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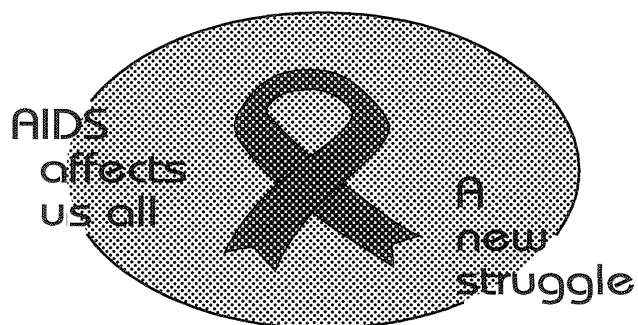
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## **LOCAL AUTHORITY NOTICE**

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**LOCAL AUTHORITY NOTICE 95**

**LOCAL MUNICIPALITY**

**OF**

**MADIBENG**



**MADIBENG BY-LAW NO. 1/2014**

**Air Quality Management By-Law**

This By-law was adopted by the Madibeng Local Municipality on 3 December 2013 by Resolution No A.0444, in terms of Section 12(2) of the Local Government: Municipal systems Act, 2000 (Act No 32 of 2000), as amended and will take effect upon date of publication in the Provincial Gazette of the North West Province.

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## CHAPTER 1

### DEFINITIONS, OBJECTIVES, APPLICATION AND AIR POLLUTION DUTY OF CARE

#### 1. Definitions

In this By-law any word or expression to which a meaning has been assigned in the By-law and the relevant SANS Standards, shall have the meaning so assigned to it and, unless the context otherwise indicates:

**“Adjacent properties”** means any property within 500m radius from the boundary of the premises;

**"Air Pollution"** means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances;

**"Air Pollutant"** means any substance included in the definition of “Air Pollution” that causes or may cause air pollution;

**“Atmosphere”** means air that is not enclosed by a building, machine, chimney or other structure enclosing air;

**“Air Quality Officer”** means an officer appointed in terms of section 14 of the Air Quality Act and is also an Authorised person;

**“Activity”** means any action which results in air pollution that has or may have an adverse effect on the environment, including health, social conditions, economic conditions, ecological conditions and cultural heritage;

**"Ambient sound level"** means the reading of an integrating sound level meter measured at the measuring point at the end of total period of at least 10 minutes after such integrating sound level meter has been put into corporation, during which period a noise alleged to be a disturbing noise is absent;

**"Authorised person"** means any employee authorised by the municipality to implement any of the provisions of this By-law and in possession of an appointment card issued by the municipality attesting thereto, including any other peace officer;

**“Biomass”** means a non-fossilized and biodegradable organic material originating from plants, animals and micro-organisms excluding-(a) sewage; and (b) treated or coated wood waste which may contain halogenated organic compounds or heavy metals;

**"Black smoke"** should be interpreted / understood to refer to smoke as dark or darker than shade 4 of the Ringelmann chart, which refers to an equivalent of 80% black;

**"Boiler"** means a combustion appliance designed to heat water;

**"Change"** means any modification which is made to an existing structure, plant, road, land use, procedure, action etc. which may have an effect on the noise generation originating from such an activity related to or connected with the use of such structure, the operation of such plant, the use of such road or railway, such land use, such procedure or such action;

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

**"Combustible Liquid"** means a liquid which has a close-cap flash point of 38 degrees Celsius or above;

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

**"Constitution"** means the Constitution of the Republic of South Africa Act, 108 of 1996;

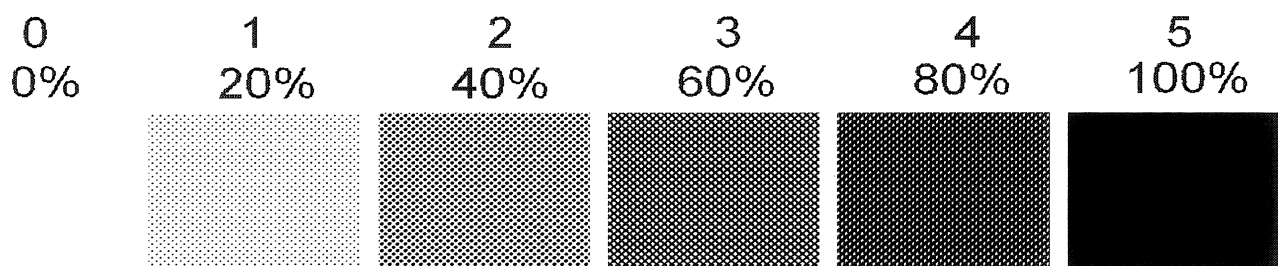
**"Control measure"** means a technique, practice or procedure used to prevent or minimise the generation, emission, suspension and/or airborne transport of air pollutant;

**"Council"** means a member of council of the Madibeng Local Municipality;

**"Prescribed"** in relation to a fee, means a fee prescribed by the Madibeng Local Municipality;

**"Dark Smoke"** in respect of any other section other than section 10 (1) of this By-law, should be interpreted / understood to refer to smoke as dark or darker than Shade 2 of the Ringelmann chart, which refers to an equivalent of 40% black;

#### **RINGELMANN SMOKE CHART**



**"Defined area"** means a particular extent of space or surface or one serving a special function as declared by the Municipality.

