

Drakenstein, South Africa

Air Quality Management

Legislation as at 7 May 2021

FRBR URI: /akn/za-wc023/act/by-law/2021/air-quality-managment/eng@2021-05-07

There may have been updates since this file was created.

PDF created on 19 April 2024 at 09:10.

Collection last checked for updates: 12 April 2024.

Check for updates



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from LawLibrary and is presented in collaboration with the African Legal Information Institute, the Judicial Institute for Africa and the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.lawlibrary.org.za | info@lawlibrary.org.za

www.laws.africa | info@laws.africa

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Air Quality Management Contents

Chapter 1 – Interpretation and fundamental principles	1
1. Definitions	1
2. Purpose and objectives	3
3. Application	3
Chapter 2 – Duty of care	3
4. Air pollution duty of care	3
Chapter 3 – Designation of air quality officer and environmental management inspectors	4
5. Designation of air quality officer and environmental management inspectors	4
6. Powers and functions of the air quality officer	4
7. Powers and functions of designated environmental management inspectors	4
Chapter 4 – Local emission standards, norms and standards and smoke control zones	4
Part 1 – Local emission standards	4
8. Identification of Substances and Development of Local Emission Standards	4
Part 2 – Norms and standards	5
9. Substances identification process	5
10. Declaration of air pollution control zones	5
11. Public participation process	6
Chapter 5 – Smoke emissions from premises other than dwellings	6
12. Prohibition of dark smoke from premises	6
13. Installation and operation of fuel burning equipment	6
14. Emission measuring	7
15. Monitoring and sampling	8
16. Temporary exemption	8
17. Transitional arrangements in respect of authorised fuel burning equipment	8
Chapter 6 – Emissions caused by burning of material	9
18. Emissions caused by burning of industrial waste, domestic waste and garden waste on any premises	9
19. Emissions caused by tyre burning and burning of rubber and other material for the recovery of metal	9
Chapter 7 – Emissions caused by spray painting and media blasting	9
20. Spray painting emissions	9
21. Media blasting emissions	9
Chapter 8 – Emissions from compressed ignition powered vehicles	10
22. Prohibition	10
23. Stopping of vehicles for inspection and testing	10
24. Testing procedure	10

25. Repair notice	11
Chapter 9 – Compliance and enforcement	11
26. Compliance Notice	11
27. Remedial steps	12
28. Access to premises and enforcement	12
Chapter 10 – General provisions	12
29. Indemnity	12
30. Exemptions	12
31. Offences and penalties	13
32. Appeal	14
33. Repeal of by-law and savings	14
34. Short title and commencement	14
Schedule 1 (Section 14)	14

Drakenstein South Africa

Air Quality Management By-law, 2021

[Published in Western Cape Provincial Gazette 8425 on 7 May 2021](#)

Commenced on 7 May 2021

[This is the version of this document from 7 May 2021 and includes any amendments published up to 12 April 2024.]

Drakenstein Municipality, by virtue of the powers conferred by section 156 of the [Constitution 1996](#), hereby enacts as follows:

Chapter 1 Interpretation and fundamental principles

1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts; and, unless the context otherwise indicates:

"**the Act**" means the National Environmental Management: Air Quality Act, 2004 ([Act 39 of 2004](#)), as amended, and any other word or expression to which a meaning has been assigned in the Act shall bear that meaning.

"**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, aerosol 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 quality management plan**" means the air quality management plan referred to in section 15 of the Act;

"**air quality officer**" means an officer appointed in terms of section 4 of the Act;

"**ambient air**" means "ambient air" as defined in section 1 of the Act;

"**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 may result in air pollution;

"**authorised official**" means any employee of municipality responsible for carrying out any duty or function or exercising any power in terms of this by-law and includes any employee delegated to carry out such duties, functions and powers;

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

"**Constitution**" means the [Constitution of the Republic of South Africa, 1996](#);

"**dark smoke**" means smoke which has a density of 60 Hartridge smoke units or more or smoke which when measured using a light absorption meter, obscuration measuring equipment or other similar equipment, has an obscuration of 20% or greater;

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

"**dwelling**" means any building or structure, or part of a building or structure, used as a dwelling and any outbuildings ancillary to it;

"**environmental management inspector**" means an environmental management inspector referred to in chapter 3;

