

NOTICES BY LOCAL AUTHORITY**THEEWATERSKLOOF MUNICIPALITY
AIR QUALITY MANAGEMENT BY-LAW**

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:

PREAMBLE

WHEREAS section 24 of the Constitution of the Republic of South Africa, 1996 states that everyone has the right:

- (a) to an environment that is not harmful to their health or well-being; or
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation, secure ecological sustainable development and the judicious use of natural resources for purpose of justifiable economic and social development.

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CHAPTER I: DEFINITIONS AND FUNDAMENTAL PRINCIPLES

1. INTERPRETATION

In this by-law, the English text prevail in the event of any conflict with the Afrikaans text, and unless the context indicates otherwise -

“adverse effect”, means any actual or potential impact on the environment that impairs or would impair the environment or any aspect of it to an extent, that is more than trivial or insignificant;

“air pollutant”, includes, but is not limited to, dust, smoke, fumes and gas that causes or may cause air pollution;

“air pollution”, means any change in the environment caused by substance emissions into the atmosphere from activities, where such changes can have an adverse effect on human health and well-being, or on the composition and resilience of natural or managed ecosystems or their ability to regenerate, or on resources required by people and ecosystems to survive, or shall have such detrimental effect in the future;

“Air Quality Act”, means the National Environment Management: Air Quality Act, 2004 (Act No 39 of 2004), as amended;

“air quality management plan”, means a air quality management plan referred to in section 15 of the National Environment Management: Air Quality Act, 2004 (Act No 39 of 2004), as amended;

“Air Quality Officer”, means the Air Quality Officer designated as such in terms of section 14(3) of the National Environment Management: Air Quality Act, 2004 (Act No 39 of 2004), as amended;

“ambient air”, means **“ambient air”** as defined in section 1 of the National Environment Management: Air Quality Act, 2004 (Act No 39 of 2004), as amended;

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

“atmospheric emissions”, means any emissions or entrainment processes of energy or substances or a combination of substances into the atmosphere, emanating from an obvious point source or not so obvious point source or mobile source that creates air pollution;

“authorized official”, means any employee of the Theewaterskloof Municipality or designated person, who is authorized by the Theewaterskloof Municipality to enforce the provisions of this by-law;

“best practical environmental option”, means the option that provides the best benefit and 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 activities”, means dust emissions, emissions caused by open burning, emissions caused by burning of waste, emissions caused by tyre burning and burning of rubber products and cables, pesticide spraying emissions, spray painting emissions and sand blasting emissions;

“**controlled emitter**”, means any appliance or equipment or activity associated with fuel burning appliances or equipment, declared as a controlled emitter in terms of section 23 of the National Environment Management: Air Quality Act, 2004 (Act No 39 of 2004), as amended;

“**designated fire officer**”, means a qualified fire officer, employed by the Overberg District Municipality or the Theewaterskloof Municipality, and designated by the Theewaterskloof Municipality as a fire officer;

“**Director Technical Services**”, means the Director Technical Services of the Theewaterskloof Municipality, who is the appointed senior manager responsible for air quality matters;

“**District Municipality**”, means the Overberg District Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), as amended, by Provincial Notice 486 of 2000, dated 22 September 2000, and as amended by Provincial Notice 162 dated 20 August 2004, and includes any reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Overberg District Municipality;

“**dust**”, means any solid matter in a fine or disintegrated form, which can easily be dispersed or be suspended in the atmosphere, and includes dust from mining activities;

“**emitter**”, means fuel burning appliances and equipment such as furnaces, boilers, incinerators or other appliances and equipment, including a chimney of a closed system designed to burn liquid, gas or solid fuels for purpose of generating heat, steam or used for the burning of any material;

“**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 afore stated that influence human health and well-being;

“**listed activity**”, means a list of activities contemplated in Section 21(1)(a) of the National Environment Management: Air Quality Act, 2004 (Act No 39 of 2004), as amended;

“**Municipality**”, means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“**NEMA**”, means the National Environmental Management Act, 1998 (Act No.107 of 1998), as amended;

“**nuisance**”, means any unreasonable, unbearable or unacceptable situation caused by air pollution, which impact on -

- (a) the health or well-being of any person or living organism; or
- (b) the use and enjoyment by an owner or occupant of a premises of his or her property or the environment;

“**offensive odour**”, means any smell which is considered to be malodorous or a nuisance to a reasonable person;

“**open burning**”, means the burning of material without a closed system, which has a chimney to vent the emitted products of combustion directly into the atmosphere;

“**operator**”, means a person who owns or manages a listed activity and / or controlled emitters, or who controls an operation or process, which emits air pollutants;

