or, subject to Section 34D of NEMA, at the conclusion of any relevant criminal proceedings.

In addition to the powers set out in this By-law, an Environmental Management Inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) to comply with his or her mandate in terms of Section 31D of NEMA; and within the area of jurisdiction for which he or she has been designated.

**(d) Section 31 (i) of NEMA stipulated seizure of items as:**

- (i) The provisions of Sections 30 to 34 of the Criminal Procedure Act, 1977, apply to the disposal of anything seized in terms of this Part, subject to such modifications as the context may require.

- (ii) When an item is seized in terms of this Part, the Environmental Management Inspector may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the inspector may do so.
  - (iii) In order to safeguard a vehicle, vessel or aircraft that has been seized, the Environmental Management Inspector may immobilise it by removing a part.
  - (iv) An item seized including a part of a vehicle, vessel or aircraft must be kept in such a way that it is secured against damage.
  - (v) An Environmental Management Inspector may in the case of a specimen of a threatened or protected species or alien species being imported into the Republic, at the port of entry, request the person responsible for the import or that person's agent, to produce the original copies of the import permit, together with such other documentation as may be required; and in the case of a specimen of a threatened or protected species, being exported or re-exported from the Republic, at the port of exit, request the person responsible for the export or re-export or that person's agent to produce the original copy of the export or re-export permit, together with such other documentation as may be required.
- (e) Section 31 (j) of NEMA stipulate that Environmental Management Inspector Powers to stop, enter and search vehicles, vessels and aircraft as:**
- (i) An Environmental Management Inspector, within his or her mandate in terms of Section 31D, may without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal or any other mechanism of transport, on reasonable suspicion that that vehicle, vessel, aircraft, pack animal or other mechanism of transport is being or has been used, or contains or conveys anything which is being or has been used, to commit- an offence in terms of the law for which that inspector has been designated in terms of Section 31D; or a breach of such law or a term or condition of a permit, authorisation or other

instrument issued in terms of such law; or contains or conveys a thing which may serve as evidence of such offence or breach.

- (ii) An Environmental Management Inspector may, without a warrant, seize a vehicle, vessel, aircraft, pack-animal or any other mechanism of transport or anything contained in or on any vehicle, vessel, aircraft, pack-animal or other mechanism of transport which is concerned in or is on reasonable grounds believed to be concerned in the commission of an offence which may afford evidence of the commission or suspected commission of an offence which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence; or which, on reasonable grounds, is being utilised in a manner that is likely to cause significant pollution, impact or degradation of the environment.
- (iii) An Environmental Management Inspector may, for the purpose of implementing this By-law, at any time, and without a warrant order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or if necessary and possible, force the driver or pilot to stop or land, as the case may be.
- (iv) An Environmental Management Inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the powers mentioned in Section 31H.
- (v) An Environmental Management Inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of Section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint.
- (vi) An Environmental Management Inspector has, within his or her mandate in terms of Section 31D, all the powers of a member of the South African Police Service in terms of Section 13(8) of the South African Police Service Act, 1995.

**(f) 31 (k) of NEMA stipulated Environmental Management Inspector routine inspections as:**

- (i) An Environmental Management Inspector, within his or her mandate in terms of Section 31D, may at any reasonable time conduct routine

inspections and, without a warrant, enter and inspect any building, land or premises or search, including but not limited to, any vehicle, vessel, aircraft, pack-animals, container, bag, box, or item for the purposes of ascertaining compliance with the legislation for which that inspector has been designated in terms of Section 31D; or a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.

- (ii) An Environmental Management Inspector, within his or her mandate in terms of Section 31D, may, with a warrant, enter and inspect any residential premises for the purposes of ascertaining compliance with the legislation for which that inspector has been designated in terms of Section 31D; or a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.
- (iii) A magistrate may issue a warrant contemplated in subsection f(ii) only on written application by an Environmental Management Inspector setting out under oath or affirmation that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the Act for which that inspector has been designated in terms of Section 31D.
- (iv) An Environmental Management Inspector may in terms of subsection f(iii) enter and inspect any residential premises without a warrant, but only if the person in control of the premises consents to the entry and inspection; or there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or inspection.
- (v) While carrying out a routine inspection, an Environmental Management Inspector may seize anything in or on any, including but not limited to, business or residential premises, land or vehicle, vessel, aircraft, pack-animals, container, bag, box, or item that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.
- (vi) The provisions of Section 31I apply to anything seized in terms of subsection (d), subject to such modifications as the context may require.

- (vii) An Environmental Management Inspector may exercise on such building, land, premises, vehicle, vessel, aircraft, pack-animals, container, bag, box, item and the like any of the powers mentioned in Section 31H.

**(g) 31(l) of NEMA stipulated Environmental Management Inspector power to issue compliance orders as:**

An Environmental Management Inspector, within his or her mandate in terms of Section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied with a provision of the law for which that inspector has been designated in terms of Section 31D; or with a term or condition of a permit, authorisation or other instrument issued in terms of such law.

- (i) A compliance notice must set out details of the conduct constituting non-compliance, any steps the person must take, the period within which those steps must be taken, anything which the person may not do, the period during which the person may not do it; and the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.
- (ii) An Environmental Management Inspector may on good cause shown vary a compliance notice and extend the period within which the person must comply with the notice.
- (iii) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice in terms of subsection 2(g).
- (iv) A person who receives a compliance notice and who wishes to lodge an objection in terms of Section 31M may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.

## CHAPTER 2

### Reasonable measures to prevent air pollution

#### 6. Duty of care

- 1) No person may intentionally or negligently commit any act or omission which causes or is likely to cause air pollution.
- 2) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures, including the best practicable environmental option to—
  - (a) prevent any potential air pollution from occurring; and
  - (b) mitigate and, as far as reasonably possible, remedy any air pollution that has occurred.
- 3) The Municipality may direct any person who fails to take the measures required under subsection (2) to—
  - (a) investigate, evaluate and assess the impact of specific activities on the health of the environment and the public and report thereon;
  - (b) take specific reasonable measures before a specific date;
  - (c) diligently continue with those measures; and
  - (d) complete them before a specified reasonable date,

Provided that prior to such direction the Municipality must give such person adequate notice and direct him or her to inform the Municipality of his or her relevant interest, and the Municipality may consult with any other organ of state.