**"Design capacity"** means capacity as installed;

**"District"** means Bojanala Platinum District Municipality

**"Disturbing noise"** means a specific noise level that exceeds either the outdoor equivalent continuous day/night rating level, the outdoor equivalent continuous day rating level and/or the outdoor equivalent continuous night rating level for the particular neighbourhood indicated as the outdoor ambient noise in various districts in SANS 10103;

**"Dust"** means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere; and includes dust from mine dumps;

**“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;

**"Erect"** means alter, convert, extend or re-erect;

**"Exempted vehicle"** means a vehicle listed in Annexure-A of SANS 10281;

**"Flammable gas"** means a gas which at 20 degrees Celsius and a standard pressure of 101.3 kilopascals-

- (a) is ignitable when in a mixture of 13% or less by volume with air; or
- (b) has a flammable range with air of at least 12% regardless of the lower flammable limit;

**"Flammable liquid"** means a liquid or combustible liquid which has a close-cap flash point of 93 degrees Celsius or below;

**"Flammable substance"** means any flammable liquid, combustible liquid or flammable gas;

**“Measuring point”** relating to:

- (a) a piece of land from which an alleged disturbing noise emanates, or may emanate, means a point in or outside the property projection plane where an alleged disturbing noise shall be measured, or calculated in accordance with the provisions of SANS 10103;
- (b) a building with more than one occupant, means a point in or outside the building where an alleged disturbing noise shall be measured, or calculated in accordance with the provisions of SANS 10103; and
- (c) a stationary vehicle means a point as described in SANS 10181 where a measuring microphone shall be placed;

**"MEC"** means the Member of the Executive Council of Department of Economic Development, Environment, Conservation and Tourism in the province;

**"Minister"** means the Minister of Water and Environmental Affairs;

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

**"Municipality"** means Madibeng Local Municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"National Framework"** means the National Framework for Air Quality Management in the Republic of South Africa, as published in terms of section 7(1) of the AQA;

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

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

**"Noise nuisance"** means any sound which disturbs or impairs or may disturb or impair the convenience or peace of any reasonable person;

**"Non-exempted vehicle"** means a vehicle not listed in Annexure-A to SANS 10281;

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

- (a) The health or well being of any person or living organism;
- (b) The use and/or enjoyment by an owner or occupier of his or her property and/or environment; and
- (c) Interferes with the ordinary comfort, convenience, peace and quiet of any person or living organism.

**"Organic Material Burning"**, for the purposes of this By-law, this means the burning of veld, farm or forest Organic Material;

**"Offensive Odour"** means any smell which is considered to be a nuisance to the reasonable person.

**"Open burning"** means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, excluding the burning of sugar cane;

**"Pave"** means to apply and maintain concrete or any other material which provides the same or similar effect to a road surface;

**"Pest"** means an injurious, noxious or troublesome living organism;

**"Pesticide"** means a micro-organism or material that is used or intended to be used to prevent, destroy, repel or mitigate a pest and includes herbicides, insecticides, fungicides, avicides and rodenticides;

**"Premises"** means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in that building or structure, and includes any land without any buildings or other structures and any locomotives, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the Council;

**"Property projection plane"** means a vertical plane on, and including the boundary line of a piece of land defining the boundaries of such piece of land in space;

**"Public road"** means a road which the public has a right to use;

**"Raw Materials"** mean materials or substances used in the primary production or manufacturing of a good;

**"Recreational vehicle"** means-

- a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;
- b) a model aircraft or vehicle;
- c) any aircraft or helicopter used for sport, recreational or business purposes;
- d) a vessel used for sport on water; or

- e) any other conveyance vessel or model which is used for sport or recreational purposes.

**"Repair notice"** means a notice as referred to in section 10 (6), regarding the re-testing of vehicle;

**"Rubber product"** means anything composed of rubber including anything containing or coated with rubber;

**"SANS 10103"** means the latest edition of Standards South Africa publication No. 10103 titled: "The measurement and rating of environmental noise with respect to land use, health, annoyance and to speech communication" as amended from time to time or its corresponding replacement;

**"SANS 10181"** means the latest edition of Standards South Africa publication No. 10181 titled: "The measurement of noise emitted by road vehicles when stationary", as amended from time to time or its corresponding replacement;

**"SANS 10281"** means the latest edition of Standards South Africa publication No. 10281 titled: "Engine speed (S values), reference sound levels and permissible sound values of stationary road vehicles", as amended from time to time or its corresponding replacement;

**"SANS 10328"** means the latest edition of Standards South Africa publication No. 10328 titled: "Methods for environmental noise impact assessments", as amended from time to time or its corresponding replacement;

**"Small Boiler"** means any boiler with a design capacity equal to 10MW but less than 50MW net heat input, capable of burning biomass, solid, liquid and/or gaseous fuels or a combination thereof, with:

