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PROCLAMATIONS • PROKLAMASIES

NON-GOVERNMENTAL ORGANIZATION

PROCLAMATION NOTICE 90 OF 2022

CAPRICORN DISTRICT MUNICIPALITY

AMENDED DRAFT AIR QUALITY MANAGEMENT BY-LAW

CAPRICORN DISTRICT MUNICIPALITY acting in terms of section 156(2) of the Constitution of the Republic of South Africa Act, 1996 has made the air quality management By-law here-under.

PREAMBLE

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;
- (c) secure ecologically sustainable development and use of natural resource while promoting justifiable economic and social development.

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CHAPTER 1**Interpretations 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 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 has caused or may cause air pollution.

“air pollution” means any change in the composition of the air caused by smoke, soot, dust(including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances.

“air pollution control zone” means the geographical area to which chapter 4 of this By- law is declared to apply.

“AQA” means the National Environmental Management: Air Quality Act, 2004 (Act no.39 of 2004).

“air quality management plan” means a plan referred to in section 15 of the AQA.

“air quality officer” means the air quality officer designated as such in terms of section 14(3) of the AQA.

“ambient air” means the ambient air as defined in section 1 of the AQA.

“asphalt plant” means a plant that produces asphalt for road, driveway or pathway surfacing by mixing aggregate, bitumen and other additives to produce hot mixed asphalt and/or warm mix asphalt.

“atmospheric emission” means any emission or entrainment process emanating from a point, non point or mobile sources that result in air pollution.

“authorized person” means an employee of the Municipality appointed to enforce its By-Laws and in possession of an appointment card issued by the Municipality attesting thereto.

“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.

“controlled emitter” means any appliance or activity declared as a controlled emitter in terms of Section 23 of the AQA.

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

“dustfall” means the deposition of dust.

“dwelling” means any building or structure, or part of a building or structure, used as a dwelling and any outbuildings ancillary to it.

“environment” has the meaning assigned to it in section 1 of the NEMA.

“industrial area” means any area classified for industrial use as per the local town planning scheme

“municipality” means Capricorn District Municipality.

“non-residential area” means any area not classified for residential use as per the local town planning scheme.

“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.

“person” means a natural person or a juristic person.

“premises” includes-

- (a) any building or other structure;
- (b) any adjoining land occupied or used in connection with any activities carried on in that building or structure;

(c) any vacant land.

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

$$\text{NHI} = M_f \times \text{NCV} / (3.6 \times 10^6)$$

Where: NHI refers to the Net Heat Input expressed in MW;

M_f refers to the Mass flow rate of the fuel expressed in kg/hour;

NCV refers to the Net Calorific Value of the fuel expressed in kJ/kg;

With:

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

Where:

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

H_2O in fuel refers to the Total moisture in the fuel, expressed as a Mass fraction (As fired condition);

H_2 in fuel refers to the Total hydrogen in the fuel including hydrocarbons, expressed as a Mass fraction (Obtained from the ultimate analysis of the fuel);

“residential area” means any area classified for residential use in terms of the local town planning scheme.

“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 particles.

“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.

“temporary asphalt plant” means an asphalt plant that is used for the sole purpose of supplying asphalt for a specific road paving contract not exceeding a period of 24 months.

“the NEMA” means the National Environmental Management Act, 1998 (Act no.107 of 1998).

2. Objectives

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

- (a) give effect to the right contained in section 24 of the Constitution in order to enhance the quality of the ambient air for the sake of securing an environment that is not harmful to the health and well-being of people;
- (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) secure ecologically sustainable development while promoting justifiable economic and social development.

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

3. Application

This By-law is applicable within the area of jurisdiction of the municipality.

CHAPTER 2

DUTY OF CARE

4. Reasonable measures to prevent air pollution

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of 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 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 reasonable time or date specified by the municipality

provided that prior to such directive 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 to ensure compliance with this By-law.

- (3) Should a person fail to comply, or inadequately comply with a directive under subsection (2), the municipality may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief, which may include a fine or imprisonment or both.

- (4) The authorized person 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 or occupier of the land at the time when the air pollution or the potential air pollution occurred;
- (c) any person who deliberately or negligently failed to prevent the
 - i. activity or the process being performed or undertaken; or
 - ii. situation from coming about.