“**organ of state**”, means -

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –
 - (i) exercising a power or performing a function in terms of the Constitution of the Republic of South Africa, 1996 or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or judicial officer;

“**paving**”, means to apply and maintain concrete or any other similar material to a road surface or any other surface;

“**person**”, means and includes for purpose of this by-law, a natural person or a juristic person or any industrial or commercial undertaking or/ and an organ of state;

“**premises**”, means any portion of land situated within the area of jurisdiction of the Theewaterskloof Municipality, of which the outer boundaries are demarcated on a general plan or diagram or sectional title plan registered in accordance with applicable legislation, and includes any building or other structures on a portion of land, used in connection with any activities carried out on that portion of land, and also includes for purpose of this by-law any locomotive or other vessel or vehicle, which operates or is present within the area of jurisdiction of the Theewaterskloof Municipality;

“**Province**”, means the Province of the Western Cape;

“**small boiler**”, means a small combustion installation with a design capacity of less than fifty (50) MW heat input, capable of burning solid, liquid and gas fuels, used primarily for steam and / or electricity generation;

“**smoke**”, means the gases, particulate matter and products of combustion emitted into the atmosphere, when material is burned or subjected to extreme heat and includes the soot and the gritty particles emitted with smoke;

“**specialist study**”, means any scientifically based study relating to air quality, conducted by an expert or recognized specialist of appropriate qualifications and competency in the discipline of air quality management;

“**Systems Act**”, means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended; and

2. APPLICATION OF THE BY-LAW

- (1) This by-law applies to all premises within the area of jurisdiction of the Municipality.
- (2) The provisions of this by-law do not remove the need for any other permit, consent, or authorisation required in terms of any other statutory acts, regulations, by-laws and / or regulatory documents for environmental or any other operational matters related to air quality management.

3. OBJECTIVES OF THE BY-LAW

- (1) The objectives of this by-law are to -
 - (a) give effect to section 24 of the Constitution of the Republic of South Africa, 1996, by regulating air pollution within the area of jurisdiction of the Municipality, in conjunction with the District Municipality, taking cognizance of the respective air quality management plans of the respective institutions;
 - (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 on the environment, public health and well being of persons; and
 - (c) ensure that air pollution is prevented, or where it cannot be prevented, restricted, mitigated and / or minimized.
- (2) Any person exercising powers under this by-law, shall exercise the powers in such a way, as to give effect to the objectives as set out in subsection 3(1) of this by-law.

4. ADMINISTRATION AND ENFORCEMENT

The Director Technical Services of the Municipality, shall be responsible for the administration and management of this by-law, and may delegate any power in relation to the application of this by-law to any official under his or her supervision.

5. RIGHT OF ACCESS TO PREMISES

- (1) The Municipality shall have the right of access to any premises for the purpose of -
 - (a) the enforcement of the provisions of this by-law or the provisions of the Air Quality Act, or any other legislation regulating air quality matters, assigned or delegated to the Municipality;
 - (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 any equipment or structures that cause, and operational activities, schemes or undertakings that results in atmospheric emissions;

(d) ascertaining whether there is or has been contraventions of the provisions of this by-law or the Air Quality Act; and

(e) enforcing compliance with the provisions of this by-law or the Air Quality Act.

(2) The Municipality may by notice in writing, e-mail, telephonically or verbally, provided to the owner or occupant of any premises, inform and require such owner or occupant to provide, on the day and at the hour specified in such notice, access to an authorized official to such premises and for the purposes referred to in sub-section 5(1) of this by-law.

(3) The Municipality may gain access to, or over any property, without notice and may take whatever steps or action as may, in the opinion of the Director Technical Services or the Air Quality Officer or an authorized official, be necessary or desirable in consequence of the existence of, or the occurrence of any emergency or disaster, or for the purpose of sub-section 5(1)(d) of this by-law.

6. LEVYING OF FEES AND TARIFFS

The Municipality may levy and recover fees, charges or tariffs for any permission granted in terms of this by-law, or implement tariffs as prescribed by the Air Quality Act and may require deposits as security for damages, repairs, losses and other costs.

7. CONFLICT BETWEEN LEGISLATION

In the event of any conflict between any stipulation of this by-law and any other national and provincial legislation or regulations, which regulates air pollution in the area of jurisdiction of the Municipality, the provisions of national and provincial legislation or regulations shall prevail.

CHAPTER 2: DUTY OF CARE

8. MEASURES REQUIRED TO PREVENT AIR POLLUTION

(1) Any owner or occupant of a premises who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring, shall take all measures required, including the most practical environmental option -

(a) to prevent any potential air pollution from occurring; and

(b) as far as reasonably possible, to mitigate and remedy any air pollution that has occurred.

