

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO

NATIONAL ENVIRONMENTAL
MANAGEMENT:
AIR QUALITY BILL**

[B 62B—2003]

*(As agreed to by the Portfolio Committee on Environmental Affairs and Tourism
(National Assembly))*

[B 62C—2003]

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AMENDMENTS AGREED TO

NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY BILL [B 62B—2003]

PREAMBLE

1. That the following be a Preamble:

PREAMBLE

WHEREAS the quality of ambient air in many areas of the Republic is not conducive to a healthy environment for the people living in those areas let alone promoting their social and economic advancement;

And whereas the burden of health impacts associated with polluted ambient air falls most heavily on the poor;

And whereas air pollution carries a high social, economic and environmental cost that is seldom borne by the polluter;

And whereas atmospheric emissions of ozone-depleting substances, greenhouse gases and other substances have deleterious effects on the environment both locally and globally;

And whereas everyone has the constitutional right to an environment that is not harmful to their health or well-being;

And whereas everyone has the constitutional right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

- (a) prevent pollution and ecological degradation;
- (b) promote conservation; and
- (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

And whereas minimisation of pollution through vigorous control, cleaner technologies and cleaner production practices is key to ensuring that air quality is improved;

And whereas additional legislation is necessary to strengthen the Government's strategies for the protection of the environment and, more specifically, the enhancement of the quality of ambient air, in order to secure an environment that is not harmful to the health or well-being of people,

CLAUSE 1

1. On page 4, from line 40, to omit the definition of “atmospheric emission licence” and to substitute:

“atmospheric emission licence” means an atmospheric emission licence contemplated in Chapter 5;

2. On page 5, after line 42, to insert:

“provisional atmospheric emission licence” means a provisional atmospheric emission licence contemplated in Chapter 5;

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Object of Act

2. The object of this Act is—
 - (a) to protect the environment by providing reasonable measures for—
 - (i) the protection and enhancement of the quality of air in the Republic;
 - (ii) the prevention of air pollution and ecological degradation; and
 - (iii) securing ecologically sustainable development while promoting justifiable economic and social development; and
 - (b) generally to give effect to section 24(b) of the Constitution in order to enhance the quality of ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.

CLAUSE 7

1. On page 6, in line 37, to omit “as soon as reasonably practicable” and to substitute:

within two years of the date on which this section took effect

CLAUSE 9

1. On page 7, in line 54, to omit “or are likely to present”.
2. On page 7, in line 55, after “environment” to insert:

or which the Minister reasonably believes present such a threat
3. On page 7, from line 56, to omit paragraph (b) and to substitute:
 - (b) must, in respect of each of those substances or mixtures of substances, establish national standards for ambient air quality, including the permissible amount or concentration of each such substance or mixture of substances in ambient air; and
 - (c) may, in respect of each of those substances or mixtures of substances, establish national standards for emissions from point, non-point or mobile sources.

CLAUSE 10

1. On page 8, in line 10, to omit “or are likely to be present”.
2. On page 8, in line 11, after “province” to insert:

or which the MEC reasonably believes present such a threat

CLAUSE 11

1. On page 8, in line 35, to omit “or are likely to present”.

2. On page 8, in line 36, after “municipality” to insert:
or which the municipality reasonably believes present such a threat
3. On page 8, after line 43, to insert:
(3) A notice issued under this section may—
(a) provide for the phasing in of its provisions; and
(b) be amended.

CLAUSE 12

1. On page 8, in line 48, to omit “may” and to substitute “must”.

CLAUSE 16

1. On page 9, after line 45, to insert:
(iii) to identify and reduce the negative impact on human health and the environment of poor air quality;

CLAUSE 18

1. On page 10, in line 20, after “if” to insert:
the Minister or MEC reasonably believes that
2. On page 10, from line 21, to omit paragraph (a) and to substitute:
(a) ambient air quality standards are being, or may be, exceeded in the area, or any other situation exists which is causing, or may cause, a significant negative impact on air quality in the area; and
3. On page 10, from line 39, to omit subsection (5) and to substitute:
(5) The Minister or MEC may, by notice in the *Gazette*, withdraw the declaration of an area as a priority area if the area is in compliance with ambient air quality standards for a period of at least two years.