- (5) No person may-
 - (a) unlawfully and intentionally or negligently commit any act or omission which causes or is likely to cause air pollution; or
 - (b) refuse to comply with a directive issued under subsection (2).
- (6) Any person who fails to comply with subsection (5) above commits an offence.

CHAPTER 3

AIR POLLUTION CONTROL ZONES

5. Declaration of air pollution control zone

- (1) The whole area within the jurisdiction of the municipality is hereby declared an air pollution control zone.

CHAPTER 4

CONTROLLED EMITTERS AND DUST EMISSIONS

6. Controlled emitters

- (1) Small boilers and temporary asphalt plants are hereby declared as controlled emitters.
- (2) No person shall install, alter, replace or operates any controlled emitter on any premises without the prior written authorization of the municipality.
- (3) The controlled emitters must comply with the standards and conditions established in terms of section 24 of the AQA.
- (4) Any person who installs, alters, replace or operates a controlled emitter without a written authorization from the municipality is guilty of an offence.
- (5) An existing small boiler must comply with this section within six (6) months from the date of promulgation of this By-law in the Provincial Gazette.

7. Dust Emissions

- (1) Any person who conducts any activity in such a way as to give rise to dust in quantities and concentrations that may exceed the dust fall standards established in terms of section 32 of the AQA must, upon receipt of a notice from the air quality officer, implement a dustfall monitoring program and submit a dust monitoring report.
- (2) A dustfall monitoring report contemplated in (1) must provide-

- (a) Information on the location of samples, including coordinates reference on a topographic map and the proximity of the samples to residential and non-residential areas;
 - (b) Classification of the area where samples were taken from;
 - (c) Meteorological data of the sampling area;
 - (d) Any other data that might influence the results; and
 - (e) The dustfall monitoring results.
- (3) Any person who has exceeded the dustfall standards must within three months after submission of the dust monitoring report, develop a dust management plan.
- (4) A dust management plan contemplated in (3) must-
- (a) Identify all possible sources of dust within the affected areas, and detail best practicable measures to be undertaken to control dust.
- (5) Failure to implement a dustfall monitoring program and submit the report to the air quality officer is an offence.

8. Dustfall monitoring

- (1) An air quality officer may require any person to undertake a dust fallout monitoring programme if-
- (a) the air quality officer suspects that the person has exceeded the dustfall standards established in terms of section 32 of AQA; or
 - (b) the activity being undertaken by the person requires a fugitive emission management plan in terms of a notice published in terms of section 21 of the AQA.
- (2) A dust fallout monitoring programme must include-
- (a) the implementation of the best practicable measures to control dust;
 - (b) a compliance or non-compliance report with the standards to the satisfaction of the air quality officer.

9. Measures for the control of dust

- (1) Any person who has exceeded the dustfall standards must, within three months after submission of the dust fallout monitoring report, develop and submit a dust management plan to the air quality officer for approval.
- (2) A dust management plan contemplated in section 9(1) must be implemented within a month of the date of approval.

- (3) An implementation progress report must be submitted to the air quality officer at agreed time intervals.
- (4) Any person who fails to comply with section 9 above commits an offence.

10. Ambient air quality monitoring for PM₁₀

- (1) An air quality officer may require any person to undertake continuous ambient air quality monitoring for PM₁₀, if the dust fallout monitoring programme indicates non-compliance with the dust fallout standards.
- (2) Failure to undertake continuous ambient air quality monitoring for PM₁₀ after receiving a notice from the air quality officer is an offence.

CHAPTER 5

EMISSIONS CAUSED BY OPEN BURNING AND BURNING OF MATERIALS

11. Open burning

- (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 authorization of such open burning to the municipality.
- (2) The municipality may, in the written authorization referred to in subsection (1), impose conditions with which the person requesting authorization, must comply.
- (3) The municipality may not authorize 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 authorization has investigated and assessed the impact the open burning will have on the environment to the satisfaction of the municipality;
 - (c) that the person requesting authorization has notified in writing the owners of and occupiers of all adjacent properties of-
 - (i) all known details of the proposed open burning; and
 - (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the municipality within seven days of being notified.
 - (d) a warning under section 10(1)(b) of the National Veld and Forest Act, 1998 (Act no.101 of 1998) has not been published for the region.
 - (e) the land on which that person intends to open burn the material is state land, a farm or small holding, or land within a proclaimed township that is not utilised for residential purposes;
 - (f) the open burning is conducted 100 metres from any building or structures; and

- (g) the open burning will not pose a potential hazard to human health or safety, private property or the environment.
- (4) The provision of this section shall not apply to-
 - (a) recreational outdoor barbecue or braai activities.
 - (b) small controlled fires for the purposes of cooking and other domestic purposes; or
 - (c) any other defined area or defined activity to which the municipality has declared this section not to apply.
- (5) Any person who conducts open burning without prior written authorisation is guilty of an offence.

