

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. R. 1738

11 February 2022

**NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004
(ACT NO. 39 OF 2004)**

**CONSULTATION ON PROPOSED REGULATIONS FOR IMPLEMENTING AND ENFORCING
PRIORITY AREA AIR QUALITY MANAGEMENT PLANS**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby under section 20, read with sections 56 and 57, of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), hereby initiate public consultation on the proposed Regulations for implementing and enforcing Priority Area Air Quality Management Plans, as set out in the Schedule hereto.

Despite concerted attempts to implement various emission control measures and tools in the areas declared as Priority Areas, including specific air quality management interventions to bring these areas into compliance with the National Ambient Air Quality Standards, emissions of certain pollutants continue to result in persistent non-compliance with these standards.

These Regulations set out the requirements necessary for implementing and enforcing approved Priority Area air quality management plans, including funding arrangements, measures to facilitate compliance with such plans, penalties for any contravention of or any failure to comply with such plans and regular review of such plans. Once implemented, the Regulations will provide for mandatory implementation of interventions; provide mechanisms for government to monitor and evaluate the effectiveness of the plans, as well as to activate enforcement measures where non-compliance is identified. They apply to all key stakeholders identified to be significant contributors to poor air quality in the respective air quality management plans, including listed activities; controlled emitters; mining operations and government stakeholders.

On their nature, these Regulations do not introduce new emission control tools or mandates, but rather coordinate the implementation of already regulated tools and functions. Implementation of the Regulations is thus not envisaged to result in additional cost to the regulated community and government. The anticipated outcome of the Regulations is improved implementation of, and compliance with, Priority Area air quality management plans resulting in ambient air that complies with National Ambient Air Quality Standards with the concomitant reduction in negative public health impacts. The main beneficiaries of the effective implementation of the Regulations are the communities within the Priority Areas who will benefit from reduced medical costs and a reduced burden of upper respiratory disease, especially vulnerable groups such as the aged, children, and people with underlying health issues.

The department does not anticipate a significant risk of undesirable cost increases due to the introduction of the Regulations. Social groups have committed their support to the establishment of the Regulations to enforce implementation of priority area air quality management plans.

Members of the public are invited to submit to the Minister, within 30 days from the date of the publication of this Notice in the *Gazette*, written inputs or comments on the draft Regulations for implementing and enforcing Priority Area Air Quality Management Plans to any of the following addresses:

By post to: The Director-General: Department of Forestry, Fisheries and the Environment
Attention: Mr Olebogeng Matshediso
Private Bag X447
PRETORIA
0001

By hand at: Ground floor (Reception); Environment House 473 Steve Biko Road, Arcadia, 0083

Please note that anyone entering the Department's building will be subjected to COVID 19 procedures. Due to the COVID 19 pandemic delivering comments by hand at the Department is being discouraged.

By e-mail: OMatshediso@dfre.gov.za

Any inquiries in connection with the notice can be directed to Mr Victor Loate at (012) 399 8507 or (079) 354 9429 by Email: VLoate@dfre.gov.za

Representations or Comments received after the closing date may be disregarded.



BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

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1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates—

“**air quality management plan**” means a plan referred to in section 19(1)(a) of the Act;

“**controlled emitter**” means any emitter declared in terms of section 23(1) of the Act;

“**emission reduction interventions**” means interventions or activities to minimise or prevent emissions, including measures to facilitate compliance, which the identified stakeholders have to implement by the target date(s);

“**emission reduction and management plan**” means the emission reduction and management plan prepared and submitted by the identified stakeholders that aims to minimise, prevent and manage emissions;

“**identified stakeholders**” means the stakeholders that have been identified to have a role in the implementation of the air quality management plan;

“**listed activity**” means any activity listed in terms of section 21 of the Act;

“**mining operation**” means a mining operation as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No.28 of 2002);

“**national air quality officer**” means an officer as defined in section 1 of the Act;

“**person**” includes a juristic person;

“**priority area**” means the priority area as defined in section 1 of the Act;

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

“**these Regulations**” means the Regulations for implementing and enforcing Priority Area Air Quality Management Plans, 2021.

