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Cederberg Local Municipality
Air Quality Management By-law, 2020

To provide for Air Quality Management and matters incidental thereto:

Preamble

The Council of the Cederberg Local Municipality acting in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996. Read with section 13(a) of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) and section 11(1) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) has made the Air Quality By-law hereunder.

And Whereas the Cederberg Local Municipality seeks to ensure management of air quality and the control of air pollution within the area of jurisdiction of the Cederberg Local Municipality and to ensure that air pollution is avoided, is minimized and remedied.

And now therefore, be it enacted by the Council of Cederberg Local Municipality, as follows:

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Chapter I Definitions and fundamental principles

1. Definitions

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

"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 dust, 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 human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

"air pollution control zone" means the geographical area to which Chapter IV of this By-law is declared to apply;

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

"air quality management plan" means the air quality management plan referred to in section 15 of the Air Quality Act;

"air quality officer" means an officer appointed in terms of section 14 of the Air Quality Act as an air quality officer;

"ambient air" excludes air regulated by the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

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

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

"authorised person" means any employee of the Municipality delegated by the Director to implement any provision of this By-law;

"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;

"boiler" means a fuel-burning apparatus or container for heating water; less than 10 megawatt (MW) (small boilers) falls under the mandate of the Local Municipality. More than 10 megawatt (MW); less than 50 megawatt (MW) (controlled emitters) falls under the mandate of the District Municipality. More than 50 megawatt (MW) (Listed activity) falls under the mandate of the District Municipality.

"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;

"Constitution of South Africa" means the Constitution of the Republic of South Africa No. 108 of 1996.

"Council" means the Council of the Cederberg Local Municipality or any of the other political structures, political office bearers, councillors or staff members, of the Cederberg Local Municipality duly authorised by delegation;

"controlled emitter" means any appliance or activity declared as a controlled emitter in terms of section 23 of the National Environmental: Air Quality Act, 2004 (Act No. 39 of 2004);

"dark smoke" means

- (a) in respect of Chapter V and Chapter VI 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 Chapter VIII of this By-law — 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 1.6m⁻¹; 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 1.10m⁻¹;

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

"dwelling" means any habitable building or structure, or part of a habitable building or structure, where people live;

"environment" means the surroundings within which humans exist and that are made up of— the land, water and atmosphere of the earth; micro-organisms, plant and animal life; any part or combination of (a) and (b) and the interrelationships among and between them; and the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"environmental management inspector" means environmental enforcement officials from various national, provincial and municipal government departments created by National Environmental Management Act (NEMA) of 2008.

"fuel-burning equipment" means any furnace, boiler, incinerator, or other equipment, including a chimney — designed to burn or capable of burning liquid, gas or solid fuel; used to dispose of any material or waste by burning; or used to subject liquid, gas or solid fuel to any process involving the application of heat;

"listed activity" means a list of activities contemplated in Section 21 of the Air Quality Act;

"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;

"living organism" means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

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

"municipality" means Cederberg Local Municipality established by Provincial Notice No. 479 of 2000 in terms of 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 177 of 1998) and include staff members of the Cederberg Local Municipality duly authorised by delegation;

"nuisance" means an unreasonable interference or likely interference caused by air pollution with — the health or well-being of any person or living organism; or 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 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" 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;

"proclaimed township" means any land unit zoned and utilized for residential purposes;

"person" means a natural person or a juristic person;

"premises" includes— any building or other structure; any adjoining land occupied or used in connection with any activities carried on in that building or structure; any vacant land; any locomotive, ship, boat or other vessel which operates in the precincts of any harbour, within the area of the jurisdiction of the Municipality;

"Province" means the Province of the Western Cape;

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

"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" means an area or enclosure and must be used for spray painting, and "spray booth" has a corresponding meaning;

"Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

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

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

"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. Application of this by-law

This By-law applies to all properties or premises within the area of jurisdiction of the Cederberg Municipality and where listed activities and controlled emitters can be identified in terms Section 21 and 23 of the National Environmental Management Air Quality Act 39 of 2004 within the area of jurisdiction. The provision of this By-law does not remove the need for any other permit, consent or authorisation required under any other statutory acts, By-law and regulatory documents.