CLAUSE 19

1. On page 11, from line 19, to omit subsection (6) and to substitute:
(6) A priority area air quality management plan must—
(a) be aimed at co-ordinating air quality management in the area;
(b) address issues related to air quality in the area; and
(c) provide for the implementation of the plan by a committee representing relevant role-players.

CLAUSE 21

1. On page 11, from line 38, to omit subsection (1) and to substitute:
(1) The Minister must, or the MEC may, by notice in the *Gazette*—
(a) publish a list of activities which result in atmospheric emissions and which the Minister or MEC reasonably believes have or

- may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage; and
- (b) when necessary, amend the list by—
 - (i) adding to the list activities in addition to those contemplated in paragraph (a);
 - (ii) removing activities from the list; or
 - (iii) making other changes to particulars on the list.
- 2. On page 11, in line 51, to omit “may” and to substitute “must”.
- 3. On page 11, in line 54, after “amount” to insert “, volume, emission rate”.

CLAUSE 22

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Consequences of listing

- 22.** No person may without a provisional atmospheric emission licence or an atmospheric emission licence conduct an activity—
- (a) listed on the national list anywhere in the Republic; or
 - (b) listed on the list applicable in a province anywhere in that province.

CLAUSE 23

1. On page 12, in line 20, to omit “or are likely to present”.
2. On page 12, in line 21, after “environment” to insert:

or which the Minister or MEC reasonably believes present such a threat
3. On page 12, after line 26, to insert:

(c) take into account the Republic’s obligations in terms of any applicable international agreement; and
4. On page 12, from line 30, to omit subparagraph (iii).

CLAUSE 24

1. On page 12, in line 36, after “amount” to insert “, volume, emission rate”.

NEW PART

1. That the following be a new Part:

Part 4: Controlled fuels

Controlled fuels

26. (1) The Minister or MEC may, by notice in the *Gazette*, declare a substance or mixture of substances which, when used as a fuel in a combustion process, result in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health or the environment or which the Minister or MEC reasonably believes present such a threat, as a controlled fuel.

(2) Before publishing a notice in terms of subsection (1) or any amendment to the notice, the Minister or MEC must—

- (a) follow a consultative process in accordance with sections 56 and 57;
- (b) apply the precautionary principle contained in section 2(4)(a)(vii) of the National Environmental Management Act;
- (c) take into account the Republic's obligations in terms of any applicable international agreement; and
- (d) consider—
 - (i) any sound scientific information; and
 - (ii) any risk assessments.

(3) Subsection (2) need not be complied with if the notice is amended in a non-substantive way.

Use and prohibition of controlled fuels

27. A notice contemplated in section 26(1) may—

- (a) establish standards for the use of the controlled fuel in combustion processes;
- (b) establish standards for the manufacture or sale of the controlled fuel;
- (c) establish specifications, including maximum or minimum levels or concentrations of the constituents of substances or mixtures of substances, for the composition of controlled fuels;
- (d) prohibit the manufacture, sale or use of the controlled fuel;
- (e) differentiate between different geographical areas;
- (f) provide for the phasing in of its provisions; and
- (g) be amended.

Consequences of declaration

28. (1) No person may manufacture, sell or use a controlled fuel unless that manufacture, sale or use complies with the standards established in terms of section 27.

(2) No person may manufacture, sell or use a prohibited controlled fuel unless that manufacture, sale or use complies with any conditions of manufacture, sale or use established in terms of section 27.

(3) Subsections (1) and (2) apply—

- (a) nationwide in respect of a substance or mixture of substances declared by the Minister; or
- (b) in a relevant province only in respect of a substance or mixture of substances declared by the MEC responsible for air quality in that province.

CLAUSE 27

1. On page 13, in line 19, to omit “is likely to” and to substitute “may”.
2. On page 13, in line 22, to omit “or is likely to contribute to”.

3. On page 13, in line 24, after the first “of” to insert “a provisional atmospheric emission licence or”.

CLAUSE 31

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Control of noise

- 34.** (1) The Minister may prescribe essential national standards—
- (a) for the control of noise, either in general or by specified machinery or activities or in specified places or areas; or
 - (b) for determining—
 - (i) a definition of noise; and
 - (ii) the maximum levels of noise.
- (2) When controlling noise the provincial and local spheres of government are bound by any prescribed national standards.