2. Purpose

The purpose of these Regulations is to prescribe requirements for implementing and enforcing priority area air quality management plans.

3. Application

These Regulations apply to stakeholders identified in the air quality management plan, including:

- (a) Anyone conducting a listed activity;
- (b) A controlled emitter;
- (c) A mining operation; and
- (d) National; provincial and local spheres of government.

4. Emission reduction interventions

- (1) The identified stakeholders, listed under regulation 3 of these Regulations, must implement emission reduction interventions assigned to them within the specified timeframes as set out in the air quality management plan.

- (2) The atmospheric emission licensing authority must incorporate the emission reduction interventions assigned to a listed activity in the atmospheric emission licence.
- (3) The emission reduction interventions for spheres of government will be managed as follows:
 - (a) The emission reduction interventions assigned to a municipality must be included in the municipal air quality management plan;
 - (b) The emission reduction interventions assigned to a province must be included in the provincial air quality management plan; and
 - (c) The emission reduction interventions assigned to a national department must be included in the departmental environmental implementation plan.

5. Emission Reduction and Management Plan

- (1) The identified stakeholders must submit the emission reduction plan to the national air quality officer for approval within the timeframes specified in the air quality management plan.
- (2) The identified stakeholder must implement the approved plan submitted in terms of sub-regulation (1) within the timeframes specified in the air quality management plan.
- (3) The emission reduction and management plan must include:
 - (a) Stakeholder name;
 - (b) Emission reduction activities;
 - (c) Full description of the emission reduction activities;
 - (d) Implementation timeframes; and
 - (e) Monitoring and evaluation process.

6. Funding and/or Resources for the Implementation of the Air Quality Management Plan

- (1) The identified stakeholder must provide necessary resources for the implementation of the air quality management plan.

- (2) The Minister may, where reasonable and necessary, provide complimentary resources to provinces and municipalities responsible for the implementation of the air quality management plan.

7. Reporting Requirements

- (1) Annual progress reports on the implementation of the air quality management plan must be presented by the national air quality officer to the committee identified in terms of section 19(6)(c) of the Act.
- (2) The identified stakeholder must attend and report to the committee identified in terms of section 19(6)(c) of the Act.

8. Review of the Emission Reduction and Management Plans

- (1) The review of the emission reduction and management plan must be undertaken by the identified stakeholders every five years from the date of submission of the air quality management plan.
- (2) The reviewed emission reduction and management plan must be submitted by the identified stakeholder to the national air quality officer for approval.

9. Review of the Air Quality Management Plan

- (1) The national air quality officer must, after 5 years of the publication of the air quality management plan, undertake a review of this plan, and submit the reviewed plan to the Minister for approval.

10. Offences

- (1) A person identified as a stakeholder under regulation 3(a), (b) and (c) of these Regulations, is guilty of an offence if that person—
 - (a) provides incorrect or misleading information in the emission reduction and management plans submitted in terms of these Regulations;

- (b) fails to implement emission reduction interventions assigned to them within the specified timeframes in terms of regulation 4(1) of these Regulations;
- (c) fails to submit the emission reduction plan to the national air quality officer for approval within the timeframes in terms of regulation 5(1) of these Regulations;
- (d) fails to implement the approved plan submitted in terms of regulation 5(2) of these Regulations;
- (e) fails to attend and report to the committee in terms of regulation 7(2) of these Regulations; or
- (f) fails to comply with regulation 8 of these Regulations.

11. Penalties

A person found guilty of an offence in terms of regulation 10 of these Regulations is liable in the case of a first conviction to a fine not exceeding five (5) million Rands or imprisonment of a period not exceeding five (5) years, and in the case of a second or subsequent conviction, to a fine not exceeding ten (10) million Rands or imprisonment for a period not exceeding ten (10) years, or to both fine and such imprisonment.

12. Short title and commencement

These Regulations are the Regulations for implementing and enforcing Priority Area Air Quality Management Plans, 2021 and will come into operation on the date of publication in the *Government Gazette*.