NHI =  $M_f \times \text{NCV} / (3.6 \times 10^6)$   
 Where, NHI refers to the Net Heat Input expressed in MW;  
 $M_f$  refers to the Mass flow rate of the fuel expressed in kg/hour;  
 NCV refers to the Net Calorific Value of the fuel expressed in kJ/kg;

With:

NCV =  $\text{GCV} - 2442 \times (\text{H}_2\text{O in fuel} + 9 \times \text{H}_2 \text{ in fuel})$

Where, GCV refers to the Gross Calorific Value expressed in kJ/kg (Air dried basis for solid fuels);

H<sub>2</sub>O in fuel refers to the Total moisture in the fuel, expressed as a Mass fraction (As fired condition);

H<sub>2</sub> in fuel refers to the Total hydrogen in the fuel including hydrocarbons, expressed as a Mass fraction (Obtained from the ultimate analysis of the fuel);

**"Small Furnace and Incinerator"** for the purposes of this By-law, this refer to any small furnace and small incinerator not contemplated under section 21 of the Air Quality Act;

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

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

**"Vehicle"** means any motor car, motor carriage, motorcycle, 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. Objectives

(1) The objectives of this By-law are-

- (a) give effect to the rights contained in section 24 of the Constitution of the Republic of South Africa by controlling and managing air pollution within the area of the municipality's jurisdiction;
- (b) provide in conjunction with any other applicable law, an effective legal and administrative framework within which the municipality can manage and regulate activities that have a potential to adversely impact the environment, public health and well being of any persons or living organisms; and
- (c) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimised.

(2) Any person exercising a power under this By-law must exercise such power in order to give effect to the objectives as set out in subsection (1) above.

## 3. Application

(1) This By-law must be read with any applicable provisions of the National Environmental Management: Air Quality Act, 2004, National Framework for Air Quality Management in the Republic of South Africa and Bojanala Platinum District Municipality Air Quality Management By-laws.

(2) In the event of any conflict with any other By-laws which directly or indirectly, within the jurisdiction of the municipality, regulates air pollution, the provisions of this By-law shall prevail to the extent of the inconsistency.

## 4. Air Pollution Duty of Care

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

- (a) to prevent any potential air pollution from occurring; and
- (b) to mitigate, as far as reasonably possible, any air pollution that may occur.

(2) The municipality may direct any person in writing who fails to take the measures required under subsection (1)-

- (a) To commence taking specific reasonable measures before a given date;
- (b) To diligently continue with those measures; and
- (c) To complete them before a specified reasonable date.

(3) Prior to making such a decision as contemplated in subsection (2), the municipality must give the affected person adequate opportunity to inform the municipality of their relevant interests and the municipality may consult with any other organ of state.

- (4) Should a person fail to comply, or inadequately comply, with a directive under subsection (2), the municipality may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.
- (5) Provided such person failed to take the measures required of him under subsection (2), the municipality may recover costs for reasonable remedial measures to be undertaken under subsection (4) above, before such measures are taken and all costs incurred as a result of it acting under subsection (4) from any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution from any or all of the following persons:
  - (a) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
  - (b) 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
  - (c) any person who negligently failed to prevent the-
    - (i) activity or the process being performed or undertaken; or
    - (ii) situation from coming about.
- (6) No person may-
  - a) unlawfully and intentionally or negligently commit any act or omission which causes or is likely to cause air pollution; or
  - b) refuse to comply with a directive or any notice issued under subsection (2).

## CHAPTER 2

### DESIGNATION OF THE AIR QUALITY OFFICER AND ENVIRONMENTAL MANAGEMENT INSPECTORS

#### 5. Designation or appointment of the Air Quality Officer and Environmental Management Inspectors

- (1) The Municipal Manager must, after consultation with the Head of Department responsible for Environmental Services, designate or appoint an employee of the municipality as the Air Quality Officer to be responsible for co-ordinating matters pertaining to air quality management in the municipality.
- (2) The Executive Mayor may request the MEC responsible for environment in the Province to appoint Environmental Management Inspectors in terms of section 31C of the NEMA.

#### 6. Duties and functions of the Air Quality Officer and Environmental Management Inspectors

- (1) The air quality officer must —
  - a) co-ordinate the development of Air Quality Management Plan for inclusion in the Integrated Development Plan of the municipality, in accordance with Chapter 5 of the Municipal Systems Act.
  - b) prepare an annual report of the municipality on air quality;

- c) exercise the duties and powers assigned to him or her under this By-law under the directions of the Municipal Manager;
  - d) submit the annual report referred to in subsection 1 (b) to the Air Quality Officer appointed by the MEC responsible for environment in the province.
- (2) The annual report referred to in subsection (1) (b) must, amongst others, include the progress of the municipality towards the implementation of the Air Quality Management Plan.
- (3) The Air Quality Officer may require the holder of a provisional atmospheric emission licence or the holder of an atmospheric emission licence to designate an emission control officer as provided for in section 48(1) of the Air Quality Act, 2004 (Act No. 39 of 2004).
- (4) For the purpose of compliance monitoring, the designated Environmental Management Inspector must exercise the powers set out in sections 31G to 32L of the NEMA.
- (5) The Environmental Management Inspectors may request from any polluter that significantly contributes or is likely to contribute to poor air quality, ambient and isokinetic monitoring and any other air quality related study, programs or reports to be conducted by recognised and competent third party, at the cost of the polluter