3. Objectives

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

- (a) Give effect of to the right contained in Section 24 of the Constitution of South Africa 108 of 1996 and the National Environmental Management Air Quality Act 39 of 2004 by regulating air pollution within the area of the municipality's jurisdiction in a cooperative manner taking cognizance of the respective air quality management plan;

- (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 the potential to adversely impact the environment, public health and well-being; and
- (c) Ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimized.

4. Administration and Enforcement

(1) The Municipality is responsible for the administration and enforcement of this By-law. The Municipality may delegate any power in terms of this By-law to any official.

5. Municipality's right of access to premises

(1) The Municipality shall, have access to or over any premises or dwellings for the purpose of -

- (a) doing anything authorized or required to be done by the Municipality under this By-law or the Air Quality Act, 2004 (Act 39 of 2004) or any other law regulating air quality matters;
- (b) inspecting and examining atmospheric emissions or anything connected therewith;
- (c) enquiring into and investigating any possible sources of atmospheric emissions or the suitability of immovable property for any work, scheme or undertaking that results in atmospheric emissions;
- (d) ascertaining whether there is or has been contravention of the provisions of this By-law or Air Quality Act, 2004 (Act 39 of 2004); and
- (e) enforcing compliance with the provisions of this By-law or Air Quality Act, 2004 (Act 39 of 2004).

(2) The Municipality may, by notice writing, email, telephonically or verbally served on the owner or occupier of any premises, require such owner or occupier to provide, on the day and at the hour specified in such notice, access to such premises to an authorised person and for a purpose referred to in sub-section (1);

(3) The Municipality, may gain access to, or over any property without notice and may take whatever steps or action as may, in its opinion, be necessary or desirable in consequence of the existence of, or the occurrence of any emergency or disaster, or for the purpose of sub-section (1)(d).

6. Levying of tariffs

(1) The Municipality may levy and recover fees, charges or tariffs for any permission granted in terms of this By-law, or implement tariffs as prescribed by the Air Quality Act and may require the deposit of an amount of money as security for damages, repair, losses and other costs.

7. Conflict with other By-laws

(1) In the event of any conflict between this By-law and any other By-law or any policy which regulates air pollution in the area of jurisdiction of the Cederberg Municipality the provisions of this By-law shall prevail.

Chapter II

Duty of care

8. Reasonable measures to prevent air pollution

(1) 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—

- (a) to prevent any potential significant air pollution from occurring; and
- (b) to mitigate and, as far as reasonably possible, remedy any significant air pollution that has occurred.

(2) The Municipality may direct any person who fails to take the measures required under subsection (1) to—

- (a) investigate, evaluate and assess the impact of specific activities and report thereon;
- (b) take specific reasonable measures before a given date;
- (c) diligently continue with those measures; and
- (d) complete them before a specified reasonable date,

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

(3) The Municipality may, if a person fails to comply or inadequately complies with a directive contemplated in subsection (2), take reasonable measures to remedy the situation.

(4) The Municipality may, if a person fails to carry out the measures referred to in subsection (1), recover all reasonable costs incurred as a result of him or her acting under subsection (3) from any or all of the following persons:

- (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution;
- (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
- (c) the person in control of the land or any person who has or had a right to use the land at the time when the — activity or the process in question is or was performed or undertaken; or situation came about;
- (d) or any person who negligently failed to prevent the — activity or the process being performed or undertaken; or situation from coming about.

(5) No person may:

- (a) unlawfully, intentionally or negligently commit any act or omission which causes or likely to cause air pollution; or
- (b) refuse to comply with a directive issued under this section.

(6) Any person who fails to comply with subsection (5) commits an offense.

(7) 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 (1) and (2).

(8) Provisions in this section must be aligned with the West Coast District Municipality Guideline on transportation, storage and handling of manganese and other potentially hazardous ores and concentrates.

Chapter III Designation of the air quality officer and environmental management inspector

9. Designation or appointment of the air quality officer and the environmental management inspector

(1) The Municipal Manager must designate or appoint an employee of the Municipality or any person as the air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the Municipality.

(2) The Council may request the MEC responsible for environment in the Province to appoint environmental management inspectors in terms of section 31C of the NEMA.

(3) Appointment of air quality officers as per Section 14 of the National Environmental Management Air Quality Act 39 of 2004.