- 4) Any person who fails to comply or inadequately complies with a directive contemplated in subsection (3), the Municipality may take reasonable measures to remedy the situation and recover all reasonable costs incurred 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 the air pollution or the potential for air pollution occurred;
  - (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 the—
    - (i) activity or the process in question is or was performed or undertaken; or
    - (ii) situation came about; or
  - (d) any person who negligently failed to prevent the—
    - (i) activity or the process being performed or undertaken; or
    - (ii) situation from coming about.
- 5) 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 person was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (2) and (3).

## **CHAPTER 3**

### **7. Regulation of product and/or commodity merchants and distributors**

1) Any product and/or commodity merchant or distributor must for purposes of this By-law keep a record of the amount of product and/or commodity on the premises and such must be available upon request.

(a) Merchants / distributors of any product and/or commodity are required to apply with the Council in order to obtain the necessary permit.

(b) the application for a permit required in terms of subsection (1)(a) must be made on a prescribed form and be accompanied by all document required in such form.

2) The record of the amount of product and/or commodity on the premises must be reported to the Municipality on an annual basis on the prescribed form furnished by the Council.

## CHAPTER 4

### Legal mandate

#### **8. Local emission standards, norms and standards and air pollution control zones**

- 1) The Municipality 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 environment of the Municipality or which the air quality officer reasonably believes present such a threat; and
  - (b) in respect of each of those substances or mixtures of substances, publish local standards for emission from point, non-point or mobile sources in the Municipality.
- 2) The Municipality shall take the following factors into consideration in setting local emission standards:
  - (a) health, safety and environmental protection objections;
  - (b) analytical methodology;
  - (c) technical feasibility;
  - (d) monitoring capability;
  - (e) socio-economic consequences;
  - (f) ecological role of fire in vegetation remnants; and
  - (g) best practicable environmental option.
- 3) Any person who is emitting substances or mixtures of substances as referred to in subsection (1) must comply with the local emission standards published in terms of this By-law.

#### **9. Substances identification process**

- 1) The Municipality must, when prioritising the substances in ambient air that present a threat to public health, well-being or the environment, consider the following:



- (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 health or environmental impacts;
- (d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
- (e) the impact of the substances taking the following factors into consideration:
  - (i) size of the exposed population, living resources or ecosystems; and
  - (ii) the existence of particularly sensitive receptors in the zone concerned; and
- (f) substances that are regulated by international conventions.
- (g) The Municipality must, using the criteria set out in subsection (1), compile a list of substances in ambient air that present a threat to public health, well-being and the environment.

#### **10. Publication of local emission standards**

The Municipality must follow a consultative process in terms of chapter 4 of the Municipal Systems Act for the purposes of publication of the local emission standards.

#### **11. Declaration of air pollution control zone**

The whole area within the area of jurisdiction of the Municipality is hereby declared to be an air pollution control zone.

- 1) The Municipality may, within the air pollution control zone, from time to time by notice in the Provincial Gazette—
  - (a) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;
  - (b) prohibit or restrict the combustion of certain types of fuel;

- (c) declare smokeless zones, in which smoke with an obscuration of more than 10 percent may not be emitted; and
- (d) prescribe different requirements in an air pollution control zone relating to air quality in respect of:
  - (i) different geographical portions;
  - (ii) specified premises;
  - (iii) classes of premises;
  - (iv) premises used for specific purposes; or
  - (v) mobile sources.
- 2) The Municipality may develop and publish guidelines and policies, including technical guidelines, relating to the regulation of activities by persons which directly or indirectly cause air pollution within an air pollution control zone.
  - a) The Municipality may in writing exempt certain premises, classes of premises or premises used for specified purposes.

## **CHAPTER 5**

### **Application**

#### **12. Smoke emissions from premises other than dwellings**

For the purposes of this chapter, "premises" does not include dwellings.

- 1) Prohibition of dark smoke from premises
  - a) Dark smoke must not be emitted from any premises for a period as determined in terms of the Act.
  - b) Dark smoke shall be presumed to have been emitted from premises if it is shown that any fuel or material was burned on the premises and the circumstances were such that the burning was reasonably likely to give rise to the emission of dark smoke, unless the owner, occupier or operator, as the case may be, shows that no dark smoke was emitted.
  - c) Where an authorised official has observed a fuel-burning equipment emitting particulate emissions or dark smoke for a period of greater than that determined in terms of the Act, the authorised official may order the

owner, occupier or operator to immediately cease the operation of the fuel-burning equipment.

- d) The owner, occupier or operator, as the case may be, must keep records of all incidents where fuel-burning equipment are responsible for smoke of a shade darker than No.2 of Ringelman chart, and such records shall include the following:

- (i) the date and time of the incident;
- (ii) the reason for the excessive smoke; and
- (iii) the actions taken to eliminate the problem.

### **13. Smoke emissions from dwellings**

#### **Prohibition of emission of dark smoke from dwellings**

- 1) No person may emit or permit the emission of dark smoke from any dwelling which-
  - (a) causes or has the effect of or potential to cause a health or environmental risk;
  - (b) causes or has the effect of or potential to cause any damage, annoyance, inconvenience or discomfort to the public or the environment; or
  - (c) affects or has the potential to affect the well-being or reasonable comfort of a person or community.
- 2) the owner or occupier of any dwelling apply for a temporal exemption in writing to the Municipality and the Municipality may grant a temporary exemption in writing from one or all of the provisions of this Chapter.