CLAUSE 36

1. On page 15, after line 12, to insert:
 - (a) any applicable minimum standards set for ambient air and point source emissions that have been determined in terms of this Act;
2. On page 15, in line 17, to omit “any practical measures” and to substitute:

the best practicable environmental options available
3. On page 15, in line 19, after “environment” to insert:

, including health, social conditions, economic conditions, cultural heritage and ambient air quality,

CLAUSE 37

1. On page 15, after line 49, to insert:

(3) If an authorisation notice is issued in terms of section 24 of the National Environmental Management Act or section 22 of the Environment Conservation Act in respect of an application, the licensing authority must decide the application within 60 days of the date on which the notice has been issued.
2. On page 15, in line 51, to omit “promptly” and to substitute “within 30 days”.

CLAUSE 38

1. On page 16, in line 4, to omit “installation and”.

CLAUSE 40

1. On page 16, in line 22, to omit “An” and to substitute “A provisional atmospheric emission licence and an”.
2. On page 16, in line 29, after “allowed” to insert “amount, volume, emission rate or”.
3. On page 16, in line 41, to omit “An atmospheric emission” and to substitute “A”.
4. On page 16, in line 44, to omit “officer” and to substitute “management inspector”.
5. On page 16, in line 46, to omit “officer” and to substitute “inspector”.

CLAUSE 41

1. On page 17, in line 1, after “of” to insert “**provisional atmospheric emission licences and**”.
2. On page 17, in line 2, after “which” to insert “a provisional atmospheric emission licence or”.
3. On page 17, in line 3, to omit “atmospheric emission”.
4. On page 17, in line 6, to omit “who wishes to apply” and to substitute “applying”.
5. On page 17, from line 6, to omit “an atmospheric emission” and to substitute “a”.
6. On page 17, in line 10, to omit “an atmospheric emission” and to substitute “the transfer of a”.
7. On page 17, after line 13, to insert:
 - (4) (a) An applicant must take appropriate steps to bring the application for the transfer of an atmospheric emission licence to the attention of interested persons and the public.
 - (b) Such steps must include the publication of a notice in at least two newspapers circulating in the area in which the listed activity applied for is carried out—
 - (i) describing the reasons for the transfer of an atmospheric emission licence;
 - (ii) giving particulars of the listed activity, including the place where it is carried out;
 - (iii) stating a reasonable period within which written representations on or objections to the application may be submitted, and the address or place where representations or objections must be submitted; and
 - (iv) containing such other particulars as the licensing authority may require.
8. On page 17, in line 14, to omit “an atmospheric emission” and to substitute “a”.

CLAUSE 42

1. On page 17, in line 18, after “of” to insert “**provisional atmospheric emission licences and**”.

2. On page 17, in line 23, after “review” to insert “and the reason for such review”.

CLAUSE 43

1. On page 17, in line 26, after “of” to insert “**provisional atmospheric emission licences and**”.
2. On page 17, in line 27, after “of” to insert “a provisional atmospheric emission licence or”.
3. On page 17, in line 38, to omit “A variation” and to substitute “The variation of a licence”.
4. On page 17, in line 39, to omit “a” and to substitute “the”.
5. On page 18, in line 6, to omit “an atmospheric emission” and to substitute “a”.

CLAUSE 44

1. On page 18, in line 7, after “of” to insert “**provisional atmospheric emission licences and**”.
2. On page 18, in line 8, to omit “An” and to substitute “A provisional atmospheric emission licence or an”.
3. On page 18, in line 10, to omit “an atmospheric emission” and to substitute “a”.
4. On page 18, in line 23, to omit “an atmospheric emission” and to substitute “a”.

CLAUSE 45

1. On page 18, in line 25, after “of” to insert “a provisional atmospheric emission licence or”.
2. On page 18, from line 30, to omit “environmentally compatible processes; and” and to substitute “cleaner production technologies and practices;”.
3. On page 18, after line 33, to insert:
 - (c) promptly report any non-compliance with any licence conditions or requirements to the licensing authority through the most effective means reasonably available.

CLAUSE 46

1. On page 18, in line 42, after “held” to insert “a provisional atmospheric emission licence,”.
2. On page 18, in line 44, to omit “is or was” and to substitute “has been”.
3. On page 18, in line 44, after the second “or” to insert “senior manager who is or was a director or”.