## **CHAPTER 3**

### **LOCAL EMISSION STANDARDS, MOTOR VEHICLE EMISSIONS, SMALL BOILERS AND CONTROLLED ACTIVITIES**

#### **Part 1**

#### **Local Emission Standards**

#### **7. Identification of Substances and Development of Local Emission Standards**

- (1) The municipality may, in terms of this By-law, 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 of the people in the municipality or which the municipality reasonably believes present such a threat.
- (2) The municipality may apply the criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:
  - (a) The possibility, severity and frequency of effects, with regard to human health and the environment as a whole, with irreversible effects being of special concern;
  - (b) Widespread and high concentrations of the substance in the atmosphere;
  - (c) Potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;
  - (d) Persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
  - (e) The impact of the substance taking the following factors into consideration:
    - i. Sizes of the exposed population, living resources or ecosystem.
    - ii. The existence of particular sensitive receptors in the zone concerned.
- (3) The municipality may, when developing the standards:
  - (a) Identify the critical factors for public health impact;

- (b) Identify sensitive sub-population;
  - (c) Review available databases for public health status;
  - (d) Review available databases for ambient air quality information; and
  - (e) Review and assess international guidelines and standards.
- (4) The municipality may take the following factors into consideration in setting local emission standards:
- (a) Health, Safety and environmental protection objectives;
  - (b) Analytical methodology;
  - (c) Technical feasibility;
  - (d) Monitoring capability; and
  - (e) Socio-economic consequences.

## **8. Consequences of identification**

- (1) Any person emitting those substances or mixture of substances must comply with the emission standards established in terms of section 7 (2) above.
- (2) Any person who fails to comply with the emission standards established in terms of section 7(2) of the By-law commits an offence and is liable to a penalty.

## **9. Public Participation Process**

For the purposes of the publication of the local emission standards, the municipality must follow the Public Participation Process as set out in section 13 of the Municipal System Act, 2000.

### **Part 2**

## **Motor Vehicle Emissions, Small Boilers, Small Furnace, Small Incinerators and Controlled Activities**

### **10. Emission from compressed ignition powered vehicle**

#### **Prohibition of emission of smoke**

- (1) No person may drive a vehicle on a public road if it emits smoke at a level of 20% or more in terms of the Ringelmann smoke chart;
- (2) A person commits an offence if he or she contravene subsection (1)

#### **Stopping of vehicle for inspection and testing**

- (3) (a) For the purpose of enforcing the provision of section 10, an authorised person may:
  - (aa) stop the vehicle; and
  - (bb) instruct that driver to give all assistance required for the purpose of the inspection and testing of that vehicle.
- (b) When a vehicle has stopped in compliance with a direction given under subsection (3) (a), the authorised person may:
  - (i) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:

- (aa) at or as near as practicable to the place where the direction to stop the vehicle is given; and
- (bb) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction.

### **Testing procedure**

- (4) (a) An authorised person must use the following method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of section (1) above:
- i. when instructed to do so by the authorised person, the driver of the vehicle must start the vehicle, place it in neutral gear and engage the clutch;
  - ii. while the throttle pedal is depressed, the authorised person must measure the smoke emitted from the vehicle's emission system in order to determine whether or not it is an unacceptable level of dark smoke;
  - iii. the driver of the vehicle may only release the throttle pedal of the vehicle when the engine reaches required test revolutions, or when directed to do so by the authorised person.
- (5) An authorised person must issue the driver of the vehicle with a repair notice in accordance with subsection (6), if the results indicate that the concerned is emitting dark smoke.

### **Repair notice**

- (6) A repair notice must direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period.
- (7) the repair notice must contain, amongst others, the following information:
- (i) the make, model and registration number of the vehicle;
  - (ii) the name address and identity number of the driver of the vehicle; and
  - (iii) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.
- (8) A person commits an offence and is liable to a penalty if that person fails:
- (i) to comply with the repair notice referred to in subsection (6);
  - (ii) to take the vehicle for re-testing as referred to in subsection (6);
- (9) If the owner of the vehicle fails to take the vehicle for re-testing as referred to in subsection (4)(a), then the authorised person must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

## **11. Small boilers, Small furnaces and Small incinerators**

- (1) No person may install, alter, extend or replace any small boiler, small furnace and/or small incinerator on any premises without the prior written authorisation of the municipality, which may only be given after consideration of the relevant plans, specifications and any applicable emission standards set for controlled emitters that have been determined in terms of section 24 of the NEM:AQA. In case when two or more boilers (capable of burning biomass, solid, liquid and/or gaseous fuels or a combination thereof) with a

combined thermal input of between 10MW to 50MW net heat inputs are installed or proposed on site, a permit to operate such boilers must be obtained from the municipality.