## **CHAPTER 6**

### **Scheduled activities**

#### **14. Air Pollution from Premises**

- 1) The Council has identified a schedule of activities as specified in Annexure B which it reasonably believes causes or may cause significant air pollution
- 2) No person may without a permit from the Council conduct an activity which has been scheduled in terms of subsection (1).
- 3) The Council may amend the schedule contemplated in subsection (1) by –
  - (a) adding an activity to or removing an activity from that list; or
  - (b) making any change to the particulars on that list.
- 4) The Minister or the MEC may in terms of Section 21 of the National Environmental Management: Air Quality Act, (Act 39 of 2004) by notice in the Gazette publish a schedule of activities and if such schedule or amended schedule of activities contains any activity specified in Annexure B of this By-law:
  - (i) the activity so specified in annexure B of this By-Law is deemed to have been deleted from the annexure B of this By-law with effect from the date of publication of that notice; and
  - (ii) any permit contemplated in Section 14 (2), to the extent that it relates to that activity, lapses with effect from the date of publication of that notice.

#### **15. Permits for scheduled activities**

- 1) An application for a permit required in terms of Section 14(2) must be made on a prescribed form and be accompanied by –
  - (a) all document specified in such form; and
  - (b) the application fee of R5000
- 2) The Council may prior to taking a decision on any application in terms of subsection (1) by notice in writing require the applicant concerned to furnish it with the further information and documentation.

- 3) If any activity scheduled in terms of Section 14(1) is operative at the commencement of this By-law, the person concerned must lodge an application in terms of subsection 15 (1) within 90 (ninety) days of such commencement or a longer period allowed by the authorised officials.
- 4) The Council must, after consideration of all relevant factors –
- (a) approve an application in terms of subsection 15 (1); and prescribe conditions it considers appropriate; or
  - (b) refuse the application in terms of subsection 15 (1) and inform the applicant in writing of its decision and reasons for refusal of the application.
- 5) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of Section 36 of this By-law.
- 6) If an application in terms of subsection 15 (1) is approved, or an appeal in terms of Section 36 relating to that application is successful, an authorised official must forthwith issue a permit on a prescribed form to the applicant specifying any condition imposed in terms of subsection (4)(a).
- 7) an activity in respect of which a permit is required in terms of that section 14 (2) may be continued –
- (a) during a period contemplated in subsection (5); or
  - (b) if an application in respect of that activity is made in terms of subsection 15 (1), until the application concerned is refused and the applicant notified in terms of subsection (4)(b); and
  - (c) if an appeal is lodged in terms of Section 36 in respect of a condition imposed in terms of subsection (4)(a) or a refusal of an application in terms of subsection (4)(b), until such appeal is rejected and the appellant notified in writing by an authorised official of the decision.

**16. Lapsing of permits**

- (1) A permit issued in terms of Section 14(2) lapses
  - (a) the activity which is the subject of the permit ceases;
  - (b) the activity concerned is taken over by a new operator; or
  - (c) the name of the permit holder changes; or
  - (d) the permit is not renewed on or before the indicated expiry date.
- (2) The permit holder concerned must forthwith in writing advise the Air Quality Officer of any occurrence contemplated in subsection (1).

**17. Changing of scheduled activities**

- (1) No holder of a permit issued in terms of Section 14(2) may materially extend or alter an activity for which that permit was issued without the prior written approval of the Council.
- (2) Application for approval contemplated in subsection (1) must be made on a prescribed form and be accompanied by –
  - (a) the application fee (as contained in tariffs); and
  - (b) any written representations that the applicant may wish to submit.
- (3) The Council must, after consideration of all relevant factors and any representations in terms of subsection (2) –
  - (a) approve an application in terms of subsection (2) subject to any conditions it considers appropriate; or
  - (b) refuse the application in terms of subsection (2) and inform the applicant in writing of its decision and reasons for refusal of the application.

### **18. Termination of permits**

The Council may, cancel any permit issued in terms of Section 14(2) if the permit holder contravenes or fails to comply with any provision of these By-law or condition imposed in terms of Section 15 (4) (a).

### **19. Emissions from compressed ignition powered vehicles**

- 1) No person may drive a vehicle on a public road if it emits dark smoke.
- 2) A person commits an offence if he or she contravenes subsection (1).
- 3) For the purposes of enforcing the provisions of this Section, an authorised official may—
  - (a) by means of a signal instruct the driver of a vehicle to stop that vehicle; and
  - (b) instruct that driver to give all assistance required for the purpose of the inspection and testing of that vehicle.
- 4) An authorised official must, prior to any testing being undertaken in terms of subsection (3) (b) inform the driver of the vehicle that—
  - (a) the vehicle has been stopped to test it in terms of this By-law for the emission of dark smoke;
  - (b) the vehicle is being detained for the purpose of such testing; and
  - (c) if the results of such testing indicate that dark smoke is emitted from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this By-law.
- 5) Any person who fails to comply with a direction given under subsection (3)(a) commits an offence.
- 6) When a vehicle has stopped in compliance with a direction given under subsection (3)(a), the authorized official may test the vehicle at the roadside, in which case testing must be carried out at or as near as practicable to the place where the direction to stop the vehicle is given; and as soon as practicable, and in any case within 1 hour, after the vehicle is stopped in accordance with the direction.
- 7) An authorised official must use the following testing procedure in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of subsection (1):

- (a) when instructed to do so by the authorised official, the driver of the vehicle must apply a handbrake, start the vehicle, place it in neutral gear and engage the clutch;
  - (b) for a period required by an authorised official smoothly depress the accelerator pedal of the vehicle, until the engine reaches a revolution level of 3000 revolutions per minute or in the absence of a revolution counter to the extent directed by an authorised person; and
  - (c) while the accelerator pedal is depressed, the authorised official must measure the smoke emitted from the vehicle's emission system by using approved instrumentation in order to determine whether or not dark smoke is emitted.
- 8) After having conducted a test, an authorised official must furnish the driver of the vehicle concerned with the test results which indicate that either the vehicle is not emitting dark smoke or is emitting dark smoke in contravention of subsection (1) and if the driver is not the owner of the vehicle concerned, then it is presumed that the driver is the owner of the vehicle unless he or she produces evidence to the contrary.
- 9) An authorised official must furnish the driver of the vehicle with a certificate (valid for a period of 24 months) indicating that the vehicle is not being driven in contravention of subsection (1), if the test results indicate that the vehicle concerned is not emitting dark smoke.
- 10) An authorised official must issue the driver of the vehicle with a repair notice in accordance with subsection (11), if the test results indicate that the vehicle concerned is emitting dark smoke.
- 11) A repair notice must direct the owner of the vehicle to repair the vehicle within 6 months from the date of issue, and to take the vehicle to a place identified in the notice for re-testing before the expiry of the 6 months.
- 12) The repair notice must contain, amongst others, the following information—
- (a) the make, model and registration number of the vehicle;
  - (b) the name, address and identity number of the driver of the vehicle; and
  - (c) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.
- 13) A person commits an offence under this Section if the person fails—
- (a) to comply with the repair notice referred to in subsection (11);