12. Emissions caused by burning of tyres, rubber and other materials

- (1) No person may without authorisation in writing by the municipality-
 - (a) carry out or permit the burning of tyres or rubber or other synthetically coated, covered or insulated products and electronic or other equipment on any land or premises;
- (2) The municipality may take whatever steps it considers necessary in order to remedy the harm caused by the burning referred to in paragraph (a), and prevent any occurrence of it, and may recover the reasonable costs incurred from the person responsible for causing such harm.
- (3) Any person who carry out or permit the burning of tyres or rubber or other synthetically coated, covered or insulated products and electronic or other equipment on any land or premises is guilty of an offence.

CHAPTER 6

LISTED ACTIVITIES

13. Licensing of listed activities

- (1) The municipality is the licensing authority for activities listed in terms of section 21 of the AQA.
- (2) No person shall undertake a listed activity, as published in terms of section 21 of the AQA without being in possession of an atmospheric emission license issued by the municipality.

14. Application for an atmospheric emission license

- (1) An application for an atmospheric emission license must be-
 - (a) Online through the South African Atmospheric Emission Licensing and Inventory Portal;
 - (b) accompanied by documents or information as may be required by the municipality;

- (c) accompanied by the prescribed processing fee.
- (2) Before considering an application made in terms of subsection (2), the municipality may require the applicant to furnish additional information such as, but not limited to, a specialist air quality impact study and/or proof of public participation.
- (3) Any persons who undertakes a listed activity without an atmospheric emission license is guilty of an offence.
- (4) Any person who contravenes or fails to comply with a condition or requirement of an atmospheric emission license is guilty of an offence.

CHAPTER 7

OFFENCES AND PENALTIES

15. Offences and penalties

- (1) Any person who contravenes any provision of this By-law commits an offence and shall, upon conviction, be liable to a fine not exceeding five thousand rand, or imprisonment not exceeding 30-days, or to both such fine and such imprisonment, or to such imprisonment without the option of a fine, and in the case of a successive or continuing offence, to a fine for everyday that such an offense continues, or in default of payment thereof, to imprisonment not exceeding 30-days.
- (2) It is an offence to:-
 - (a) supply false information to an authorised person in respect of any issue pertaining to this By-law;
 - (b) refuse to cooperate with the request of an authorised person made in terms of this By-law.
 - (c) fail to comply with a notice, directive or instruction referred to in this By-law.

16. Admission of guilt fines

The municipality may impose admission of guilt fines for offences listed in Schedule 1 of this By-law.

CHAPTER 8

GENERAL MATTERS

17. Compliance monitoring

- (1) For the purposes of compliance monitoring, the designated authorised person must exercise the powers as set out in sections 31G to 31L of the NEMA;
- (2) The authorised person may request from any polluter that significantly contributes or is likely to contribute to poor air quality to conduct ambient, point or non-point source

monitoring and any other air quality related study by a recognised and competent third party, at the cost of the polluter.

18. 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.

19. Co-operation between municipalities

- (1) In an effort to achieve optimal service delivery in terms of this By-law, the municipality may enter into any written agreements with the local municipalities with which legislative and executive powers are shared, in respect of the following-
 - (a) the practical arrangements with regard to the execution of the provisions of this By-law;
 - (b) any other matter regarded necessary by the parties to achieve optimal service delivery in terms of this By-law.

20. Appeals

- (1) Any person may appeal against a decision taken by the authorised person under this By-law by submitting in writing an appeal in accordance with the provisions of section 62 of the Local Government: Municipal Systems Act, 2000 (Act no.32 of 2000).

21. Exemptions

- (1) Any person may, in writing apply for exemption from the application of this By-law to the municipality.
- (2) An application in terms of subsection (1) must be accompanied by substantive reasons.
- (3) Capricorn District 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 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.
- (5) 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 or 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.