(2) The Municipality may instruct any owner or occupant of a premise who fails to take the measures required under subsection 8(1) of this by-law to -

(a) commence taking specific mitigating and / or preventive measures before a given date;

(b) continue implementing the required measures; and

- (c) complete all measures required before a specified date, provided that prior to such instruction –
 - (i) the Municipality shall give adequate notice to the transgressor concerned and direct him or her to inform the Air Quality Officer of the relevant facts of the situation; and
 - (ii) the Air Quality Officer may consult with any other organ of state on the matter at hand and / or measures to be implemented.
- (3) The Municipality may, when an owner or occupant of a premise fails to comply or inadequately complies with any stipulation contemplated in subsection 8(2) of this by-law, take measures to remedy the situation.
- (4) The Municipality may, when an owner or occupant of a premise fails to carry out the measures referred to in subsection 8(1) of this by-law, recover collectively or individually, all costs incurred for correcting the situation as a result of the Municipality acting under subsection 8(3) of this by-law, from any or all of the following persons -
 - (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution;
 - (b) the owner of the premises at the time when the air pollution or the potential for air pollution occurred;
 - (c) the person in control of the premises or any person who has or had a right to use the premises and at the time when the -
 - (i) activity or the process in question is or was performed or undertaken; or
 - (ii) situation came about; and / or
 - (d) any person who negligently failed to prevent that -
 - (i) the air be polluted; or
 - (ii) a situation occur that leads to air pollution.
- (5) No owner or occupant of a premise 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 an instruction issued in terms of section 8 of this by-law.
- (6) When more than one person is responsible for any transgression under subsection 8(4) of this by-law, the liability may be apportioned by the Municipality among the persons involved, and the persons liable shall be collectively and separately responsible for the pollution of the environment, as a result of their respective failures to take the measures required under subsections 8(1) and 8(2) of this by-law.

CHAPTER 3: DESIGNATION OF AN AIR QUALITY OFFICER

9. DESIGNATION OF AN AIR QUALITY OFFICER

The Municipality shall designate an official as an air quality officer, who shall be responsible for co-ordinating matters pertaining to air quality management in the area of jurisdiction of the Municipality.

10. DUTIES AND FUNCTIONS OF THE AIR QUALITY OFFICER

(1) The Air Quality Officer shall –

- (a) co-ordinate the development of an air quality management plan for inclusion in the Integrated Development Plan of the Municipality;
- (b) prepare an annual report for the Municipality on air quality;
- (c) exercise the duties and power, under the supervision of the Director Technical Services, assigned to him or her in terms of the provisions of this by-law; and
- (d) submit the annual report on air quality for the Municipality, to the Provincial Air Quality Officer.

(2) The annual report referred to in subsection 10(1)(b) of this by-law shall include, but is not limited to, the progress of the Municipality towards the implementation of an air quality management plan for the municipal area.

(3) The Air Quality Officer may require the holder of a provisional atmospheric emission licence, or the holder of an atmospheric emission licence, to designate an emission control officer, as contemplated in section 48 of the Air Quality Act.

CHAPTER 4: LOCAL EMISSIONS NORMS AND STANDARDS

Part 1: Local Emission Norms and Standards

11. DETERMINATION OF LOCAL EMISSION NORMS AND STANDARDS

(1) The Municipality may by notice, after a comprehensive public participation process has been followed –

- (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bio-accumulation, deposition or in any other way, present a threat to public health, public well-being or the environment in the area of jurisdiction of the Municipality; and
- (b) in respect of each of those substances or mixtures of substances, publish local norms and standards for emissions from point or non-point or mobile sources in the area of jurisdiction of the Municipality.

(2) The Municipality shall take the following factors into consideration when setting local emission norms and standards -

- (a) health, safety and environmental protection objectives;
- (b) analytical methodology;
- (c) technical feasibility;

- (d) monitoring capability;
 - (e) socio-economic consequences;
 - (f) the ecological role of fire in vegetation remnants; and
 - (g) the best practicable environmental options.
- (3) Any owner or occupant of premises who are emitting substances or mixtures of substances into the atmosphere as referred to in subsection 11(1) of this by-law, shall comply with the local emission norms and standards published in terms of this by-law, or any other provincial or national norms and standards.

12. PUBLICATION OF LOCAL EMISSION NORMS AND STANDARDS

The Municipality may publish the local emission norms and standards, as required in terms of the Systems Act.