CLAUSE 50

1. On page 20, in line 17, after “of” to insert “specific”.
2. On page 20, in line 19, to omit paragraph *(d)*.
3. On page 20, in line 20, to omit “or” and to substitute “and”.

CLAUSE 52

1. On page 20, in line 50, after “or” to insert “any”.
2. On page 20, in line 50, to omit “and” and to substitute “or”.

CLAUSE 56

1. On page 22, after line 20, to insert:
 - (b)* No exemption from a provision of section 9, 22 or 25 may be granted in terms of paragraph *(a)*.

CLAUSE 57

1. On page 22, from line 40, to omit subsection (1) and to substitute:
 - (1) The legislation mentioned in the Table in Schedule 1 is hereby repealed or amended to the extent set out in the third column of the Table, subject to subsections (2) and (3) of this section and section 61.

CLAUSE 58

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Transitional arrangements in respect of registration certificates issued in terms of Atmospheric Pollution Prevention Act

61. (1) *(a)* Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, a provisional registration certificate issued in terms of that Act and which was a valid certificate immediately before the date on which section 60 took effect, continues to be valid for a period of two years from that date, subject to paragraph *(c)*.

(b) During the period for which a provisional registration certificate continues to be valid, the provisions of this Act, read with the necessary changes as the context may require, apply in respect of—

- (i) the holder of such a certificate as if that person is the holder of a provisional atmospheric emission licence issued in terms of section 41(1) of this Act for the activity for which the certificate was issued; and
 - (ii) the certificate as if the certificate is a provisional atmospheric emission licence.
- (c)* If during the two-year period referred to in paragraph *(a)*—

- (i) a provisional atmospheric emission licence is issued to the holder of a provisional registration certificate following a revision in terms of section 45 or an application for renewal in terms of section 47, the certificate expires on the date of issue of the provisional licence; or
 - (ii) an atmospheric emission licence is issued to the holder of a provisional registration certificate in terms of section 42(1), the certificate expires on the date of issue of the licence.
- (2) (a) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, a registration certificate issued in terms of that Act and which was a valid certificate immediately before the date on which section 60 took effect, continues to be valid for a period of four years from that date, subject to paragraph (d).
- (b) During the period for which a registration certificate continues to be valid, the provisions of this Act, read with the necessary changes as the context may require, apply in respect of—
- (i) the holder of such a certificate as if that person is the holder of an atmospheric emission licence issued in terms of section 42(1) of this Act for the activity for which the certificate was issued; and
 - (ii) the certificate as if the certificate is an atmospheric emission licence.
- (c) The holder of a registration certificate must within the first three years of the four-year period referred to in paragraph (a), lodge a renewal application in terms of section 47 with the licensing authority of the area in which the activity for which the certificate was issued is carried out.
- (d) (i) If the holder of a registration certificate fails to comply with paragraph (c), the certificate expires at the end of the three years referred to in paragraph (c).
- (ii) If, during the four-year period referred to in paragraph (a) an atmospheric emission licence is issued to the holder of a registration certificate following an application for renewal in terms of paragraph (c), the certificate expires on the date of issue of the licence.
- (iii) If, during the period before the holder of a registration certificate lodges an application for renewal in terms of paragraph (c), an atmospheric emission licence is issued to the holder of the certificate following a revision in terms of section 45, the certificate expires on the date of issue of the licence. In such event compliance with paragraph (c) falls away.
- (3) Despite the repeal of the Atmospheric Pollution Prevention Act by section 60 of this Act, any application for a registration certificate made in terms of that Act which was not decided when section 60 took effect, must be proceeded with in terms of this Act as if such application was an application for an atmospheric emission licence in terms of section 37.

CLAUSE 59

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Transitional provision regarding listed activities

62. Pending the listing of activities by the Minister in terms of section 21, the processes identified in the Second Schedule of the Atmospheric Pollution Prevention Act must for the purposes of this Act be regarded as activities listed by the Minister in terms of that section.

CLAUSE 60

1. On page 23, in line 22, to omit “guidelines contained in Schedule 1” and to substitute “standards contained in Schedule 2”.

CLAUSE 61

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Short title and commencement

64. (1) This Act is called the National Environmental Management: Air Quality Act, 2004, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) for different provisions of the Act.