10. Duties and functions of the air quality officer and the environmental management inspector

(1) The air quality officer must —

- (a) co-ordinate the development of the air quality management plan as well as enforcing compliance to the air quality management plan for inclusion in the Integrated Development Plan of the Municipality, in accordance with Chapter 5 of the Municipal Systems Act 32 of 2000;
- (b) prepare an annual report of the Cederberg Municipality on air quality;
- (c) exercise the duties and powers assigned to him or her under this By-law under the directions of the Municipality; and
- (d) submit the annual report referred to in paragraph (b) to the air quality officer appointed by the MEC responsible for the environment in the Province.

(2) The annual report referred to in subsection (1)(b) must, amongst others, include the progress of the Cederberg Municipality towards the implementation of the air quality management plan.

(3) West Coast District Municipality has authority over listed activities and issuing licences for these activities.

(4) The Environmental Management Inspector must –

- (a) In terms of Chapter 7 of the NEMA, the functions of the Environmental Management Inspectors (EMI's) are to monitor compliance with, and enforce the NEMA and specific environmental management legislation. The MEC designates officials to be EMI's and allocate the mandates to the EMI's. Section 31 (G) of NEMA indicates some of the functions of the EMI, and this to be related to his or her designated mandate (NEMA: section 31 D).
- (b) General powers of an EMI as follows, but not limited to: they may question a person, issue a written notice, inspect any documents, take photographs and samples, remove any waste or matter deposited or discharged in contravention of the law, seizure of items, powers to stop, enter and search vehicles, vessels and aircraft, routine inspections and the power to issue compliance orders (NEMA: Section 31 H, I, J, K and L).
- (b) Officials designated as EMI's in terms of the NEMA are able to enforce all necessary legislation and by-laws within the Municipal area.

Chapter IV Local emissions standards, norms and standards and smoke control zones

Part 1 – Local emission standards

11. Legal mandate

(1) The Municipality may, by notice –

- (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, wellbeing or the environment in the Cederberg 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 emissions from point, non-point or mobile sources in the District.

(2) The Municipality shall 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;
- (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.

Part 2 – Norms and standards

12. Substances identification process

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

- (a) the possibility, severity and frequency of effects with regard to human health and the environment as a whole, with irreversible effects being of special concern;
- (b) ubiquitous and high concentrations of the substance in the atmosphere;
- (c) potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;
- (d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
- (e) the impact of the substance taking the following factors into consideration: size of the exposed population, living resources or ecosystems; the existence of particularly sensitive receptors in the zone concerned;
- (f) and substances that are regulated by international conventions.

(2) The authorised person 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 or the environment.

13. Publication of local emission standards

For the purposes of publication of the local emission standards, the Cederberg Municipality must follow a consultative process in terms of Chapter 4 of the Municipal Systems Act.

14. Declaration of air pollution control zone

The whole area within the area of jurisdiction of the Municipality is hereby declared an air pollution control zone. The Municipality may in writing exempt certain premises, classes of premises or premises used for specified purposes from this section.

Chapter V Smoke emissions from premises other than dwellings

15. Application

For the purposes of this Chapter “premises” does not include dwellings.

16. Prohibition of dark smoke from premises

Dark smoke must not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes. This section does not apply to dark smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practical environmental option.

17. Installation of boilers and fuel-burning equipment

(1) No person shall install, alter, extend or replace any boiler or fuel-burning equipment on any premises without the prior written authorisation of the Municipality, which may only be given after consideration of the relevant plans and specifications.

(2) Any boiler or fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved for the purposes of this section by the Municipality, shall be presumed until the contrary is proved to comply with the provisions of subsection (1).

(3) Where boilers or fuel-burning equipment have been installed, altered, extended or replaced on premises contrary to subsection (1), The Municipality may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

(4) The Cederberg Municipality may take whatever steps considers necessary in order to remedy the harm caused by the installation, alteration, extension or replacement on premises and prevent any further occurrence. The Municipality may recover the reasonable costs for his/her own account so incurred from the person responsible for causing such harm.

18. Operation of boilers and fuel-burning equipment

(1) No person may use or operate any boiler or fuel-burning equipment on any premises contrary to the authorisation referred to in section 17.

(2) Where boilers or fuel-burning equipment has been used or operated on the premises in contrary to subsection (1), The Municipality may on written notice to the owner and occupier of the premises —

(a) revoke his or her authorisation under section 13;

(b) and order the removal of the boiler or fuel-burning equipment from the premises at the expense of the owner and operator within the period stated in the notice.