Part 2: Norms and Standards

13. SUBSTANCES IDENTIFICATION PROCESS

- (1) The Air Quality Officer shall apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, public well-being and the environment -
- (a) the increasing possibility, severity and frequency of the negative effects of a substance in the atmosphere on human health and the environment as a whole;
 - (b) the ubiquitous and high concentrations of a substance in the atmosphere;
 - (c) the potential environmental transformations and metabolic alterations which can be caused by a substance, and the risk that such a substance may result in further production of chemicals in ambient air, with an increased toxicity risk;
 - (d) the persistence presence in the environment of a substance, particularly when a substance is not bio-degradable and able to accumulate in the human body, ecosystems and food sources;
 - (e) the impact of a substance, taking into consideration -
 - (i) the size of the exposed population, living resources or ecosystems;
 - (ii) the existence of particularly sensitive receptors in the affected area concerned; and
 - (f) substances that are recognized by international conventions as pollutants.
- (2) The Air Quality Officer may, using the criteria set out in subsection 12(1), compile a list of substances in ambient air that present a threat to public health, public well-being or the environment.

CHAPTER 5: CONTROLLED EMITTERS

14. INSTALLATION OF CONTROLLED EMITTERS

- (1) No owner or occupant of a premises shall install, alter, extend or replace any controlled emitter on any premises, without the prior written authorization of the Municipality, which may only be given after consideration of the relevant installation plans and specifications of the premises and the emitter, in terms of any applicable emission norms and standards developed for controlled emitters in terms of section 24 of the Air Quality Act.
- (2) After considering the application submitted in terms of subsection 14(1) of this by-law the Municipality shall either –
 - (a) grant an application and issue an authorization, subject to any conditions that may be imposed; or
 - (b) refuse an application, with written reasons provided.
- (3) The authorization applied for and issued in terms of subsections 14(1) and 14(2) of this by-law shall specify -
 - (a) the product name or model of the controlled emitter;
 - (b) the premises in respect of which the authorization is issued;
 - (c) the person and / or entity to whom the authorization is issued;
 - (d) the period for which the authorization is issued;
 - (e) the name of the municipal authority;
 - (f) the intervals at which the authorization may be reviewed;
 - (g) the fuel type and quality used;
 - (h) the maximum allowable amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
 - (i) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
 - (j) any other matters which are necessary for air quality management.
- (4) The Municipality shall review the authorization issued in terms of section 14(2) of this by-law, at intervals specified in the authorization, or when circumstances demand that a review is necessary.
- (5) Any controlled emitter installed, altered, extended or replaced on premises, in accordance with plans and specifications submitted to and approved by the Municipality, shall be presumed compliant to all conditions, until the contrary is proved.

- (6) Where a controlled emitter has been installed, altered, extended or replaced on a premises contrary to subsection 14(1) of this by-law, the Municipality may on written notice to the owner and / or occupant of the premises, order the removal of the controlled emitter concerned from the premises, at the expense of the owner and / or occupant of the premises concerned, and within the period stated in the notice issued.
- (7) The Municipality may take whatever steps necessary in order to remedy the pollution caused by the installation, alteration, extension or replacement on premises of emitters, to prevent any further air pollution occurrence or incidents, and may recover the costs incurred from the person responsible for the transgression.

15. OPERATION OF CONTROLLED EMITTERS

- (1) No person may use or operate any controlled emitter on any premises contrary to the authorisation referred to in section 14 of this by-law.
- (2) Where any controlled emitter has been used or operated on the premises in contravention of an authorization, the Municipality may on written notice to the owner and / or occupant of the premises concerned -
- (a) revoke the authorisation issued in terms of section 14 of the by-law; and
 - (b) order the removal of the controlled emitter concerned from the premises, at the expense of the owner and / or occupant of a premises, within the period stated in the notice.
- (3) The Municipality may, when the owner or occupant of a premise fails to comply with the notice referred to in subsection 15(2) of this by-law, remove the controlled emitter from the premises and may recover the costs incurred from such owner or occupant of such premises.

16. MONITORING AND SAMPLING

An owner or occupant of a premises where listed activities take place, and / or the operator of controlled emitters, shall install emission measuring equipment and / or shall do emissions monitoring from the emitters concerned, if and when required by the Air Quality Officer, and shall -

- (a) record all monitoring and sampling results and maintain a copy of this record for at least five (5) years after obtaining the results;
- (b) when requested to do so by an air quality officer, produce the record of the monitoring and sampling results for inspection; and
- (c) when requested to do so by an air quality officer, provide a written report of the information on monitoring and sampling results, in a format and by a date specified by an air quality officer.