SCHEDULE 1

Schedule rejected.

NEW SCHEDULES

1. That the following be new Schedules:

SCHEDULE 1

(Section 60)

Legislation repealed or amended

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 45 of 1965	Atmospheric Pollution Prevention Act, 1965	The whole
Act No. 17 of 1973	Atmospheric Pollution Prevention Amendment Act, 1973	The whole
Act No. 21 of 1981	Atmospheric Pollution Prevention Amendment Act, 1981	The whole
Act No. 15 of 1985	Atmospheric Pollution Prevention Amendment Act, 1985	The whole
Act No. 107 of 1998	National Environmental Management Act, 1998	The amendment of section 1 by the substitution for the definitions of “specific environmental management Act” and “specific environmental management Acts” of the following definition: “ ‘specific environmental management Act’ means— (i) the National Environmental Management: Biodiversity Act, 2003; (ii) the National Environmental Management: Protected Areas Act, 2003; or (iii) the National Environmental Management: Air Quality Act, 2004, and includes any regulations or other subordinate legislation made in terms of any of those Acts;”.

SCHEDULE 2**(Section 63)****Ambient air quality standards**

1. Ambient concentrations of ozone (O_3) may not exceed—
 - (a) an instant peak of 0.25 parts per million measured at 25°C and normal atmospheric pressure; or
 - (b) a one-hour average of 0.12 parts per million measured at 25°C and normal atmospheric pressure.
2. Ambient concentrations of the oxides of nitrogen (NO_x) may not exceed—
 - (a) an instant peak of 1.4 parts per million measured at 25°C and normal atmospheric pressure;
 - (b) a one-hour average of 0.8 parts per million measured at 25°C and normal atmospheric pressure;
 - (c) a 24-hour average of 0.4 parts per million measured at 25°C and normal atmospheric pressure and the 24-hour limit may not be exceeded more than three times in one year;
 - (d) a one month average of 0.3 parts per million measured at 25°C and normal atmospheric pressure; or
 - (e) an annual average of 0.2 parts per million measured at 25°C and normal atmospheric pressure.
3. Ambient concentrations of nitrogen dioxide (NO_2) may not exceed—
 - (a) an instant peak of 0.5 parts per million measured at 25°C and normal atmospheric pressure;
 - (b) a one-hour average of 0.2 parts per million measured at 25°C and normal atmospheric pressure;
 - (c) a 24-hour average of 0.1 parts per million measured at 25°C and normal atmospheric pressure and the 24-hour limit may not be exceeded more than three times in one year;
 - (d) a one-month average of 0.08 parts per million measured at 25°C and normal atmospheric pressure; or
 - (e) an annual average of 0.05 parts per million measured at 25°C and normal atmospheric pressure.
4. Ambient concentrations of sulphur dioxide (SO_2) may not exceed—
 - (a) a ten-minute average instant peak of 0.191 parts per million measured at 25°C and normal atmospheric pressure;
 - (b) an instant peak of 500 micrograms per cubic meter ($\mu g/m^3$) measured at 25°C and normal atmospheric pressure;
 - (c) a 24-hour average of 0.048 parts per million or 125 micrograms per cubic meter ($\mu g/m^3$) measured at 25°C and normal atmospheric pressure;
 - (d) an annual average of 0.019 parts per million or 50 micrograms per cubic meter ($\mu g/m^3$) measured at 25°C and normal atmospheric pressure.
5. Ambient concentrations of lead (Pb) may not exceed a one month average of 2.5 micrograms per cubic meter ($\mu g/m^3$).
6. Ambient concentrations of particulate matter with a particle size of less than 10 microns (μ) in size (PM_{10}) may not exceed—
 - (a) a 24-hour average of 180 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour limit may not be exceeded more than three times in one year; or
 - (b) an annual average of 60 micrograms per cubic meter ($\mu g/m^3$).
7. Ambient concentrations of total suspended solids may not exceed—
 - (a) a 24-hour average of 300 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour limit may not be exceeded more than three times in one year; or

(b) an annual average of 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

LONG TITLE

1. On page 1, in the first line, to omit “protect and enhance the quality of air in the Republic, taking into account the need for sustainable development” and to substitute:

protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development

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