"**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 inter relationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"**fuel burning equipment**" means any furnace, boiler, incinerator, or other equipment, including a chimney:

- (a) designed to burn or capable of burning liquid, gas or solid fuel
- (b) used to dispose of any material or waste by burning; or
- (c) used to subject liquid, gas or solid fuel to any process involving the application of heat;

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

"**media blasting**" means a process that uses pressurized air to propel a stream of abrasive material against a surface (known as blasting media) out of a nozzle and includes sand blasting or shot blasting;

"**Municipality**" means the municipality of Drakenstein established in terms of Section 12 of the Municipal Structures [Act, 117 of 1998](#), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"**National Framework**" means the National Framework for Air Quality Management in the Republic of South Africa, as established in terms of the Act;

"**NEMA**" means the National Environmental Management Act, 1998 ([Act No. 107 of 1998](#)), as amended;

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

"**open burning**" means the combustion of material by burning without a closed system that has a chimney to vent the emitted products of combustion to the atmosphere;

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

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

"**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 structure, locomotive, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality;

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

- (a) the health or well being of the public;

- (b) the ordinary comfort, convenience and peace of the public.

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

"**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;

"**soot blowing**" means a method of cleaning deposited carbon from the internal surfaces of fuel burning equipment, which usually includes the use of a jet of air or steam onto heat exchange surfaces to clean deposits;

"**spray area**" means the area or enclosure referred to in [section 20](#).

2. Purpose and objectives

- (1) The objectives of this by-law are to–
- (a) give effect to the environmental right contained in section 24 of the [Constitution](#) and the local government mandate contained in Schedule 4B of the [Constitution](#) by regulating air pollution within the jurisdictional area of the municipality;
 - (b) give effect to the requirements of the Drakenstein Environmental Policy and the Air Quality Management Plan;
 - (c) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the municipality can manage and regulate activities that have the potential to adversely impact the environment, public health and well being; and
 - (d) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimised.
- (2) Any person exercising a power under this by-law must exercise such power 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 Act and the National Framework.
- (2) This by-law applies to all land or premises within the jurisdictional area of the Drakenstein municipality.
- (3) The provisions of this by-law do not remove the need for any other permit, consent, or authorisation required under any other legislation.
- (4) In the event of conflict with another by-law or policy that regulates air pollution, the provisions of this by-law shall prevail in so far as it relates to air quality.

Chapter 2 Duty of care

4. Air pollution duty of care

- (1) Every person who is wholly or partially responsible for causing atmospheric emissions from premises must take all reasonable measures–
- (a) to prevent any air pollution from occurring; and
 - (b) where it cannot be prevented, to mitigate any air pollution that may occur.

- (2) No person may commit any act or omission which causes or is likely to cause air pollution;

Chapter 3

Designation of air quality officer and environmental management inspectors

5. Designation of air quality officer and environmental management inspectors

- (1) The city manager must designate an employee of the municipality as air quality officer to be responsible for co-ordinating matters pertaining to air quality management within the jurisdictional area of the municipality.
- (2) The city manager may request the MEC responsible for environment in the Province to designate appropriately qualified officials of the municipality as environmental management inspectors in terms of section 31C of NEMA.

6. Powers and functions of the air quality officer

- (1) The air quality officer must—
- (a) co-ordinate the development of the air quality management plan for inclusion in the Integrated Development Plan of the municipality;
 - (b) report annually on air quality in the municipality;
 - (c) exercise the powers and duties assigned to him or her under this by-law; and
 - (d) submit the annual report referred to in paragraph (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 include the progress of the municipality towards the implementation of the air quality management plan.

7. Powers and functions of designated environmental management inspectors

A designated environmental management inspector shall, within his or her mandate as determined by the MEC, have all the powers and functions as set out in sections 31G to 31L of NEMA.

Chapter 4

Local emission standards, norms and standards and smoke control zones

Part 1 – Local emission standards

8. Identification of Substances and Development of Local Emission Standards

- (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, well-being or the environment in the municipality or which the air quality officer reasonably believes present such a threat; and
 - (b) in respect of each of those substances or mixtures of substances, publish local standards for emissions from point, non-point or mobile sources in the municipality.