- (b) to take the vehicle for re-testing as referred to in subsection (11).
- 14) It shall not be a defence in proceedings under subsection (13) to claim that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- 15) An authorised official must issue a notification in terms of Section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended, where the owner of the vehicle fails to take the vehicle for re-testing as referred to in subsection (11).

## **20. Installation and operation of fuel-burning equipment**

- 1) Any person wishing to install, alter, extend, replace or use any fuel-burning equipment on any premises must make an application to the Municipality for a fuel-burning equipment authorisation and pay the prescribed application fee.
- 2) No person shall install, alter, extend, replace or use any fuel-burning equipment on any premises without the written authorisation by the Municipality referred to in subsection (1).
- 3) Where fuel-burning equipment has been installed, altered, extended, replaced or used on premises contrary to subsection (1), the Municipality may, on written notice to the owner and occupier of the premises-
  - (a) order the removal of the fuel-burning equipment from the premises at the expense of the owner and occupier and within the period stated in the notice;
  - (b) direct the person to pay an administrative fine not exceeding R10 000 before the rectification of the unauthorised installation of the fuel-burning equipment can be considered; or
  - (c) revoke the authorisation granted under subsection (1).
- 4) The Municipality may take whatever steps it considers necessary in order to remedy the harm caused by the installation, alteration, extension, replacement or use of fuel-burning equipment on premises and prevent any further

occurrence, and may recover the reasonable costs so incurred from the person responsible for causing such harm.

5) Where the ownership of fuel-burning equipment approved in terms of subsection (1) is transferred, the new owner must apply to the Municipality for authorisation in terms of subsection (1) within 14 days of taking ownership.

6) Fuel-burning equipment must comply with the emission standards and conditions issued by the Municipality from time to time.

7) Where a boiler or boilers are operated on the same premises, the Municipality may require the person who uses or operates such a boiler or boilers to submit atmospheric emission reports to the Municipality.

8) The Municipality may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate an appropriate obscuration measuring equipment at his or her own cost, if —

(a) unauthorised and unlawful emissions of dark smoke from the relevant premises have occurred consistently and regularly over a period of at least two days;

(b) unauthorised and unlawful emissions of dark smoke from the relevant premises have occurred intermittently over a period of at least 14 days;

(c) fuel-burning equipment has been or is intended to be installed on the relevant premises which are reasonably likely to emit dark smoke;

(d) the person on whom the notice is served has been convicted more than once under this Chapter and has not taken adequate measures to prevent further contravention of the provisions of this Chapter; or

(e) the Municipality considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard to human health or the environment.

9) A notice referred to in subsection (8) must inform the person to whom it is addressed of—

- (a) that person's right to make written representations and to appear in person to present and dispute information and arguments regarding the notice, and must stipulate a reasonable period within which this must be done;
- (b) that person's right of appeal under Section 36;
- (c) that person's right to request written reasons for the issuing of the notice; and
- (d) the measures that must be taken and the potential consequences if the notice is not complied with.

## **21. Monitoring and sampling**

An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install obscuration-measuring equipment in terms of this bylaw must —

- (a) record all monitoring and sampling results and maintain a copy of this record for at least five years after obtaining the results;
- (b) if requested to do so by an authorised official, produce the record of the monitoring and sampling results for inspection;
- (c) if requested to do so by an authorised official, conduct stack emission monitoring to validate calculated data for applicable priority pollutants as identified in terms of the Act; and
- (d) if requested to do so by an authorised official, provide a written report, in a form and by a date specified by the authorised official, of part or all of the information in the record of the monitoring and sampling results.

## **22. Reporting requirements**

1) An owner or operator of any fuel-burning equipment, as the case may be, must—

- (a) immediately register with the National Atmospheric Emission Inventory System and submit emission data within a period determined by the Municipality;
  - (b) submit at least one calculated stack emission report per annum to the Municipality in a format as specified by the Municipality;
  - (c) provide any additional emission reports as may be requested by the Municipality;
  - (d) provide a maintenance plan per annum for all fuel-burning equipment;
  - (e) produce annual records of ash management and its disposal thereof; and
  - (f) submit the first emission report to the Municipality within 12 months from the date of promulgation of this By-law.
- 2) An owner or operator of fuel-burning equipment must keep a complaint's register at the premises and make such register available for inspection by the Municipality as and when the needs for such inspection arises.
- 3) The complaints register must include the following information:
- (a) the nature of the complaint;
  - (b) the name, physical address and telephone number of the complainant;
  - (c) the date and time when the complaint was registered; and
  - (d) details of the steps taken by the owner or operator of fuel burning equipment to investigate the complaint and remedy the issue that triggered the complaint.

### **23. Temporary exemption**

- 1) Subject to Section 20 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the Municipality may grant a temporary exemption in writing from one or all the provisions of this Chapter.
- 2) Any exemption granted under subsection (1) must state at least the following:

- (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
  - (b) the reasons for granting the exemption;
  - (c) the conditions attached to the exemption, if any;
  - (d) the period for which the exemption has been granted; and
  - (e) any other relevant information.
- 3) The Municipality may not grant a temporary exemption under subsection (1) until—
- (a) the applicant has advertised the application for an exemption in a manner determined by the Municipality, affording the public an opportunity to make representations to the Municipality in respect of such application;
  - (b) the applicant has taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the temporary exemption, including adjacent land owners or occupiers, are aware of the application for temporary exemption; and
  - (c) it has duly considered and taken into account any objections raised in respect of the application.