(3) The Municipality may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2), remove the boiler or fuel burning equipment from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

(4) All generators to be sound proofed for example by cladding or silences fitted. Generators not to cause any nuisance to the public, residents or any person and to be situated in such a way as to not cause vibration. Adequate ventilation to be ensured at all times and compliance at all times to the Western Cape Noise Control Regulations, 2013 in line with the SANS 10103:2008 requirements.

19. Presumption

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.

20. Installation and operation of obscuration measuring equipment

(1) An authorised person 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 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 fourteen 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 authorised person 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.

(2) A notice referred to in subsection (1) 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 43;
- (c) that person's right to request written reasons for the issuing of the notice;
- (d) and 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 section 16(1) must —

- (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
- (b) if requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection;
- (c) and if requested to do so by an authorised person, provide a written report, in a form and by a date specified by the authorised person, of part or all of the information in the record of the monitoring and sampling results.

22. Temporary exemption

(1) Subject to section 44 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;
- (e) and any other relevant information.

(3) The Municipality may not grant a temporary exemption under subsection (1) until the Municipality has —

- (a) 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 how to obtain a copy of it;
- (b) provided such persons with a reasonable opportunity to object to the application;
- (c) and duly considered and taken into account any objections raised.

Chapter VI Smoke emissions from dwellings

23. Prohibition of emission of dark smoke from dwellings

(1) Subject to section 4(1), no person shall emit or permit the emission of dark smoke from any dwelling for an aggregate period exceeding three minutes during any continuous period of thirty minutes.

(2) Subject to section 44 and on application in writing by the owner or occupier of any dwelling, the Municipality may grant a temporary exemption in writing from one or all of the provisions of this Chapter.

Chapter VII Emissions caused by dust emissions, open burning and burning of material

24. Authorisation of 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 for prior written authorisation of such open burning to the Municipality.

(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) that 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) that 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) that person requesting authorisation has investigated and assessed the impact the open burning will have on the environment to the satisfaction of the Municipality;
- (e) that person requesting authorisation has notified in writing the owners and occupiers of all adjacent properties of — all known details of the proposed open burning; and 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) and 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 smallholding, or land within a proclaimed 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.
- (k) Farmers must obtain burning permits from the Local Fire Chief. The Fire Chief will request the time, date, area and extinguishing equipment. No crop burning may take place in windy conditions.

(4) The provisions of this section shall not apply to —

- (a) recreational outdoor barbecue or braai activities on private premises;
- (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
- (c) any other defined area or defined activity to which the Municipality has declared this section not to apply.

25. Emissions caused by tyre burning and burning of rubber and other material for the recovery of metal

(1) No person may without authorisation in writing by the Municipality —

- (a) carry out or permit the burning of any tyres or 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; or
- (c) possess, store, transport or trade in any burnt metal or fibre reinforcements referred to in paragraph (a) and (b).

(2) The Municipality may take whatever steps it considers necessary in order to remedy the harm caused by the burning referred to in paragraphs (a) and (b) and the possession referred to in paragraph (c), and prevent any occurrence of it, and may recover the reasonable costs incurred from the person responsible for causing such harm.

26. Dust emissions

Any person who —

- (a) conducts any activity; or
- (b) causes or permits dust emissions to occur,

shall adopt the best practical environmental option to the satisfaction of the authorised person, 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.

The dustfall standard indicates acceptable dust fall rates for residential and non-residential areas that must be adhered to as stated in the National Environmental Management Air Quality Act 39 of 2004.

Chapter VIII Emissions from compression ignition powered vehicles and power generators

27. Prohibition of dark smoke from compression ignition powered vehicles

- (1) No Person may on a public or private road or any premises drive or use, or cause to be used, a compression ignition powered vehicle or power generator that emits dark smoke.
- (2) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

28. Stopping of vehicles for inspection and testing

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

- (a) to stop the vehicle; and
- (b) to facilitate the inspection or testing of the vehicle.

When a vehicle has stopped in compliance with a direction given under subsection (1), the authorised person may —

- (a) inspect and test the vehicle at the roadside, in which case inspection and 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 one hour, after the vehicle is stopped in accordance with the direction; or
- (b) conduct a visual inspection of the vehicle and, if the authorised person reasonably believes that an offence has been committed under section 23(1), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 25.