- (2) The municipality must 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 emitting substances or mixtures of substances referred to in subsection (1) must comply with the emission standards established in terms of this section.

Part 2 – Norms and standards

9. Substances identification process

- (1) The municipality 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:
 - (i) size of the exposed population, living resources or ecosystems;
 - (ii) the existence of particularly sensitive receptors in the zone concerned; and
 - (f) substances that are regulated by international conventions.
- (2) The municipality must, using the criteria set out in subsection (1), compile a list of substances in ambient air that present a threat to public health, well-being or the environment.

10. Declaration of air pollution control zones

- (1) The municipality may–
 - (a) declare air pollution control zones within its area of jurisdiction; and
 - (b) within the air pollution control zone, by notice in the *Provincial Gazette*–
 - (i) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;
 - (ii) prohibit or restrict the combustion of certain types of fuel;

- (iii) declare smokeless zones, in which smoke with an obscuration of more than 10% may not be emitted;
- (iv) prescribe different requirements in an air pollution control zone relating to air quality in respect of:
 - (aa) different geographical portions;
 - (bb) specified premises;
 - (cc) classes of premises;
 - (dd) premises used for specified purposes; or
 - (ee) mobile sources
- (3) The municipality may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.

[Please note: numbering as in original.]

11. Public participation process

For the purposes of the publication of the local emission standards and the declaration of air pollution control zones, the municipality must follow the public participation process as set out in section 13 of the Municipal Systems Act, 2000, as amended.

Chapter 5

Smoke emissions from premises other than dwellings

12. Prohibition of dark smoke from premises

- (1) Subject to subsections (2) and (3), dark smoke may not be emitted from any premises, other than dwellings, for an aggregate period exceeding three minutes during any continuous period of thirty minutes.
- (2) This section does not apply to dark smoke which is emitted from fuel-burning equipment which occurs within thirty minutes of the equipment 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.
- (3) During soot blowing of any fuel burning equipment, dark smoke shall be limited to a period not exceeding 10 minutes in any continuous period of eight hours. Should soot blowing of any fuel burning equipment exceed 10 minutes, the holder shall report the incident to the air quality officer immediately.
- (4) Subsections (1), (2) and (3) do not apply to holders of atmospheric emission licences for activities listed in terms of section 21 of the Act, and the emission standards listed in such licence shall apply.

13. Installation and operation of fuel burning equipment

- (1) No person may install, alter, extend, replace or cause or permit to be installed, altered, extended or replaced any fuel burning equipment on any premises, unless the plans and specifications in respect of such installation, alteration, extension or replacement have been approved by the municipality.

- (2) The municipality may, in the written approval issued in terms of subsection (1), impose conditions with which the applicant must comply, including:
 - (a) minimum emission standards;
 - (b) minimum chimney diameter and height;
 - (c) minimum control measures; and
 - (d) maximum hours of operation.
- (3) No person may use or operate any fuel-burning equipment on any premises contrary to an authorisation issued in terms of subsection 1 or contrary to any conditions of such authorisation issued in terms of subsection (2).
- (4) Where fuel-burning equipment has been used or operated on the premises contrary to subsections (1) or (2), an authorised official may after written notice to the owner or operator of the equipment–
 - (a) order the removal of the fuel-burning equipment from the premises at the expense of the owner or operator within the period stated in the notice; or
 - (b) revoke his or her authorisation under subsection (1).
- (5) The municipality may, if the owner or operator of the equipment fails to comply with a notice issued in terms of subsection (4), remove the fuel burning equipment from the premises and may recover the reasonable costs incurred from the owner or operator.
- (6) The municipality may take whatever steps necessary to remedy the harm caused by the use or operation of fuel-burning equipment in contravention of this section and recover any costs incurred from the person responsible therefor.

14. Emission measuring

- (1) An authorised official may issue a written 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 conduct emission measurements of specific pollutants in accordance with Schedule 1 of this by-law, or to install, maintain and operate obscuration measuring equipment at his or her own cost if such official has grounds to believe–
 - (a) that unauthorised and unlawful emissions of dark smoke from the relevant premises have occurred;
 - (b) that unauthorised and unlawful emissions of selected pollutants beyond the minimum emission standards authorised from any fuel burning equipment from the relevant premises have occurred;
 - (c) that fuel-burning equipment has been or is intended to be installed on the relevant premises which are likely to emit dark smoke;
 - (d) that the person on whom the notice is served has previously transgressed the provisions of this chapter and has not taken adequate measures to prevent further transgression of the provisions of this chapter; or
 - (e) that the nature of the air pollutants emitted from the relevant premises is likely to create a hazard to human health or the environment.
- (2) A notice issued in terms of subsection (1) must contain the information as set out in [section 28](#) of this by-law.