## **CHAPTER 7**

### **Dust emissions**

#### **24. Dust emissions caused by open burning and burning of material**

- 1) Merchants / distributors of any product and/or commodity that causes dust are required to apply with the Council in order to obtain the necessary permit.
- 2) The application for a permit required in terms of subsection (1) must be made on a prescribed form and be accompanied by any document required in such form.
- 3) Any person who causes or permits dust emissions to occur, must adopt the best practicable environmental option to the satisfaction of the Municipality, to prevent and abate dust emissions into the atmosphere that may be

harmful to public health and well-being or is likely to cause a nuisance to persons residing or present in the vicinity of such land, activity or premises.

**25. Prohibition of emissions caused by open burning and burning of material**

- 1) Subject to the provisions of subsection (2), no person may carry out any open burning;
- 2) The provisions of subsection (1) do not apply to open burning that use only coal or biomass or both –
  - (a) for any recreational outdoor activity on any premises; or
  - (b) at a dwelling for purposes of heating any area in that dwelling, cooking, heating water or for any other domestic purpose.

**26. Authorisation of emissions caused by open burning and burning of material**

- 1) Subject to subsection (4), any person who intends to carry out open burning of any material on any land or premises, must apply to the Municipality for prior written authorisation of such open burning.
- 2) The Municipality may, in the written authorisation referred to in subsection (1), impose conditions with which the person requesting authorisation must comply.
- 3) The Municipality may not authorise open burning referred to in subsection (1) unless it is satisfied that the following requirements have been adequately addressed or fulfilled:
  - (a) the material will be open burned on the land from which it originated;
  - (b) the person requesting authorisation has investigated and assessed every reasonable alternative for reducing, reusing or recycling the material in order to minimize the amount of material to be open burned, to the satisfaction of the Municipality;

- (c) the person requesting authorisation has investigated and assessed every reasonable alternative for removing the material from the land or premises to the satisfaction of the Municipality;
  - (d) the person requesting authorisation has investigated and assessed the impact the open burning will have on the environment by means of a specialist study, as requested by the Municipality;
  - (e) the person requesting authorisation has notified in writing the owners and occupiers of all adjacent properties of—
    - (i) all known details of the proposed open burning;
    - (ii) the reason for the burning;
    - (iii) the date and approximate time of the burning;
    - (iv) in the event of inclement weather conditions, an alternative date or dates on which the burning may occur; and
    - (v) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the Municipality within 7 days of being notified;
  - (f) the prescribed fee has been paid to the Municipality;
  - (g) a warning under Section 10(1)(b) of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998) has not been published for the region;
  - (h) the land on which that person intends to open burn the material is state land, a farm or small-holding, or land within a township that is not utilised for residential purposes;
  - (i) the open burning is conducted at least 100 metres from any buildings or structures; and
  - (j) the open burning will not pose a potential hazard to human health or safety, private property or the environment.
- 4) The provisions of this Section shall not apply to —
- (a) recreational outdoor barbecue or braai activities on private premises or designated public places;
  - (b) small controlled fires in any land or premises for the purposes of cooking, heating water and other domestic purposes;
  - (c) sugar cane burning; and
  - (d) any other area or activity to which the Municipality has declared this Section not to apply.

**27. Prohibition of tyre burning and burning of rubber and other material for the recovery of metal**

- 1) No person may without authorisation in writing from the Municipality—
  - (a) carry out or permit the burning of any tyres, rubber or other synthetically coated, covered or insulated products and electronic or other equipment on any land or premises;
  - (b) carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for the purpose of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, or the rubber products or cables as waste
- 2) The Municipality may—
  - (a) take whatever steps it considers necessary in order to remedy the harm caused by the burning referred to in subsection (1) (a) and (b) and the possession referred to in subsection (1) (c), and prevent any occurrence of it;
  - (b) recover the reasonable costs incurred from the person responsible for causing such harm; and
  - (c) for the purposes of gathering evidence, confiscate any burnt metal or metal reasonably suspected of being recovered, possessed, stored, transported or traded from burning referred to in subsection (1) where authorisation has not been obtained or cannot be provided.

**28. Emissions from Sugar cane burning**

- 1) Any person who is in control of premises where sugarcane is cultivated and will be burnt may register with a Fire Protection Association (FPA) that is contemplated in the National Veld and Forestry Act, 1998 (Act No. 101 of 1998) and must comply with the constitution, minimum requirements, guidelines and rules of such FPA.
- 2) Any person who is in control of premises where sugarcane is cultivated and will be burnt and is not registered with any FPA must —
  - (a) consult with the South African Weather Services for wind speed, wind direction;



- (b) comply with the National fire danger rating system when preparing to burn sugar cane for harvesting;
- (c) declare a 'no burn' if a Fire Detection Index of 55 or above is predicted for the burn day;
- (d) declare a 'no burn' when the atmospheric conditions negatively impact (smut deposits, smoke, heat, etc.) onto sensitive areas like schools, recreational areas, clinics, hospitals, residential units, District & National roads, telecommunication links, power lines and special areas of interest such as the Richards Bay Airport;
- (e) declare a 'no burn' when there is a strong temperature inversion and after 19H00 and before 05H00;
- (f) record the controlled burns (fields burnt/fire breaks) and unplanned burns (arson /runaway fires) and include the date and time of burning and prevailing wind direction and wind speed; and
- (g) not exercise any burning on weekends and public holidays.