- (2) Application for an authorisation to operate a small boiler, small furnace and/or small incinerator shall be made on a schedule form.
- (3) Where a small boiler, small furnace and/or small incinerator has been installed, altered, extended or replaced on premises in contravention of subsection (1) -
  - a) the owner and/or occupier of the premises and the installer of the small boiler, small furnace and/or small incinerator are guilty of an offence;
  - b) the municipality may, on written notice to the owner of the premises order the removal of the small boiler, furnace and/or incinerator from the premises at the expense of the owner and within the period stated in the notice after having been given reasonable time to remove it.
- (4) In considering an application submitted in terms of subsection (1), the Air Quality Officer may require the applicant to furnish such information as the Air Quality Officer may require.
- (5) After considering the application submitted in terms of subsection (1), the municipality must either-
  - (a) grant an application and issue a permit, subject to any conditions that may be imposed; or
  - (b) refuse an application with reasons.
- (6) The authorisation issued in terms of subsection (1) above must specify-
  - (a) the product name and model of the small boiler;
  - (b) the premises in respect of which it is issued;
  - (c) the person to whom it is issued;
  - (d) the period for which the authorisation is issued;
  - (e) the name of the municipality;
  - (f) the periods at which the authorisation may be reviewed;
  - (g) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
  - (h) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
  - (i) any other matters which are necessary for the protection or enforcement of air quality.

**Transitional arrangements in respect of other small boilers, furnaces and/or incinerators.**

- (7)(a) Despite the small boilers, furnaces and/or incinerators within the municipality not previously required to be authorised in terms of any By-laws, any person operating such small boilers, small furnaces and/or small incinerators which now falls within the ambit of this By-law, at the commencement date of this by-law, must apply for an authorisation as required by section 11 of this by-law.
- (b) Persons operating small boilers, small furnaces and/or small incinerators that falls under 7 (a) above have a period of two years, from the commencement date of this By-law, to apply for authorisation in terms of section 11 of this by-law
- (c) If any person fails to comply with subsection (7) (b), then continuing to operate the small boiler without a valid authorisation is an offence.

## 12. Dust emissions

- (1) Any person conducting any activities which ordinarily produce emissions of dust, offensive fumes / odours and/or unacceptable level of dark smoke that may be harmful or toxic to public health, well-being and/or cause a nuisance shall take control measures to prevent such emissions into the atmosphere.
- (2) Any person who undertakes any activity that causes dust emissions must implement one or more of the following control measures:
  - (i) pave;
  - (ii) use dust palliatives or dust suppressants;
  - (iii) uniformly apply and maintain any surface gravel;
  - (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
  - (v) use ground covers;
  - (vi) re-vegetation which is similar to adjacent undisturbed native conditions; or
  - (vii) any alternative control measure approved in writing by the Air Quality Officer.
- (3) The provisions of this section are not applicable to:
  - (i) landscaping activities by a person at his place of residence;
  - (ii) emergency maintenance activities on publicly maintained roads, road shoulders and rights of way;
  - (iii) unpaved roads having vehicular traffic of less than 200 vehicles per day; this provision is limited to private roads
  - (iv) non-commercial and non-institutional private driveways;
  - (v) horse trials, hiking paths, bicycle paths or other similar paths; and
  - (vi) any other path that has been designated as an exclusive use area for purposes other than travel by motor vehicle;
  - (vii) small boilers, small furnaces and small incinerators since they are regulated under section 11 of this By-law.

## 13 Emission Caused by open burning

- (1) A person who carries out or permits open burning of any material on any land or premises are guilty of an offence and is liable to a penalty, unless
  - (a) the prior written authorisation of the municipality has been obtained, which authorisation may be granted by the municipality with conditions; and
  - (b) that person has notified in writing the owners and occupiers of all adjacent properties of:
    - (i) All known details of the proposed open burning; and
    - (ii) 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; and
    - (iii) the prescribed administrative fee that has been paid to the municipality.
- (2) The municipality may not authorise open burning:
  - (a) unless it is satisfied that the requirements set out in subsection (1) above have been adequately addressed or fulfilled;

- (b) where a warning under section 10(1) (b) of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998) has been published for the region; and
- (c) where fire breaks in tends to be made in accordance to the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998).

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

- (a) recreational outdoor activities on private premises; and
- (b) controlled fires in dwellings for purposes of heating any area within the dwelling, cooking, heating water and other domestic purposes.