15. Monitoring and sampling

An owner or occupier of premises, and the operator of any fuel-burning equipment, who is required to conduct emission measurements or to install obscuration measuring equipment in terms of [section 14\(1\)](#) must–

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

16. Temporary exemption

- (1) Subject to [section 32](#) and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the municipality may grant a temporary exemption in writing from one or all the provisions of this Chapter.
- (2) Any exemption granted under subsection (1) must state at least the following–
 - (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
 - (b) the reasons for granting the exemption;
 - (c) the conditions attached to the exemption, if any;
 - (d) the period for which the exemption has been granted; and
 - (e) any other relevant information.
- (3) The municipality may not grant a temporary exemption under subsection (1) until the municipality has–
 - (a) taken reasonable measures to ensure that all persons whose rights may be adversely 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; and
 - (c) duly considered and considered any objections raised.

17. Transitional arrangements in respect of authorised fuel burning equipment

- (1) Subject to [section 33\(2\)](#), fuel burning equipment that was authorised to operate in terms of any by-law of the municipality prior to the commencement of this by-law, continues to be authorised to operate subject to sub section (3).
- (2) During the period for which the authorised fuel burning equipment continues to operate, the provisions of this by-law, read with the necessary changes, apply in respect of–
 - (a) the holder of an existing authorisation as if that person is the holder of the authorisation issued in terms of [section 13\(1\)](#) of this by-law; and
 - (b) the existing authorisation as if the authorisation was issued in terms of [section 13\(1\)](#) of this by-law.
- (3) The holder of an existing authorisation must re-apply in terms of subsection 13(1), when such authorisation expires or when required to do so by the municipality.

Chapter 6

Emissions caused by burning of material

18. Emissions caused by burning of industrial waste, domestic waste and garden waste on any premises

A person who carries out or permits the burning of any industrial, domestic or garden waste, on any premises, for the purpose of disposing of that waste, is committing an offence unless such waste is legally disposed of in terms of section 26 of the National Environmental Management: Waste Act, 2008 ([Act 59 of 2008](#)).

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

- (1) No person may without written permission 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 premises;
 - (b) carry out or permit the burning of any tyres, rubber products, cables or any other products, on any 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 illegally burnt metal or fibre reinforcement.
- (2) The municipality may take whatever steps it considers necessary 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 costs incurred from the person responsible for causing such harm.

Chapter 7

Emissions caused by spray painting and media blasting

20. Spray painting emissions

- (1) No person may spray, coat, plate, or epoxy-coat any vehicle, article or object with any substance outside an approved spray-painting room or booth without approval of the municipality.
- (2) A spray area or spray booth referred to in sub section (1) must be—
 - (a) constructed and equipped in accordance with the General Safety Regulations promulgated in terms of the Occupational Health and Safety Act, 1993 ([Act 85 of 1993](#)); and
 - (b) approved by an authorised official, for emissions, mechanical ventilation, noise and any other relevant legislation.
- (3) A person who wishes to obtain a spraying authorisation must apply for authorisation in the prescribed manner.
- (4) The provisions of any by-law of the municipality relating to Fire Safety shall apply with the necessary changes.

21. Media blasting emissions

- (1) A person conducting media blasting, grinding, finishing or similar activity which produce emissions of dust that may be harmful to public health or cause a public nuisance must take control measures to prevent emissions into the atmosphere.

- (2) A person undertaking an activity referred to in subsection (1) must implement dust extraction control measures or any alternative control measures approved by the municipality.

Chapter 8

Emissions from compressed ignition powered vehicles

22. Prohibition

- (1) No person may drive or use a compressed ignition powered vehicle 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.