17. DUST EMISSIONS FROM LISTED ACTIVITIES AND CONTROLLED EMITTERS

- (1) Any owner or occupant of a premises undertaking or conducting any listed activity or who operate a controlled emitter, that produces emissions of dust that may be harmful to public health, public well-being and / or may cause a nuisance, shall implement mitigating measures to prevent or minimize dust emissions into the atmosphere.
- (2) Any owner or occupant of a premises undertaking or conducting any listed activity or who operate a controlled emitter that causes dust emissions, shall implement one or more of the following mitigating measures to control dust emissions -
 - (a) paving of surfaces;
 - (b) use of dust palliatives or suppressants;
 - (c) uniform application and maintenance of any surface graveling;
 - (d) erection of physical barriers;
 - (e) erection of signs to prohibit access to the affected areas;
 - (f) use of any type of ground covers;
 - (g) re-vegetation of area with similar plant material of adjacent undisturbed areas; or
 - (h) any alternative mitigating measures for control, approved in writing by the Air Quality Officer.
- (3) The mitigation measures used for control shall be consistent with the provisions of any other applicable legislation.
- (4) The provisions of this section are not applicable to –
 - (a) landscaping activities by a person at his or her place of residence;
 - (b) emergency maintenance activities on public roads;
 - (c) unpaved roads having vehicular traffic of less than five hundred (500) vehicles per day;
 - (d) non-commercial and non-institutional private driveways;
 - (e) horse trails, hiking paths, bicycle paths or other similar paths; and
 - (f) any other path that has been designated for use other than by a motor vehicle.

**CHAPTER 6:
EMISSIONS THAT CAUSE AN OFFENSIVE ODOUR**

18. PROHIBITION OF EMISSIONS THAT CAUSE OFFENSIVE ODOURS

- (1) No owner or occupant of a premises shall within the area of jurisdiction of the Municipality, conduct any listed activity or any part of a listed activity or use a controlled emitter, which causes an offensive odour that is a contravention of the atmospheric emission permit conditions for the premises concerned or the applicable minimum emission norms and standards for emissions for the municipal area, as contemplated in section 21 of the Air Quality Act.
- (2) Any owner or occupant of a premises conducting listed and / or controlled emitter activities, that produce emissions of offensive odours that may be harmful to public health and / or public well-being or may cause a nuisance, that is in contravention of atmospheric emission permit conditions for the premises concerned or the applicable minimum emission norms and standards for emissions for the municipal area, as contemplated in Section 21 of the Air Quality Act, shall implement mitigating measures for control to prevent odoriferous emissions into the atmosphere.
- (3) Any owner or occupant of a premises undertaking or managing an activity referred to in subsection 18(2) of this by-law, shall implement the necessary measures to identify the substance or substances causing the offensive odour.
- (4) Any owner or occupant of a premises undertaking or managing an activity referred to in subsection 18(2) of this by-law, shall implement the necessary offensive odour control measures and any alternative control measure approved by the Air Quality Officer.
- (5) When an owner and / or occupant of any premises, from where an offensive odour emanates or where an offensive odour exists, refuses to control the offensive odour or refuses to implement the control measures referred to in subsection 18(3) of this by-law, such an owner or occupant of a premises shall be guilty of an offence.

19. ABATEMENT NOTICES

An Air Quality Officer may serve an abatement notice on any owner or occupant of a premises whom he or she reasonably believes, is likely to transgress or has transgressed section 18 of this by-law, instructing such person -

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

CHAPTER 7: CONTROLLED ACTIVITIES

20. INSTALLATION OF SMALL BOILERS

- (1) No owner or occupant of a premises shall install, alter, extend or replace any small boiler on any premises, without the prior written authorization of the Municipality, and such authorization may only be given after consideration of the relevant installation plans and specifications of the premises and the emitter concerned in terms of any applicable emission norms and standards for such controlled emitters by the Municipality, developed for such controlled emitters in terms of section 24 of the Air Quality Act.
- (2) The application for an authorization to operate a small boiler on a premises, shall be made on an application form prescribed by the Municipality.
- (3) When a small boiler has been installed, altered, extended or replaced on a premise in contravention of subsection 20(1) of this by-law, the owner or occupant of such premises commits an offence and the Municipality may on written notice to the owner and / or occupant of the premises concerned, order the removal of the boiler concerned from the premises, at the expense of the owner and / or occupant of the premises, and within the period stated in the notice issued.
- (4) When considering an application submitted in terms of subsection 20(1) of this by-law, the Air Quality Officer may require the applicant to furnish any such information as the Air Quality Officer may require.
- (5) After considering the application submitted in terms of subsection 14(1) of this by-law the Municipality shall either –
 - (a) grant an application and issue an authorization, subject to any conditions that may be imposed; or
 - (b) refuse an application, with written reasons for the refusal provided.
- (6) The authorization applied for and issued in terms of subsections 14(2) of this by-law shall specify -
 - (a) the product name or model of the small boiler;
 - (b) the premises in respect of which the authorization is issued;
 - (c) the person and / or entity to whom the authorization is issued;
 - (d) the period for which the authorization is issued;
 - (e) the name of the municipality issuing the authorization;
 - (f) the intervals at which the authorization shall be reviewed;
 - (g) the fuel type and quality used;
 - (h) the maximum allowable amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;