22. Short title

Capricorn District Municipality: Air Quality Management By-law

23. Commencement

These By-laws shall commence from date of promulgation in the Provincial Gazette.

Schedule 1**SCHEDULE OF OFFENCES AND FINES**

Offence	Section in the By-law	Maximum fine in Rands
Installation of an appliance and/or operation of an activity that is declared as a controlled emitter without written authorization of the municipality	Section 6(4)	5000
Alteration or replacement of the controlled emitter without written authorization of the municipality	Section 6(4)	1000
Failure to implement a dustfall monitoring program	Section 7(4)	5000
Failure to submit a dust monitoring program	Section 9(4)	500
Operation of a listed activity without an atmospheric emission license	Section 14(3)	5000
Unavailability of a copy of the atmospheric emission license at the premises where a listed activity is undertaken	Section 14(4)	500
Failure to comply with a condition or requirement of an atmospheric emission license	Section 14(4)	5000
Failure to submit monthly and quarterly reports	Section 14(4)	1500
Failure to submit an annual report	Section 14(4)	5000
Failure to submit a report stating the efficiency and availability of the pollution abatement appliance to the licensing authority.	Section 14(4)	500
Failure to inform the municipality of abnormal conditions which may detrimentally impact on the environment within 24 hours	Section 14(4)	1000
Failure to keep a complaints register	Section 14(4)	500
Open burning	Section 11(5)	1500
Burning of tyre, rubber or other material	Section 12 (3)	1500

SCHEDULE 2**Application Form to Operate Small Boiler (Section 6)****Name of Enterprise:** _____

Declaration of accuracy of information provided:

I, _____, declare that the information provided in this application is in all respect factually true and correct.

Signed at _____ on the _____ day of _____

SIGNATURE_____
CAPACITY OF SIGNATORY

I, _____ owner/occupier of the land/property known as _____ (Registered name) within the municipality's jurisdiction hereby apply for permission to operate a small boiler on the said property.

1. Enterprise details

Enterprise name	
Trading as	
Postal Address	
Telephone number(general)	
Fax number(general)	
Industry type	
Land use zoning as per town planning scheme	
Landuse rights if outside town planning scheme	

2. Contact details

Name of responsible person	
Telephone Number	
Cell Phone Number	
Fax Number	
Email address	

3. Product name and model of the small boiler

Product name	Product model	Serial number

4. Raw materials used

Raw material used	Maximum permitted consumption rate(volume)	Design consumption rate	Actual consumption rate	Units (quantity/period)

5. Energy used

Energy source	Sulphur content of fuel (%) if applicable	Ash content of fuel (%) if applicable	Maximum permitted consumption rate(volume)	Design consumption rate	Actual consumption rate	Units (quantity/period)

SCHEDULE 3**Application Form to operate a temporary asphalt plant (Section 6)****Name of Enterprise:** _____

Declaration of accuracy of information provided:

I, _____, declare that the information provided in this application is in all respect factually true and correct.

Signed at _____ on the _____ day of _____

SIGNATURE_____
CAPACITY OF SIGNATORY

I, _____ owner/occupier of the land/property known as _____ (Registered name) within the municipality's jurisdiction hereby apply for permission to operate a small boiler on the said property.

1. Enterprise details

Enterprise name	
Trading as	
Postal Address	
Telephone number(general)	
Fax number(general)	
Industry type	
Land use zoning as per town planning scheme	
Land use rights if outside town planning scheme	

2. Contact details

Name of responsible person	
Telephone Number	
Cell Phone Number	
Fax Number	
Email address	

3. Product name and model of the small boiler

Serial number	Product name	Product model	Capacity

4. Energy used

Energy source	Sulphur content of fuel (%) if applicable	Ash content of fuel (%) if applicable	Design consumption rate	Actual consumption rate	Units (quantity/ period)

5. Point source parameters

Unique stack ID	Point source name	Height of release above ground	Height of nearby building	Diameter at stack tip/vent exit (m)	Actual gas exit temperature	Actual gas volumetric flow	Actual gas exit velocity

6. Point source emissions

Unique stack ID	Pollutant name	Daily average averages			Emission hours	Type of emission (Continuous/intermittent)

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