## **CHAPTER 8**

### **Control of emissions that cause a nuisance**

#### **29. Emissions that cause a nuisance**

- 1) No person may, within the area of jurisdiction of the Municipality—
  - (a) inside an approved spray area or spray booth, spray or apply any coat, plate or epoxy coat to any vehicle, article or object, so as to cause a nuisance; or
  - (b) outside an approved spray area or spray booth, allow any spray, coat, plate or epoxy coat to be applied to any such vehicle, article or object.
- 2) The spray area or spray booth referred to in subsection (1) must be constructed and equipped in such a manner that complies with the requirements of the Municipality and any applicable law.
  - (a) Any person conducting sand blasting, shot blasting, grinding, finishing or similar activities which customarily produce emissions of dust that maybe harmful to public health or cause a nuisance, shall take control measures to prevent emissions into the atmosphere.

- (b) Any person undertaking an activity referred to in subsection (2)(a) must implement—
  - (i) dust extraction control measures; or
  - (ii) any alternative control measure approved by the Municipality.
- 3) An occupier or owner of any premises must-
  - (a) prevent the existence of any nuisance in, or the emission of any nuisance from, his or her premises; and
  - (b) take all reasonable steps to prevent the nuisance caused by fumes due to any activity on such premises.

## **CHAPTER 9**

### **Control of offensive odours**

#### **30. Offensive Odours**

- 1) The occupier or owner of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.
- 2) Council may prescribe measures, best practical means or abatement equipment to be used to prevent or mitigate the emission of offensive odours.
- 3) Council may prohibit any activity or process that creates continuous offensive odours if the measures prescribed in terms of subsection 2 are not effective.
- 4) Any person who emits or permits the emission of any offensive odour in contravention of subsections (1), (2) and (3) commits an offence.

## **CHAPTER 10**

#### **31. Enforcement**

##### **1) Inspections**

- (a) An authorized official may for any purpose relating to the implementation

and enforcement of this By-law –

- (i) At any time during which an activity which is relevant in respect of the implementation or enforcement of these By-law is carried out on a property, enter any property and carry out an inspection for the purposes of this By-law.
- (b) An authorized official must, before the commencement of, or during an inspection in terms of subsection (1), at the request of any person concerned, produce written confirmation of his or her appointment as an air quality officer or an authorised official empowered to carry out inspections for the purposes of this By-law.
- (c) An authorised official carrying out an inspection in terms of these By-law, must conduct himself or herself with strict regard to decency and orderliness and with due regard to any person's rights contained in the Bill of Rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996.

## **2) Entry into premises**

- (a) An authorised official may enter any premises if he or she suspects on reasonable grounds that any condition or situation occurring on any such premises constitutes a violation of this By-law and causes or is likely to cause an environmental or human health impact or nuisance.
- (b) An authorised official may enter any premises and–
  - (i) conduct any search, inspection, audit or monitoring with or without appointment, in order to ensure compliance with this By-law;
  - (ii) take samples of any substance that is relevant to the search, audit, monitoring or inspection;
  - (iii) question any person who he or she believes may have information relevant to the search, inspection, audit, monitoring or any purpose which is connected with this Bylaw;
  - (iv) require the person in charge of such premises to produce, for inspection or for the purpose of obtaining copies or extracts thereof or there from, any document that such person is required to maintain in terms of any law or any other document which may assist the authorised official to obtain the required information;

- (v) examine any books, documents, recordings or electronic data and take extracts there from; and
- (vi) deliver any notice in terms of this By-law.
- (c) An authorised official seeking entry into premises in terms of subsection (1) must, immediately before entering the premises in question—
  - (i) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and
  - (ii) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search.
- (d) An authorised official who is performing a function under this By-law may ask any question or request any information or documentation, which might assist him or her to carry out his or her duties in terms of this By-law.

### **3) Compliance notices**

- (a) The Municipality may issue a compliance notice in the prescribed form if it has reasonable grounds to believe that a person has not complied—
  - (i) with a provision of this By-law; or
  - (ii) with a condition of the permit issued in terms of this By-law.
- (b) A compliance notice must include—
  - (i) details of the conduct, activity, condition or situation constituting non-compliance;
  - (ii) the steps the person must take to comply with this By-law or conditions of the permit and the time period within which those steps must be taken; and
  - (iii) the procedure to be followed in lodging an objection to the compliance notice.
- (c) The Municipality may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.
- (d) A person who receives a compliance notice must comply with that notice within the time period stipulated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice.

- (e) If a person fails to take steps stipulated in the compliance notice, the Municipality may –
- (i) by notice in writing, suspend or withdraw any permit granted in terms of this By-law;
  - (ii) apply for an order of court to close down any activity or process which constitutes a violation of the permit; and
  - (iii) cause the responsible person to be prosecuted for an offence in terms of this By-law; or
- (f) in the case of a person who has not been issued with a permit-
- (i) apply for an order of court to close down any activity or process which constitutes a scheduled activity in terms of this By-law; and
  - (ii) cause the responsible person to be prosecuted for an offence in terms of this By-law.
- (g) Where the Municipality believes that there is imminent or irreversible threat of harm to the environment or the health, safety or well-being of any person or the public as a result of any scheduled activity carried out on premises as contemplated in this By-law, the Municipality may take urgent action to remedy the situation and dispense with the requirements of subsections (1) to (5).
- (h) A compliance notice remains in force until it has been complied with to the satisfaction of the Municipality, and the Municipality has issued a compliance certificate to that effect.
- (i) Should a responsible person fail to comply, or inadequately comply with the notice, or if urgent action is needed as contemplated in subsection (6), the Municipality may take reasonable measures to remedy the situation and may recover all costs incurred from the responsible person.
- (j) No person shall be entitled to compensation for any loss or damage arising out of any bona fide action or decision by the Municipality or any authorised official in terms of this Bylaw.