29. Testing procedure

- (1) An authorised person must use the free acceleration test method in order to determine whether a compression ignition powered vehicle is being driven or used in contravention of section 23(1).
- (2) The following procedure must be adhered to in order to conduct a free acceleration test:
- (a) when instructed to do so by the authorised person, the driver must start the vehicle, place it in neutral gear and engage the clutch;
 - (b) while the vehicle is idling, the authorised person must conduct a visual inspection of the emission system of the vehicle;
 - (c) the authorised person must rapidly, smoothly and completely depress the accelerator throttle pedal of the vehicle, or he may instruct the driver to do likewise under his supervision;
 - (d) while the throttle pedal is depressed, the authorised person must measure the smoke emitted from the emission system of the vehicle in order to determine whether or not it is dark smoke;

- (e) the authorised person must release the throttle pedal when the engine reaches cut-off speed;
- (f) if the authorised person instructs the driver to depress the throttle, the driver may only release the throttle when it reaches cut-off speed or when instructed to do so by the authorised person.

(3) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle—

- (a) is not emitting dark smoke, he or she must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 23(1); or
- (b) is emitting dark smoke, he or she must issue the driver of the vehicle with a repair notice in accordance with section 26.

30. Repair notice

(1) The authorised person must with a written repair notice, 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 retesting before the expiry of that period. (2) The repair notice must contain the following information:

- (a) the make and registration number of the vehicle;
- (b) the name, address and identity number of the driver of the vehicle; and
- (c) If the driver is not the owner, the name and address of the vehicle owner.

(3) It shall not be a defence in proceedings relating to the non-compliance of the repair notice and non-retesting of the vehicle referred to in subsection (1) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

(4) If the owner of the vehicle fails to comply with the notice and the re-test referred to in subsection (1), the Municipality may take whatever steps it considers necessary in order to remedy the harm including towing the vehicle away and may recover the costs incurred from the owner of the vehicle.

Chapter IX Emissions that cause a nuisance

31. Prohibition of emissions that cause nuisance

(1) No person shall, 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;
- (b) or 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 General Safety Regulations promulgated in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and must be approved by the authorised person, for emissions, mechanical ventilation, noise and any other relevant Department as may be required by any other law.

(3) Any person conducting sand blasting, shot blasting, grinding, finishing or similar activity which customarily produce emissions of dust that may be harmful to public health or cause a nuisance shall take control measures to prevent emissions into the atmosphere.

(4) Any person undertaking an activity referred to in (3) must implement the following control measures:

- (a) dust extraction control measures;
- (b) any alternative control measure approved by the air quality officer or his or her delegated representative.

(5) An occupier or owner of any premises —

- (a) must prevent the existence in, or emission of any nuisance from, his or her premises.
- (b) from which a nuisance emanates, or where a nuisance exists, is guilty of an offence.

32. Abatement notice

(1) An authorised person may serve an abatement notice on any person whom he or she reasonably believes is likely to act in contrary or has acted in contrary of section 31, 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; and
- (c) to comply with any other conditions contained in the notice.

(2) An abatement notice under subsection (1) may be served —

- (a) upon the owner of any premises, by —
- (b) delivering it to the owner or, if the owner cannot be traced or is living abroad, the agent of the owner; transmitting it by registered post to the last known address of the owner or the last known address of the agent; or delivering it to the address where the premises are situated, if the address of the owner and the address of the agent are unknown;
- (c) upon the occupier of the premises, by —
 - (i) delivering it to the occupier; or transmitting it by registered post to the occupier at the address at which the premises are situated.

33. Steps to abate nuisance

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 reasonable costs incurred from the person responsible for causing the nuisance.

Chapter X Pesticide and crop spraying

34. Spraying of a pesticide, herbicide or other related material

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

(3) A person who carries out or permits the spraying of pesticides, herbicides or other materials referred to in subsection (1), within the area of jurisdiction of the Municipality, must comply with the following controlled measures:

- (a) obtain prior written authorisation of the Municipality which may be granted by the Municipality with conditions, including —
 - (i) the area of land on which the pesticide, herbicide or other material may be applied; and
 - (ii) the period of time in which the pesticide, herbicide or other material may be applied;
- (b) notify in writing the owners and occupiers of all adjacent properties within 150 metres of the proposed area of land, of —
 - (i) the details of such land;
 - (ii) the reason for use of pesticide, herbicide or other material;
 - (iii) the active ingredient of pesticide, herbicide or other material;
 - (iv) the date and approximate time of the use of pesticide, herbicide or other material;
 - (v) in the event of inclement weather conditions such as windy conditions, an alternative date or dates on which the use of pesticide, herbicide or other material may occur;
 - (vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application of the pesticide, herbicide or other material;