#### **14 Emissions Caused by Burning of Industrial Waste, Domestic Waste and Garden Waste**

A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste, is guilty of an offence and is liable to a penalty unless the industrial, domestic or garden waste is legally disposed of in terms of section 20 of the Environmental Conservation Act, 1989 (Act No. 73 of 1989) or section 26 the National Environmental Management: Waste Act, 2008 (At No. 59 of 2008)

#### **15 Emissions Caused by Tyre Burning and Burning of Rubber Products and Cables in Open Spaces**

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

#### **16 Organic materials burning**

- (1) Any person who burns organic material shall comply, in addition to the burning requirements provisions of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998), with the following control measures:
  - (a) The prior written authorization of the municipality has been obtained, which authorization may be granted by the municipality with conditions; and
  - (b) That person has notified in writing the owners and occupiers of all adjacent properties of:
    - (i) The details of the proposed area to be burned;
    - (ii) The reason for the organic material burning;
    - (iii) the date and approximate time of the organic material burning;
    - (iv) in the event of inclement weather conditions, an alternative date or dates on which the organic material burning may occur;
    - (v) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed organic material burning with the municipality within 7 days of being notified; and
    - (vi) the prescribed administrative fee that has been paid to the municipality.
- (2) The municipality may not authorize organic material burning:
  - (a) unless it is satisfied that the requirements set out in subsection (1) above have been adequately complied with; and
  - (b) where a warning notice in terms of section 10(1) of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998) has been published for the region.
- (3) The provisions of this section are not applicable to any defined area to which the municipality may declare.

## 17 Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of a pesticide, herbicide or other related material unless such pesticide, herbicide or material is registered in terms of section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) A person who carries out the spraying of pesticides, herbicide or other related material either by tractor or aerial, within the area of jurisdiction, must comply with the following control measures:
  - (a) the prior written authorisation of the municipality has been obtained, which authorisation may be granted by the municipality with conditions, including:
    - (i) the area of land on which the pesticides, herbicide or other related material may be applied; and
    - (ii) the time in which the pesticides, herbicide or other related material may be applied.
  - (b) that person must notify in writing the owners and occupiers of all adjacent properties of the treatment area of:
    - (i) the details of the proposed treatment area;
    - (ii) the reason for the pesticides, herbicide or other related material use;
    - (iii) the active ingredient of pesticides, herbicide or other related material;
    - (iv) the date and approximate time of the pesticides, herbicide or other related material use;
    - (v) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
    - (vi) the right of the owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the municipality within 7 days of being notified; and
    - (vii) proof of the application fee that has been paid to the district municipality
- (3) A person may apply to the district municipality for an exemption if the spraying of the pesticide is for:
  - (a) the management of pests that transmit human diseases or adversely impact agriculture or forestry;
  - (b) the management of pests that threaten the integrity of sensitive ecosystems; or
  - (c) the need for the use of the pesticide is urgent in the opinion of the applicant.
- (4) The provisions of this section are not applicable to:
  - (a) residential areas;
  - (b) buildings or inside buildings and the domestic use of pesticides; or
  - (c) any other defined area or activity to which the municipality has declared.

## 18 Spray Painting Emissions

- (1) No person shall, within the municipality's jurisdiction, spray, coat, plate, or epoxy-coat any vehicle, article, object or allow them to be sprayed, coated, plated or epoxy-coated with any flammable substance outside the approved spray painting room or booth. In cases where the

size of the article or object to be sprayed cannot be sprayed within the designated spraying room or booth, a temporal structure (i.e. tent, net etc) must be instituted in order to prevent and/or minimize the escape of spraying particles to the atmosphere.

- (2) No person may spray, coat, plate or epoxy-coat any vehicle, article, object, or building or part thereof or allow them to be sprayed, coated, plated, or epoxy-coated with any flammable substance unless-
  - (a) that person is in a possession of a spraying permit contemplated in subsection (1) above;
  - (b) the spraying, coating, plating or epoxy-coating as the case may be is conducted in a spraying room approved by the designated Fire Officer, in consultation with the Air Quality Officer, on premises registered for that purpose.
- (3) Any person who wishes to obtain a spraying permit must complete and submit to the designated Fire Officer an application form for such permit in the form and manner as prescribed.
- (4) The designated Fire Officer may cancel the spraying permit if there is reason to believe that the holder of the spraying permit contravenes or fails to comply with any provision of this By-law.
- (5) Subject to subsection (6) below, before the designated Fire Officer cancels the spraying permit as contemplated in subsection (4), that Officer must-
  - (a) give the holder of the spraying permit written notice of the intention to cancel the spraying permit and the reasons for such cancellation;
  - (b) give the holder a period of at least 21 days to make written representations regarding the matter to the municipality.
- (6) If the designated Fire Officer has reason to believe that the failure to cancel the spraying permit may endanger any person, that officer may cancel the spraying permit without prior notice to the holder as contemplated in subsection (4) above and furnish the holder of the spraying permit with written notice of the cancellation;
- (7) If the designated Fire Officer cancels the spraying permit in terms of subsection (6) above, that officer must-
  - (a) give the holder of the spraying permit a period of at least 21 days to make written representations regarding the matter to the municipality
- (8) The provisions of this section are not applicable to:
  - (a) small scale spray painting of any articles, objects and structures excluding spraying of vehicles taking place on any residential areas or properties;

## **19 Sand blasting, Rock crushing and concrete mixing emissions**

- (1) Any person conducting sand blasting, rock crushing and concrete mixing activities which customarily produce emissions of dust and/or smoke or unacceptable level of smoke that may be harmful to public health, well-being and /or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
- (2) Any person who undertakes any sand blasting activity that causes dust, and/or smoke or unacceptable level of smoke emissions must implement the following control measure:

- (a) Dust extraction and/or dust suppressant control measure; or
- (b) Any alternative dust control measure approved in writing by the Air Quality Officer.