- (i) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
 - (j) any other matters which are necessary for air quality management.
- (7) The Municipality shall review the authorizations issued in terms of this section at intervals specified in the authorizations concerned, or when circumstances demand that a review is necessary.

21. EMISSIONS CAUSED BY OPEN BURNING

- (1) Any owner or occupant of a premises, who carries out or permits open burning of any material on any property or premises, commits an offence, unless -
- (a) written authorization has been obtained from the Municipality and the District Municipality beforehand, which authorization may be granted by the Municipality and the District Municipality subject to certain conditions, and
 - (b) the owner and / or occupant of a premises, in writing has notified the owners and /or occupants of all adjacent and affected properties, and the owners of the overhead electrical power lines and telephone lines, traversing the property concerned, where the open burning shall take place, of -
 - (i) all the known details of the proposed open burning activities; and
 - (ii) the right of owners and / or occupants of properties, and the owners of overhead electrical power lines and telephone lines, to lodge written objections to the proposed open burning activities, to the Municipality and the District Municipality, within fourteen (14) days after date of notification.
- (2) The Municipality and the District Municipality may not authorize any open burning of material on any property or premises –
- (a) unless the Municipality and the District Municipality has been satisfied that the requirements as set out in subsection 21(1) of this by-law have been complied with;
 - (b) unless the Municipality and the District Municipality has been satisfied that all the provisions as set out in the Community Fire Safety By-law of the Theewaterskloof Municipality and the conditions stipulated by the District Municipality, have been complied with; or
 - (c) when a warning for fire hazard conditions, has been issued for the region, in terms of section 10(1)(b) of the National Veld and Forest Fire Act, 1998 (Act No 101 of 1998), as amended.
- (3) The provisions of subsections 21(1) and 21(2) of this by-law shall not apply to -
- (a) controlled fires made for purpose of barbequing in designated places in or on or at public places, municipal sport facilities, nature reserves or similar public amenities;
 - (b) controlled fires made for recreational outdoor activities and barbequing on private premises; and
 - (c) controlled fires in dwellings for the purposes of heating, warm water, cooking and other domestic purposes.

22. EMISSIONS CAUSED BY THE BURNING OF WASTE

No person may carry out or allow the burning of any industrial, domestic, garden or any other waste on any property or premises, for the purpose of disposing of such waste by means of burning, unless the disposal of such waste by burning has been legally authorized in terms of the National Environment Management: Waste Act, 2008 (Act No 59 of 2008), as amended.

23. EMISSIONS CAUSED BY THE BURNING OF TIRES, RUBBER PRODUCTS AND CABLES

No person may carry out or permit the burning of any tires, rubber products, cables or any other similar products, on any property or premises for any purpose.

24. EMISSIONS FROM THE SPRAYING OF INSECTICIDES AND / OR HERBICIDES

- (1) The owner or occupant of a premises may not carry out or permit the spraying of insecticides and / or herbicides, except as permitted by legislation and / or regulations.
- (2) Any owner or occupant of a premises who carries out the spraying of insecticides and / or herbicides, either by hand or tractor or any other type of vehicle or an airplane or helicopter, within the area of jurisdiction of the Municipality, shall comply with the following conditions -
 - (a) a written authorization shall be obtained from the Municipality before any spraying can commence, which authorization may be granted for a period of twelve (12) months from the date of issue;
 - (b) all the owners and / or occupants of adjacent properties or the properties in the area to be sprayed, in the case of spraying per airplane or helicopter, shall be notified in writing of -
 - (i) the details of the proposed area to be sprayed;
 - (ii) the reason for the specific insecticide and / or herbicide to be used;
 - (iii) the active ingredients of the insecticide and / or herbicide to be used;
 - (iv) the planned dates for the spraying of insecticides and / or herbicides;
 - (v) the preferred weather conditions for the spraying of the specific insecticide and / or herbicide;
 - (vi) the time required after spray application, before the area sprayed can safely be re-entered, as specified for every insecticide and / or herbicide to be used; and
 - (vii) the right of owners and occupants of properties to lodge written objections to the proposed spraying of pesticides and / or herbicide, with the Municipality within fourteen (14) days after date of notification.
- (3) The Municipality shall within thirty (30) days after an application has been received, notify the applicant for an authorization, as contemplated in subsection 24(2) of this by-law, as well as all registered affected and interested parties, in writing whether -
 - (a) an authorization has been granted and what conditions have been imposed for the authorization; or
 - (b) an authorization has been refused, and provide the reasons for the refusal of the authorization.