23. Stopping of vehicles for inspection and testing

- (1) The driver of a vehicle must comply with any reasonable direction given by an authorised official–
 - (a) to stop the vehicle; and
 - (b) to facilitate the inspection or testing of the vehicle.
- (2) The authorised official may–
 - (a) inspect and test the vehicle in which case inspection and testing must be carried out–
 - (i) at or as near as practicable to the place where the vehicle is stopped; and
 - (ii) as soon as practicable after the vehicle is stopped; or
 - (b) conduct a visual inspection of the vehicle and, if he or she believes that an offence has been committed under [section 22\(1\)](#), instruct the driver of the vehicle to take the vehicle to a testing station, within a specified period, for inspection and testing in accordance with [section 24](#).

24. Testing procedure

- (1) An authorised official must use the free acceleration test method to determine whether a compressed ignition powered vehicle is being driven or used in contravention of [section 22\(1\)](#).
- (2) The following procedure must be adhered to–
 - (a) the driver must start the vehicle, place it in neutral gear, engage the clutch and disengage the exhaust brake;
 - (b) the authorised official or the driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle;
 - (c) while the throttle pedal is depressed, the authorised official must measure the smoke emitted from the vehicle's emission system with a Hartridge Smoke meter to determine whether or not it is dark smoke; and
 - (d) the throttle pedal of the vehicle must be released when directed to do so by the authorised official.
- (3) If the authorised official 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 22\(1\)](#); or
 - (b) is emitting dark smoke, the authorised official must issue the driver of the vehicle with a repair notice in accordance with [section 25](#).

25. Repair notice

- (1) A repair notice must direct the owner of the vehicle to take the vehicle to a place identified in the notice for re-testing.
- (2) The repair notice must contain the following information–
 - (a) the make, model and registration number of the vehicle;
 - (b) the name, address and identity number of the driver of the vehicle; and, if the driver is not the owner, the name and address of the vehicle owner;
 - (c) the measures required to remedy the situation; and
 - (d) the period within which the owner of the vehicle must comply with the repair notice.
- (3) It shall not be a defence to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

Chapter 9 Compliance and enforcement

26. Compliance Notice

- (1) An authorised official may serve a compliance notice on any person whom he or she reasonably believes is likely to commit or has committed an offence under this by-law, calling upon that person–
 - (a) to abate the nuisance or transgression within a period specified in the notice;
 - (b) to take all necessary steps to prevent a recurrence of the nuisance or transgression; and
 - (c) to comply with any other conditions contained in the notice.
- (2) For the purposes of sub section (1), an authorised official may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the compliance notice is to be served.
- (3) A notice referred to in sub section (1) must contain the following information–
 - (a) the action that constitutes a contravention or non-compliance;
 - (b) the relevant legislative provisions contravened;
 - (c) the measures to be implemented to remedy the situation
 - (d) the time frame within which remedial measures must be executed;
 - (e) the right to make representations; and
 - (f) the possible consequences if the notice is not complied with.
- (4) A compliance notice under sub section (1) may be served–
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;

- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c); or
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.
- (5) When any notice or other document must be authorised or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

27. Remedial steps

- (1) The municipality may take reasonable measures to remedy a condition or situation or to apply to a competent court for appropriate relief should a person fail to comply, or inadequately comply with a notice issued in terms of [section 26](#) or any other provision of this by-law.
- (2) The municipality may recover costs for remedial measures undertaken under subsection (1) from any person who is or was responsible for, or who contributed to the transgression.

28. Access to premises and enforcement

- (1) An authorised official shall have access to any premises for the purpose of–
 - (a) doing anything authorised or required to be done under this by-law or the Act or any other law regulating air quality;
 - (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 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 the Act; and
 - (e) enforcing compliance with the provisions of this by-law or the Act.
- (2) The municipality may gain access to or over premises without notice and may take whatever steps or action as may reasonably be necessary or desirable in consequence of the existence of or the occurrence of any emergency or disaster.

Chapter 10

General provisions

29. 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.

30. Exemptions

- (1) Any person may, in writing, apply to the municipality for exemption from the application of a provision of this by-law.