- (vii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Municipality within seven days of being notified; and
 - (viii) the prescribed fee has been paid to the Municipality.
- (4) Any person who contravenes subsection (3) is guilty of an offence.
- (5) A person may apply to the Municipality for an exemption if —
- (a) the spraying of the pesticide is for the management of pests that transmit human diseases or adversely impact agriculture or forestry;
 - (b) the spraying of the pesticide is for the management of pests that threaten the integrity of sensitive ecosystems; or
 - (c) the need for the use of the pesticide is urgent.
- (6) The provisions of this section are not applicable to —
- (a) residential areas of farms;
 - (b) buildings or inside of buildings; or
 - (c) any other defined area or defined activity to which the Municipality has declared this section not to apply.

Chapter XI Licensing of listed activities

35. Establishment of atmospheric emission licensing system

West Coast District Municipality established an Atmospheric Emission Licensing System as contemplated in Chapter 5 of the Air Quality Act. West Coast District Municipality is authorised to issue licences for listed activities.

36. Purpose of the atmospheric emission licensing system

The purpose of the Atmospheric Emission Licensing System is to —

- (a) identify and register all sources of air pollution in the Municipal areas;
- (b) regulate and ensure compliance with the licence conditions;
- (c) undertake strategic planning; and
- (d) provide information to any person in order to — facilitate monitoring of the performance of the Municipality, and if applicable, a licensee; stimulate research by acknowledged institutions; and assist the Municipality to achieve the main objectives of this By-law.

37. Application for atmospheric emission licence

(1) No person shall undertake a listed activity, as published in terms of section 21 and 23 of the Air Quality Act, without being in possession of an atmospheric emission licence issued by the West Coast District Municipal air quality officer.

(2) An application for an atmospheric emission licence must be —

- (a) made in writing on the application form as prescribed by the air quality officer;
- (b) accompanied by documents or information as may be required by the air quality officer; and
- (c) on payment of the prescribed application fee.

(3) The air quality officer must on receipt of an application for an atmospheric emission licence —

- (a) acknowledge receipt, within 14 days, of the application together with the prescribed fee;
- (b) check whether the application is properly completed and contains the information required in the application form; and
- (c) is accompanied by the required information or documents required in terms of this By-law.

(4) Before considering an application made in terms of subsection (2), the air quality officer may require the applicant to furnish additional information or a specialist air quality impact study.

(5) Any person who undertakes a listed activity without an atmospheric emission licence is guilty of an offence and is subject to the penalties as set out in section 52 of the Air Quality Act.

38. Factors to be taken into account

The air quality officer must, in addition to the factors set out in section 39 of the Air Quality Act, consider each application having regard to the following factors: compliance with the Air Quality Act and this By-law; and the environmental, health and safety record of the applicant.

39. Decisions on applications for atmospheric emission licence by West Coast District Municipality

(1) After considering the application in terms of section 37, the air quality officer must, within 60 days of receipt of the application, either —

- (a) approve the application by issuing a provisional atmospheric emission licence or an atmospheric emission licence, subject to such conditions as the air quality officer may impose; or
- (b) reject the application.

(2) If the air quality officer fails to grant or reject an application for an atmospheric emission licence within 60 days after considering the application in terms of section 33, he or she must inform the applicant in writing that the period for consideration is extended and must inform the applicant of the date by which a decision will be made.

40. Terms and conditions of the atmospheric emission licence issued by West Coast District Municipality

(1) When issuing an atmospheric emission licence, the air quality officer may impose reasonable conditions as he or she may deem necessary. (2) An atmospheric emission licence issued under this section must —

- (a) comply with section 43 of the Air Quality Act;
- (b) contain a requirement that the licence holder must comply with and ensure compliance by his or her employees, agents and sub-contractors with this By-law and other applicable national or provincial legislation.

41. Variation of atmospheric emission licences

No building, plant or works used by a holder of a licence referred to in section 33 shall be — materially extended; and altered or added to, and no changes in process, procedures or significant production increases may be undertaken without the prior approval of the air quality officer.

42. Cessation of atmospheric emission licence

The holder of a licence referred to in section 33 must on cessation of operations to which the licence relates notify the air quality officer of such cessation.