- (4) The authorization issued in terms of subsection 24(2) shall specify -
- (a) the person to whom it has been issued;
 - (b) the areas where the insecticides and / or herbicides may be sprayed;
 - (c) the planned dates for the spraying of insecticides and / or herbicides;
 - (d) the period for which the authorization is valid; and
 - (e) other measures which are necessary for the protection of public health and / or public well-being or the environment.
- (5) Any person may apply to the Municipality for an exemption of the provisions, when the spraying of the insecticides and / or herbicides is for -
- (a) the management and control of pests, that transmit human diseases or adversely impact on agriculture and / or forestry production; or
 - (b) the management and control of pests that threaten the integrity of sensitive ecosystems.
- (6) The provisions of section 24 of this by-law are not applicable for -
- (a) the use of insecticides and / or herbicide in residential areas for house gardens;
 - (b) the domestic use of insecticides and / or herbicide, or the use thereof in buildings; or
 - (c) any other defined area or defined activity, which the Municipality has declared as an exclusion.

25. SPRAY PAINTING EMISSIONS

- (1) No owner or occupant of a premises shall within the area of jurisdiction of the Municipality spray, coat, plate or epoxy-coat any vehicle or any other movable object in the open, or allow it to be done, with any substance emitting fumes, and such spraying, coating, plating or epoxy-coating of any vehicle or any other movable object shall only be done in an approved spray painting room or booth or area, which shall be approved by the designated fire officer, in consultation with the Air Quality Officer and other authorized officials, as applicable, on a premises registered for that purpose
- (2) No owner or occupant of a premises may spray, coat, plate, or epoxy-coat any building or part thereof or allow any article to be sprayed, coated, plated or epoxy-coated with any substance emitting fumes, unless in possession of an operational authorization for outdoor spray painting, issued by the Municipality.
- (3) Any owner or occupant of a premises who wishes to obtain an operational authorization for outdoor spray painting, as contemplated in subsection 25(2) of this by-law, shall complete and submit to the Municipality, an application for such authorization in the format and manner as prescribed by the Municipality.

- (4) The designated fire officer, in consultation with the Air Quality Officer, may grant or refuse an operational authorization for outdoor spray painting contemplated in subsection 25(2) of this by-law, based on the information submitted with an application.
- (5) A spray room or booth or area designated for spray painting, as contemplated in subsection 25(1) of this by-law, shall be constructed and equipped according to requirements as determined by the Municipality and stipulated in the applicable national legislation, regulations and standards.
- (6) The Municipality may cancel an operational authorization for outdoor spray painting, as contemplated in subsection 25(2) and approved in terms of subsection 25(4) of this by-law, when there is reason to believe that the holder of the operational authorization contravenes or fails to comply with any provision of this by-law and / or the conditions of the authorization.
- (7) The Municipality shall before the cancellation of an operational authorization for outdoor spray painting by the Municipality, and subject to subsection 25(8) of this by-law -
 - (a) give the holder of the operational authorization written notice of the intention to cancel the operational authorization concerned, and the reasons for such cancellation; and
 - (b) give the holder of the operational authorization a period of at least fourteen (14) days, to make written representations to the Municipality on the intended cancellation of the operational authorization concerned.
- (8) When the designated fire officer has reason to believe that the immediate cancellation of the operational authorization for outdoor spray painting, is essential for public safety, health and / or well-being, or the environment, the Municipality may cancel the spraying authorization without prior notice to the holder as contemplated in subsection 25(7) of this by-law.

26. DUST EMISSIONS FROM SAND BLASTING

- (1) Any owner or occupant of a premise conducting sand blasting activities, which may produce emissions of dust, that may be harmful to public health, public well-being and / or the environment, and / or may cause a nuisance, shall implement mitigating measures for control and / or to prevent dust emissions into the atmosphere.
- (2) Any owner or occupant of a premises who undertakes any sand blasting activity, that may cause dust emissions, shall implement the following mitigating measures –
 - (a) dust extraction control measures; or
 - (b) any alternative dust control measures, approved in writing by the Air Quality Officer.