- (2) The municipality may require an applicant applying for exemption to take steps bring the application to the attention of interested and affected persons.
- (3) The steps contemplated in subsection (3) may 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 may be required.
- (4) The municipality may–
 - (a) review any exemption granted in terms of this section, and may impose such conditions as it may determine; and
 - (b) withdraw any exemption in case of non-compliance with such conditions.
- (5) The municipality may not grant an exemption under subsection (1)–
 - (a) until it has taken reasonable measures to ensure that all persons whose rights may be adversely affected by the granting of the exemption are aware of the application for exemption and how to obtain a copy of it;
 - (b) until it has provided such persons with a reasonable opportunity to object to the application; and
 - (c) until it has duly considered and considered any objections raised.
- (6) The municipality may not grant an exemption under subsection (1) in conflict with the Act or any other legislation or any restriction placed in terms of any other legislation.

31. Offences and penalties

- (1) A person who contravenes sections [4](#), [12](#), [13](#), [15](#), [18](#), [19](#), [20](#), [21](#), [22](#), and [23](#) is guilty of an offence and upon conviction will be liable to a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment.
- (2) It is an offence to–
 - (a) supply false information to an authorised person made in terms of this by-law; or
 - (b) refuse to co-operate with the request of an authorised official made in terms of this by-law or to interfere with an authorised official in the execution of his or her duties.;
 - (c) fail to comply with a notice issued in terms of [section 26](#) of this by-law.
- (3) A court may order any person convicted of an offence under this by-law to pay a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.
- (4) Failure to comply with a notice, direction or condition referred to in this by-law constitutes a continuing offence and a person who is guilty of a continuing offence, is liable on conviction to an additional fine for each day on which such offence is continued.
- (5) 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 a civil judgment; and

- (c) to install and operate at the person's own expense emission measuring equipment referred to in [section 14](#).
- (6) In addition to any other penalty the court may impose, it may order a person to take such steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the offence.

32. Appeal

A person whose rights are affected by decision taken in terms of delegated authority may appeal to the city manager against such decision in terms section 62 of the Local Government: Municipal Systems Act, 2000 ([Act 32 of 2000](#)) by giving a written notice within 21 days of the date of notification of the decision and the reasons for the appeal.

33. Repeal of by-law and savings

- (1) The Drakenstein Municipality: By-law Relating to Atmospheric Pollution, No 11/2007, published in *Provincial Gazette* No. 6426 dated 16 March 2007 is hereby repealed.
- (2) Anything done or deemed to have been done under the by-law hereby repealed, remains valid to the extent that it is consistent with this By-law.

34. Short title and commencement

This by-law shall be known as the Drakenstein: Air Quality Management By-law 2021, and shall come into operation on the date of publication thereof in the *Provincial Gazette*.

Schedule 1 (Section 14)

Standards and specifications for fuel-burning equipment:

- 1. All fuel-burning equipment capable of burning more than 100kg/h of coal, biomass or other solid fuel shall be fitted with suitable control equipment to limit dust and grit emissions.
- 2. The control equipment shall be fitted in such a manner to facilitate easy maintenance.
- 3. The permitted concentration of grit and dust emissions from a chimney serving a coal fired boiler equipped with any mechanical draught fan system shall not be more than 250 mg/Nm³ (as measured at 0°C, 101,3 kPa and 12% CO₂). Where the fuel-burning equipment has been declared as a Controlled Emitter in terms of the Air Quality Act, the respective Controlled Emitter Regulations shall apply.

The approved methods for testing shall be:

US EPA:

- 1. Method 17 - In-Stack Particulate (PM).
- 2. Method 5 - Particulate Matter (PM).

ISO standards:

ISO 9096: Stationary source emissions - Manual Determination of mass concentration of particulate matter.

British standards:

BS 3405:1983 Method for measurement of particulate emission including grit and dust (simplified method).

The municipality reserves the right to call upon the owner or his or her agent of the fuel burning equipment to have the emissions from such fuel burning equipment evaluated at his or her own expense as may be required by the authorised official.

Insulation of chimneys:

All fuel-burning equipment using Heavy Fuel Oil or other liquid fuels with a sulphur content equal to or greater than 2.5 % by weight must be fitted with a fully insulated chimney using either a 25mm air gap or mineral wool insulation to prevent the formation of acid smut. Such chimneys must be maintained in a good state of repair at all times.

Wood-fired pizza ovens and other solid fuel combustion equipment:

Wood-fired pizza ovens and other solid fuel combustion equipment shall be fitted with induced draft fans at the discretion of the authorised official.