Chapter XII Controlled emitters

43. Installation of controlled emitters (West Coast District Municipal function)

(1) No person shall install, alter, extend or replace any controlled emitter on any premises without the prior written authorization of the Municipality, which may only be given after consideration of the relevant plans and specifications and any applicable emission standards developed for controlled emitters that have been determined in terms of section 24 of the Air Quality Act.

(2) After considering the application submitted in terms of subsection (1), the Municipality must either:

- (a) grant an application and issue an authorization, subject to any conditions that may be imposed; or
- (b) refuse an application with reasons.

(3) The authorization issued in term subsection (1) must specify:

- (a) the product name and model of the controlled emitter;
- (b) the premises in respect of which is issued;

- (c) the person to whom it is issued;
- (d) the period for which the authorization is issued;
- (e) the name of the municipality;
- (f) the periods at which the authorization may be reviewed;
- (g) the fuel type and quality;
- (h) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
- (i) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
- (j) any other matters which are necessary for the protection or enforcement of air quality.

(4) The Municipality must review the authorization issued in terms of Section 14(2) at intervals specified in the authorization, or when circumstances demand that a review is necessary.

(5) Any controlled emitter installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved for the purposes of this chapter by the Municipality, shall be presumed until the contrary is proved to comply with the provisions of subsection (1).

(6) Where any controlled emitter has been installed, altered, extended or replaced on premises contrary to subsection (1), the Municipality may, on written notice to the owner and occupier of the premises, order the removal of fuel burning equipment from the premises at the expense of the owner and operator and within the period stated within the notice.

(7) The Municipality may take whatever steps necessary in order to remedy the harm caused by the installation, alteration, extension or replacement on premises and prevent any further occurrence and may recover the reasonable costs so incurred from the person responsible for causing such harm.

44. Operation of controlled emitters (West Coast District Municipal function)

(1) No person may use or operate any controlled emitter or any premises contrary to the authorisation referred to in section 14.

(2) Where any controlled emitter has been used or operates on the premises in contrary to subsection (1), the Council may on written notice to the owner and occupier of the premises –

- (a) revoke his or her authorization under section 14; and
- (b) order the removal of the controlled emitter from the premises at the expense of the owner and the operator within the period stated in the notice.

(3) West Coast District Municipality may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2), remove the controlled emitter from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

45. Monitoring and sampling (West Coast District Municipal function)

(1) An occupier or owner of listed activities, and the operator of controlled emitters, must install emission measuring equipment and or must do emissions monitoring if and when required by an authorized person and 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 authorized person, produce the record of the monitoring and sampling results for inspection; and
- (c) if requested to do so by an authorized person, provide a written report, in a form and by a date specified by the authorized person, of part or all of the information in the record of the monitoring and sampling results.

46. Dust emissions from listed activities, controlled emitters and non-listed activities

(1) Any person conducting a listed activity or controlled emitter or a non-listed activity that produces emissions of dust that may be harmful to public health, well-being and/or cause a nuisance must take control measures to prevent or minimize emissions into the atmosphere.

(2) Any person who undertakes any listed activity or controlled emitter or non-listed activity that causes dust emissions must implement one or more of the following control measures:

- (i) pave;
- (ii) use dust or palliatives or suppressants;
- (iii) uniformly apply and maintain surface gravel;
- (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
- (v) use ground covers;
- (vii) re-vegetation which is similar to adjacent undisturbed native conditions; or
- (viii) any alternative control measure approved in writing by West Coast District Municipality for listed activities and controlled emitters. Non-listed activities are the responsibility of Cederberg Local Municipality.

(3) The control measures must be consistent with the provisions of any applicable legislation. Reference should be made to Section 6 of the National Dust Control Regulations.

(4) Any person who contravenes subsection (1) commits an offence.

Chapter XIII Emissions that cause offensive odour

48. Prohibition of emissions that cause offensive odours

(1) No person shall, within the area of jurisdiction of the Cederberg Local Municipality conduct any listed activity and or part of any listed activity or controlled emitter or any non-listed activity which cause an offensive odour that is in contravention of Atmospheric Emission Licence conditions or minimum emission standards published in terms of Section 21 of the Air Quality Act; or

(2) Any person conducting listed and/or controlled emitter activities or non-listed activities that produce emissions of offensive odours that may be harmful to public health and/or well-being or cause a nuisance that is in contravention of Atmospheric Emission Licence conditions or minimum emission standards published in terms of Section 21 of the Air Quality Act, must take control measures to prevent odorous emissions into the atmosphere.