CHAPTER 8: OFFENCES AND PENALTIES

27. OFFENCES AND PENALTIES

Any person who contravenes or fails to comply with the provisions of this by-law, or fails to comply with a notice served in terms of this by-law, or fails to comply to an instruction of an authorized official or posted on a notice board, or interferes with an authorized official in the execution in his or her duties, is guilty of an offence and is liable on conviction, for -

- (a) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;
- (b) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and
- (c) any further amount as an order of court for costs, equal to any costs and expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

CHAPTER 9: GENERAL MATTERS

28. MONITORING OF COMPLIANCE

The Municipality may request any person or entity, whose actions significantly contributes or is likely to contribute to poor air quality, to implement or undertake at their own costs, ambient and point or non-point or mobile source monitoring, or any other air quality studies, programs or reports, to be performed by recognised and competent third parties, for purpose of the monitoring of atmospheric emissions and to determine whether compliance to local norms and standards for emissions exists.

29. ENFORCEMENT OF THE BY-LAW

- (1) The Air Quality Officer may take any lawful, necessary and practical steps and may implement measures, to enforce the provisions of this by-law.
- (2) The Municipality may develop enforcement procedures for the control of air quality, which shall not be in conflict with any other enforcement procedures for the control of air quality implemented for air quality management on a national, provincial or district municipal level.
- (3) The Municipality may in any instance, where it is evident that actions or neglect by any occupant or owner of a premises, may lead to a contravention of the provisions of this by-law and atmospheric pollution, give notice in writing to such occupant or owner of the premises concerned to comply with any such requirements as the Municipality may deem necessary, to prevent the occurrence or repetition of such contravention or the pollution.

30. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law, is deemed to be duly issued, when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively 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 of South Africa, with a person apparently older than 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 of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 30(2)(a), 30(2)(b) or 30(2)(c) of this by-law;
 - (d) if that person's address and agent or representative in the country of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand, or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner, occupant, or holder of the property or rights in question, and it is not a requirement to name that person.
- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

31. CO-OPERATION BETWEEN MUNICIPALITIES

- (1) To achieve optimal service delivery in terms of this by-law, the Municipality may enter into any written service level agreement with any other organ of state with whom legislative and executive powers for air quality management are shared, with regard to the following matters –
 - (a) the practical arrangements with regard to the implementation of the provisions of this by-law;
 - (b) the recovery of costs and expenses related to any action in terms of this by-law; and
 - (c) any other matter regarded necessary by the parties to achieve optimal service delivery and effective air quality management.

- (2) The Municipality shall monitor the effectiveness of any agreement entered into in terms of sub-section 31(1) of this by-law, in achieving the purposes for which it was intended.

32. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against the decision and the reasons for the appeal to the Municipal Manager, within twenty one (21) days of the date of the notification of the decision.

33. EXEMPTIONS

- (1) Any owner or occupant of a premises may, in writing apply for exemption from the application of a provision of this by-law to the Municipality.
- (2) An application submitted in terms of subsection 33(1) of this by-law, shall be accompanied by substantive reasons for the application for exemption.
- (3) The Municipality may require from an applicant applying for exemption, to take any appropriate steps to bring the application for exemption, to the attention of relevant interested and affected persons, and the public.
- (4) The steps contemplated in subsection 33(3) this by-law, may include the publication of a notice in a local newspaper -
 - (a) giving reasons for the application; and
 - (b) providing such other particulars concerning the application, as the Air Quality Officer may require.
- (5) The Municipality may from time to time review any exemption granted, and may impose such additional conditions as it may deem necessary, and / or on good grounds withdraw any exemption.
- (6) The Municipality may not grant an exemption as contemplated in subsection 33(1) of this by-law -
 - (a) until the Municipality has taken all reasonable measures to ensure that all persons whose rights may be significantly and / or detrimentally affected by the granting of the exemption, are aware of the application for exemption;
 - (b) until all affected and interested parties and persons, were granted a reasonable opportunity to object to the application for exemption; and
 - (c) until the Municipality has duly considered and taken into account all objections raised, and the impact of the exemption when granted, on public health, public well-being and the environment.

34. ADOPTION OF A POLICY

The Municipality may adopt and implement in a policy document measures and procedures for the regulation and management of air quality and associated activities, and to provide for matters incidental thereto.

35. REPEAL OF BY-LAWS

The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality, are hereby repealed as far as they relate to matters provided for in this by-law.

36. SHORT TITLE

This By-law shall be called the Air Quality Management By-law of the Theewaterskloof Municipality.

37. OPERATIVE DATE

This by-law shall take effect on the date of publication, with the exception of sections 14 and 15 of this by-law, which shall come into operation on a future date to be determined.