## **20. Noise Pollution Management**

### **Prohibition of disturbing noise**

- (1) A person shall not cause a disturbing noise, or allow it to be caused by any person, animal, machine, device, vehicle, recreational vehicle, apparatus or any combination thereof.

### **Prohibition of noise nuisance**

- (2) No person shall-

- (a) Operate or play, allow to be operated or played, a radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound so as to cause a noise nuisance.
- (b) Allow an animal owned or controlled by him or her to cause a noise nuisance.
- (c) Build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft, or object including construction vehicles on or near residential premises, or allow it to be built, made, constructed, repaired, rebuilt, modified, operated or tested, if this may cause a noise nuisance.
- (d) Erect a building or structure on residential premises or allow it to be erected if this may cause a noise nuisance, unless permission is granted by the municipality to conduct normal building operations.
- (e) Use or discharge any explosive, firearm or similar device that emits impulsive sound and may cause a noise nuisance, or allow it to be used or discharged, except with the prior consent in writing of the municipality and subject to such conditions as the municipality may deem necessary.
- (f) On a piece of land or in water or in airspace above the piece of land designated by the municipality for recreational purposes, by means of a notice in the press –
  - (i) Move about on or in a recreational vehicle ;
  - (ii) Exercise control over a recreational vehicle; or
  - (iii) As the owner or person in control of the piece of land, water or airspace, allow such activity to take place, if this may cause a noise nuisance.
- (g) Except in an emergency, emit a sound, or allow a sound to be emitted by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device, if it may cause a noise nuisance
- (h) Drive vehicle on a public road in such a manner that it may cause a noise nuisance
- (i) Use any power tool or power equipment used for construction purposes, drilling or demolition work, or allows it to be used, in or near a residential area if it may cause a noise nuisance, unless permission was granted by the municipality to conduct normal construction or repair work.

## **21 Music, Open-Air Music Festivals, Shows, Inclusive of Air Shows and Similar Gatherings**

- (3) (a) No person may stage any open-air entertainment festival, such as, a show, an air show, music festival or similar gathering without compliance with the Major Events Act, 2010 (Act No. 2 of 2010).
- (b) if any music causes or may cause a noise nuisance or a disturbing noise, the municipality may instruct in writing that such music be discontinued until such conditions as the municipality may deem necessary have been complied with.
- (c) Subject to the provisions of subsection (b) above and the applicable provisions of any other law, the municipality may attach any instrument used to generate music if the sound level of such exceeds the sound level referred to in subsection (a) above and no permission has been obtained.
- (d) An instrument attached under subsection (c) above shall be kept in safe custody by the municipality.
- (e) The municipality may lift the attachment contemplated in subsection (c) above if the owner or person in control of the instrument has applied for permission in terms of subsection (a) above.
- (f) This subsection is not applicable to:
  - (i) Churches
  - (ii) Schools
  - (iii) Other education facilities; or
  - (iv) Any other defined area or activity to which the municipality has declared this subsection not to apply

### **General prohibitions**

- (1) A person is guilty of an offence when s/he –
  - (a) Fails to comply with a written condition, instruction or notice issued by the municipality in terms of the noise pollution management section of this By-law;
  - (b) Tampers with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or noise placed in a position by or on behalf of the municipality;
  - (c) In respect of a duly authorised person of the municipality –
    - (i) Fails or refuses to grant admission to such official to enter and to inspect the premises;
    - (ii) Fails or refuse to give information which may lawfully be required of him or her to such official;
    - (iii) Hinders or obstruct such official in the execution of his or her duties; or
    - (iv) Gives false or misleading information to such official knowing that it is false or misleading.

### **General Powers of the municipality**

- (2) The municipality-
  - (a) For the purposes of applying the noise pollution management section of this By-law, at any reasonable time enter premises upon reasonable noise –
    - (i) To conduct any appropriate examination, injury or inspection thereon as it may deem expedient; and

- (ii) To take any steps it may deem necessary.
- (b) If a noise emanating from a building premises, vehicle, recreational vehicle or private area is a disturbing noise or noise nuisance or may in the opinion of the authorised person be a disturbing noise or noise nuisance, instruct in writing the person causing such noise or who is responsible for the infringement, or the owner or occupant of such building, premises, vehicle, recreational vehicle or private area from which or from where such noise emanates or may emanate, or all such persons to discontinue or cause to be discontinued such noise or to take steps to lower the level of such noise to a level conforming to the requirements of this By-law within the period stipulated in the instruction: Provided that the provisions of this By-law shall not apply in respect of a disturbing noise or noise nuisance caused by rail, vehicles or air traffic or on a public road, by vehicles that are not used as recreational vehicle.
- (c) If the owner or person in charge of an animal fails to comply with an instruction referred to in subsection (2) (b) above, subject to the applicable provisions of any other law, impound or cause to be impounded such animal.
- (d) Impose such appropriate conditions as it deems fit when granting any permission or exemption, including the specification of times and days when activities that may cause noise are permitted or prohibited.
- (e) Subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices at any place within the municipality's jurisdiction for the enforcement of the provisions of this By-law: Provided that road traffic signs and notices shall be on private property only with the permission of the owner.