(3) Any person undertaking an activity referred to in subsection (2) must implement the necessary measures such as, but not limited to, monitoring or any other measure determined by the authorized person to identify the substance(s) causing the offensive odour.

(4) Any person undertaking an activity referred to in subsection (2) must implement the necessary offensive odour control measures and any alternative control measure approved by the Air Quality Officer or his or her delegated representative.

(5) If an occupier or owner of any premises from which an offensive odour emanates, or where an offensive odour exists, refuses to control the offensive odour or refuses to implement the control measures referred to in subsection (3) is guilty of an offence.

49. Abatement notice

(1) An authorized person may serve an abatement notice on any person whom he or she reasonably believes is likely to act in contrary or has acted in contrary of section 47, calling upon that person –

- (a) to abate the offensive odour within a period specified in the notice;
- (b) to take all necessary steps to prevent a recurrence of the offensive odour; and
- (c) to comply with any other conditions contained in the notice.

(2) An abatement notice under subsection (1) may be served –

- (a) upon the owner of any premises, by –
 - (i) delivering it to the owner or, if the owner cannot be traced or is living abroad, the agent of the owner;
 - (ii) transmitting it by registered post to the last known address of the owner or the last known address of the agent; or
 - (iii) delivering it to the address where the premises are situated, if the address of the owner and the address of the agent are unknown;

- (b) upon the occupier of premises, by –
 - (i) delivering it to the occupier; or
 - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

Chapter XIV Offences and penalties

50. Offences and penalties

(1) Any person who continues to commit an offence after notice has been served on him or fails cease committing such offence after he has been convicted of such offence, is guilty of a continuing offence.

(2) Any person who –

- (a) contravenes any of the provisions of this By-law, condition or restriction or fails to comply therewith; or
- (b) contravenes or fails to comply with any other made hereunder or any notice served in connection herewith; or
- (c) furnishes a false statement, or give false or misleading information knowing it to be false or misleading; is guilty of an offence and liable to a –
 - (i) fine or imprisonment, or to both such fine and imprisonment and;
 - (ii) in the case of a continuing offence, to an additional fine or an additional period of imprisonment for each day on which such offence is continued and;
 - (iii) a further amount equal to any cost and expenses found by the court to have been incurred by the municipality as a result of such contravention or failure.

(3) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law –

- (a) to remedy the harm caused;
- (b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of civil judgement; and
- (c) to install and operate at the person's own expense emission measuring equipment referred to in section 16.

(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 offence.

(5) A fine may be issued to anyone who contravenes this By-law as per Municipal By-laws and Municipal Ordinances.

Chapter XV General matters

51. Compliance monitoring

- (1) For the purposes of compliance monitoring, the designated environmental management inspectors must exercise the powers as set out in sections 31G to 31L of the NEMA.
- (2) 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 a recognised and competent third party, at the cost of the polluter.

52. Enforcement

- (1) The authorised person must take all lawful, necessary and reasonable practicable measures to enforce the provisions of this By-law.
- (2) The Municipality may develop enforcement procedures which should take into consideration any national or provincial enforcement procedures.

53. Recognition programmes

An air quality officer may establish a programme for the public recognition of significant achievements in the area of pollution prevention.

54. Appeals

Any person may appeal against a decision taken by an authorised person under this By-law by giving a written notice of the appeal in accordance with the provisions of section 62 of the Systems Act.

55. Exemptions

- (1) Any person may, in writing, apply for exemption from the application of a provision of this By-law to the Municipality.
- (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 two newspapers, one circulating provincially and one 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.

The Municipality may —

- (a) from time to time review any exemption granted in terms of this section, and may impose such conditions as it may determine; and
- (b) on good grounds withdraw any exemption.

- (6) The Municipality may not grant an exemption under subsection (1) until he or she 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.

56. Indemnity

The Municipality shall not be liable for any damage caused to any property or premises by any action or omission of the employees or officials of the Municipality when exercising any function or performing any duty in terms of this By-law, provided that such employees or officials must, when exercising such function or performing such duty, take reasonable steps to prevent any damage to such property or premises.

57. Short title

This By-law is called the Cederberg Municipality Air Quality Management By-law, 2020.