#### **4) Prohibition notice**

- (1) The Air Quality Officer or Environmental Management Inspector may, after inspecting premises, serve a prohibition notice prohibiting the

premises from being used for specified purposes and requiring measures to be taken to ensure that this occurs, on one or more of the following persons:

- (a) the owner of the premises;
  - (b) the occupier of the premises; or
  - (c) any person apparently in charge of the premises.
- (2) If the Air Quality Officer or Environmental Management Inspector reasonably believes that that person has not complied with the terms of a compliance notice.
- (3) The Air Quality Officer or Environmental Management Inspector must give the person on whom he or she intends serving a prohibition notice a reasonable opportunity to make representations before serving the notice unless the Air Quality Officer or Environmental Management Inspector reasonably believes that the delay in doing so would significantly compromise public health, in which case the person on whom a prohibition notice is served must be given reasonable opportunity to make representations why it should be withdrawn.
- (4) A prohibition notice must state –
- (a) the reasons for serving the notice;
  - (b) whether or not the Council will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;
  - (c) the possible consequences of failing to comply with the notice; and
  - (d) how to appeal against the notice.
- (5) The Air Quality Officer or Environmental Management Inspector must as soon as possible affix a copy of the notice in a conspicuous position on the premises

#### **5) Withdrawal of prohibition notice**

- (1) The Air Quality Officer or Environmental Management Inspector must, within 48 hours of receiving a written request for the withdrawal of a prohibition contained in a prohibition notice, carry out an investigation of the premises.
- (2) After completing the investigation, the Air Quality Officer or Environmental Management Inspector must inform the person on whom the prohibition

notice was served or that person's agent in writing, whether or not the prohibition has been removed or the prohibition order withdrawn.

- (3) The Council may charge the owner or occupier of any premises where an investigation is carried out in terms of subsection (1), a prescribed fee for undertaking the investigation.

#### **6) Municipal remedial work and recovery of costs**

- (1) The Council may enter any premises and perform any function on the premises that it reasonably considers necessary –
- (a) to ensure compliance with these bylaw or with any compliance notice or prohibition notice;
  - (b) to reduce, remove or minimise any public health nuisance; or
  - (c) to reduce, remove or minimise any public health hazard.

#### **7) Cost orders**

- (1) The Council may recover any costs reasonably incurred by it in taking measures contemplated in Section 33 from any person who was under a legal obligation to take those measures, including –
- (a) a person on whom a compliance notice referred to in Section 31(3) that required those steps to be taken, was served;
  - (b) the owner or occupier of the premises concerned; or
  - (c) any person responsible for creating a public health hazard or a public health nuisance.
- (2) The Municipal Manager may issue a cost order requiring a person who is liable to pay costs incurred by the Council in terms of subsection (1), to pay those costs by a date specified in the order and such order constitutes prima facie evidence of the amount due.

### **32. Abatement notice**

- 1) An authorised official may serve an abatement notice on any person whom he or she reasonably believes is likely to act contrary or has acted contrary to this By-law, calling upon that person to—
- (a) abate the nuisance within a period specified in the notice;

- (b) take all necessary steps to prevent a recurrence of the nuisance; and
- (c) comply with any other conditions contained in the notice.

### **33. Steps to abate nuisance**

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

### **34. Offences**

- 1) A person commits an offence if he or she-
  - (a) contravenes any provision of this By-law;
  - (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-law;
  - (c) fails to comply with the terms of any notice given or signage displayed in terms of this By-law;
  - (d) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or
  - (e) furnishes false information to an authorised official in respect of any issue pertaining to this By-law;
  - (f) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

### **35. Penalties**

- 1) Any person who is convicted of an offence under this By-law is be held liable to a fine of an amount not exceeding R5000 000 or to a period of imprisonment of not more than 5 years, or to both fine and imprisonment.
- 2) In the case of a continuing offence, an additional fine of an amount not exceeding R10 000 000 or imprisonment for a period not exceeding 10 years, for each day on which such offence continues or both fine and imprisonment.
- 3) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law to—



- (a) remedy the harm caused;
  - (b) pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and
  - (c) install and operate at the person's own expense any equipment or technology required to mitigate the adverse effect caused by air emissions.
- 4) In addition to any other penalty the court may impose, it may order a person convicted of an offence under this By-law to take such steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

### **36. Appeals**

- 1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of Section 62 of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons thereof to the Municipal Manager within 21 days of the date of the notification of the decision.
- 2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority within his or her area of jurisdiction.
- 3) The appeal authority must commence with an appeal within six weeks of receiving the appeal from the Municipal Manager and decide the appeal within a reasonable period.
- 4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.
- 5) The appeal authority must furnish written reasons for its decision on all appeal matters.
- 6) All appeals lodged are done so in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.
- 7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of this By-law.

## **CHAPTER 11**

### **General matters**

#### **37. Reporting of emissions in the National Atmospheric Emission Inventory System (NAEIS)**

Any person who is conducting activities that are listed in Schedule "1" of this By-law or any person that is conducting activities below the threshold that is listed in the Act's list of activities that result in atmospheric emission which have or may have a significant detrimental effect on the environment including health, social conditions, economic conditions, ecological conditions or cultural heritage must register with NAEIS and submit emission data within a period determined by the Municipality.

#### **38. Exemptions**

- 1) Any person may, in writing, apply to the Municipality for exemption from the application of a provision of this By-law.
- 2) An application in terms of subsection (1) must be accompanied by substantive reasons.
- 3) The Municipality 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.
- 4) The steps contemplated in subsection (3) must include the publication of a notice in at least one newspaper, circulating within the jurisdiction of the Municipality—
  - (a) giving reasons for the application; and
  - (b) containing such other particulars concerning the application as the air quality officer may require.
- 5) The Municipality may—
  - (a) impose conditions it deems necessary, when granting an application for exemption;
  - (b) from time to time review any exemption granted in terms of this Section, and may impose such conditions as it may determine; and

- (c) on good grounds withdraw any exemption.
- 6) The Municipality may not grant an exemption under subsection (1) until it has—
  - (a) taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
  - (b) provided such persons with a reasonable opportunity to object to the application; and
  - (c) duly considered and taken into account any objections raised.

### **39. Delegations**

- 1) Subject to the Constitution and applicable national and provincial law, any power, excluding a power referred to in Section 160(2) of the Constitution; function; or duty conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor, or staff member, to an entity within, or a staff member employed by, the Municipality.
- 2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with Section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), subject to the criteria set out in Section 59(2) of said Act.
- 3) Any delegation contemplated in this Section must be recorded in the Register of Delegations, which must contain information on the -
  - (a) entity or person issuing the delegation or sub-delegation;
  - (b) recipient of the delegation or sub-delegation; and
  - (c) conditions attached to the delegation or sub-delegation.