## **22 Emissions that cause a Nuisance**

### **Prohibition**

- (1) Any occupier and/or owner of premises from which a nuisance emanates, or where a nuisance exists, commit an offence and are liable to a penalty.

### **Abatement notice**

- (2) An Air Quality Officer may serve an abatement notice on any person, whom the authorised person reasonably believes is likely to commit or has committed an offence in terms of this By-law, calling upon that person:
  - (a) To abate the nuisance within a period specified in the notice;
  - (b) To take all necessary steps to prevent a recurrence of the nuisance; or
  - (c) To comply with any other conditions contained in the notice.
- (3) For the purpose of subsection (2) above, an authorised person may form a reasonable belief based on his own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the abatement notice is to be served.

(4) An abatement notice under subsection (2) above may be served:

(a) Upon the owner of any person, by -

- (i) Handing it to the owner, or if the owners cannot be traced or is living abroad that person's agent;
- (ii) Transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
- (iii) Handing it to the address where the premises are situated, if the owner's address and the address of the agent are unknown.

(b) Upon the occupier of the premises, by

- (i) Handing it to the occupier;
- (ii) Transmitting it by registered post to the occupier at the address at which the premises are situated.

### **Steps to abate nuisance**

(5) After been notified at any time, 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 actual costs so incurred from the person responsible for causing the nuisance.

## **23 Offence and Penalties**

This section shall only apply if the municipality decides to take any person/s to a Court of Law. In other instances, spot or administrative fines shall apply.

(1) Any person who –

- (a) contravenes or fails to comply with any provision of this By-law;
- (b) refuses or fails to comply with any notice addressed to him or her in terms of or for the purposes of this By-law;
- (c) refuses or fails to comply with the terms or conditions of any permit issued or otherwise imposed in terms of this By-law;
- (d) obstruct, hinders or interferes with an authorised official in the exercise of any power or the performance of any duty under this By-law;
- (e) fails or refuses to furnish the authorised official with any documentation or information required for the purposes of this By-law or furnishes a false or misleading document or information;
- (f) fails or refuses to comply with any instruction given by the authorised official for the purposes of this By-law;
- (g) pretends to be an authorised official;

## **CHAPTER 4**

### **GENERAL MATTERS**

#### **24. Appeals**

Any person may appeal against any decision taken under this By-law by giving written notice of the appeal in accordance with the provision of section 62 of the Municipal Systems Act, 2000.

#### **25. Enforcement**

- (1) The Municipality may appoint so many authorised person/s as it may consider necessary to be responsible for compliance and enforcement monitoring of this By-law.
- (2) The authorised person/s shall take all lawful, necessary and practicable measures to enforce the provisions of this By-law.

#### **26. Exemptions**

- (1) Any person may, in writing, apply for exemption from certain provisions of this by-law to the municipality.
- (2) An application in terms of subsection (1) above must be accompanied by reasons.
- (3) The municipality may grant a temporary exemption in writing from one or all of the provisions of this By-law, provided that the municipality:
  - (a) Is satisfied that granting the exemption will not significantly prejudice the objectives referred to in section 2 of this By-law; and
  - (b) Grants any exemption subject to conditions that promote the attainment of the objectives referred to in section 4(1) of the By-law.
- (4) The municipality must not grant an exemption under subsection (1) until the municipality has:
  - (a) Taken measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
  - (b) Proof that all interested & affected parties were provided with a reasonable opportunity to raise their comments or objections to the application; and
  - (c) Duly considered and taken into account any objections raised.
- (5) The municipality may –
  - (a) From time to time review any exemptions granted in terms of this section; and
  - (b) On good grounds withdraw any exemption.

#### **27. Severability**

If a section, subsection, sentence, clause or phrase of this By-law is declared invalid by a competent court, the invalid portion shall be severed and shall not affect the validity of the remaining portions of this By-law.

## 28. State Bound

This By-law is binding on the state and the municipality except in so far as any criminal liability is concerned.

## 29. Repeal of By-Law

No By-Laws are hereby repealed

## 30. Short Title

This By-Law is called the Madibeng Local Municipality Air Quality Management By-Law.

## 31. Commencement Date

This By-Law will come into operation on a date or dates to be determined by the Municipality by publication in the Provincial Gazette.

**T MOTLASHUPING**  
*acting* **MUNICIPAL MANAGER**

Civic Centre  
Van Velden Street  
P O Box 106  
Brits  
0250

Notice Number: 27/2014  
Reference Number: (1/4/2/54)





**NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS**

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