### **40. Indemnity**

- 1) The Municipality and its employees are not liable for any loss or harm suffered by any person, or any damage caused to any property or premises, as a result of the Municipality acting in terms of this By-law: Provided that the Municipality and its employees must, when exercising such function or performing such duty, take reasonable steps to prevent any harm, loss or damage from occurring.

**41. Transitional provisions**

- 1) Any person who has permission issued in terms of the—
  - (a) Environmental Health Bylaw for the uMhlathuze Local Municipality, as approved by Council, (gazetted on 14 September 2006, MN16)
- 2) Any person who is undertaking an activity or process which is listed as a scheduled activity in this By-law, but which was not listed in the Schedule of the By-law mentioned in subsection (1) (a) immediately before the date of promulgation of this By-law, must comply with all applicable provisions of this By-law within 12 months of the date of promulgation of this By-law.
- 3) Notwithstanding subsection (2), the Municipality may in writing require or allow a person contemplated in subsection (2) to comply with any provision of this By-law at, and within, any time that is, in the Municipality's opinion, reasonable: Provided that all persons must comply with the provisions of this By-law within 3 years of its promulgation.

**42. Short title and commencement**

This By-law is called the uMhlathuze Municipality: Air Quality Management By-law, 2024 and takes effect six months from the date of publication thereof in the Provincial Gazette or on such earlier date as may be determined by the publication of a commencement notice in the Provincial Gazette.

**ANNEXURE A****NOTICE TO BE PUBLISHED BY APPLICANT FOR PERMISSION OF THE COUNCIL TO USE PREMISES FOR THE CARRYING ON OF A SCHEDULED TRADE****CITY OF UMHLATHUZE : AIR QUALITY MANAGEMENT BYLAW**

Notice is hereby given that an application will be made in terms of the above-mentioned Bylaw to the Council of the City of uMhlathuze, for permission to use premises at the following address –

.....  
.....

(Insert site address)

for the following purposes

.....  
.....

(Description of purposes and nature of trade or proposed to be carried on) (check your company category/ies under Annexure B

Any person desiring to object to the use of the above-mentioned premises for such purposes may do so by lodging on or before ..... a written notice setting out the grounds of his objection, with the Municipal Manager, City of uMhlathuze (Maximum 21 days)

Name and address of applicant

.....  
.....  
.....

**NB: Ensure that objections are directed to:**

**The Municipal Manager  
AIR QUALITY MANAGEMENT UNIT  
City of uMhlathuze  
Private Bag x1004  
RICHARDS BAY  
3900  
Att: AIR QUALITY MANAGEMENT UNIT  
[Airquality@umhlathuze.gov.za](mailto:Airquality@umhlathuze.gov.za)**

**ANNEXURE B****LIST OF SCHEDULED TRADES/ ACTIVITIES**

1. Panel beating or spray painting;
2. Operating a waste recycling plant including oil and petroleum product recycling;
3. Scrap yard or scrap metal dealing;
4. Parchment making;
5. Sintering of sulphurous materials;
6. Viscose works;
7. Ore or mineral smelting, calcining, puddling or rolling of iron or other metal, conversion of pig iron into cast iron, reheating, tempering, hardening, forging, conversion or compounding of carbon with iron or other metals;
8. Works for the production of carbon bisulphide, cellulose lacquer, cyan or its compounds, hot pitch or bitumen, pulverized fuel, peridine, liquid or gaseous sulphur dioxide or sulphur chlorides;
9. Works for the production of amyl acetate, aromatic ethers, butyric acid, caramel, enamelled wire, glass, hexamine, lampblack, B-naphthol, resin products, salicylic acid, sulphated organic compounds, sulphurous paints, ultramarine, zinc chloride or zinc oxide;
10. Bacon factories and meat-processing factories;
11. Food-processing factories;
12. Chemical works;
13. Dye works;
14. Breweries and distilleries;
15. Malt and yeast manufacturing works;
16. Sugar mills and sugar refineries;
17. Works or premises used for the storing or mixing of manure, super phosphate or fertilizers;
18. Fat-melting or tallow-melting works and any similar works or establishments for dealing with meat, bones, blood or offal, or with other organic matter derived from animals or poultry;

19. Works or premises used for the manufacture, storage or mixing of meal derived from fish, crustacea, poultry, meat offal from animals or poultry, or other organic matter derived from animals or poultry;
20. Works or premises used for storing, drying, preserving, or otherwise processing bones, horns, hoofs or other waste matter or excretions from animals or poultry;
21. Premises used for storing, sorting or dealing with hides and skins, or for fellmongery;
22. Tanning and leather-dressing works;
23. Slaughter houses or abattoirs and knackers' yards;
24. Glue or size factories;
25. Gut-scraping works;
26. Tripe-cleaning or tripe-boiling works;
27. Soap or candle works;
28. Wool-scouring or wool-washing works;
29. Processing of fish products;
30. Whaling stations, and premises or works used for storing or processing material derived from whales;
31. Paper mills or paper works;
32. Sawmills, wood bark grinding, chipping or extracting work, and destructors;
33. Landfill sites, sewage treatment and water purification plants and activities;
34. Crematoria;
35. Lead-smelting works;
36. Oil refineries and works concerned with the processing of products of petroleum refining;
37. Paint and varnish works;
38. Rubber works, including retreading or motor vehicle tyres;
39. Brick-burning and lime-burning works;
40. Stone-crushing and stone-dressing works;
41. Asbestos works – any processes where asbestos is used, milled or handled;
42. Cement works;
43. Metallurgical works;
44. Reduction works and ore-dressing works;
45. Charcoal burning and brick burning;

- 46. Works or premises where sand or shot blasting or similar dust or grit producing processes is applied;
- 47. Dry cleaning establishments; and
- 48. The handling or storage of any substance or material, which can lead to a public health hazard.

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