

# ATMOSPHERIC POLLUTION PREVENTION ACT 45 OF 1965

(Afrikaans text signed by the State President)

*[Assented to: 17 April 1965]  
[Commencement Date: 21 April 1965]*

## **as amended by:**

Government Notice R819/ GG 1452/ 1966  
Government Notice R1173/ GG 2117/ 1968  
Government Notice R1864/ GG 2910/ 1970  
Government Notice R5/ GG 3355/ 1972  
Atmospheric Pollution Prevention Amendment Act 17 of 1973  
Government Notice R212/ GG 3783/ 1973  
Government Notice R303/ GG 3793/ 1973  
Government Notice R1020/ GG 4308/ 1974  
Atmospheric Pollution Prevention Amendment Act 21 of 1981  
Government Notice R2239/ GG 8416/ 15-10-1982  
Atmospheric Pollution Prevention Amendment Act 15 of 1985  
Government Notice R1353/ GG 10789/ 1987  
Legal Succession to the South African Transport Services Act 9 of 1989  
Government Notice R1702/ GG 16008/ 07-10-1994  
Government Notice R420/ GG 17031/ 15-03-1996  
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996  
Government Notice R401/ GG 17846/ 14-03-1997  
Environmental Laws Rationalisation Act 51 of 1997

## **ACT**

**To provide for the prevention of the pollution of the atmosphere, for the establishment of a National Air Pollution Advisory Committee, and for matters incidental thereto.**

### *NOTE:*

The Act has been amended by s. 2 of Act 51/97 by the substitution for the expressions “Administrator”, “Director-General: Health and Welfare”, and “Minister of Industries, Commerce and Tourism”, wherever they occur, of the expressions “Premier”, “Director-General: Environmental Affairs and Tourism” and “Minister of Trade and Industry”, respectively.

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**1. Definitions**

- (1) In this Act, unless the context otherwise indicates -

“**best practicable means**”, when used with reference to the prevention of the escape of noxious or offensive gases or the dispersal or suspension of dust in the atmosphere or the emission of fumes by vehicles, includes the provision and maintenance of the necessary appliances to that end, the effective care and operation of such appliances, and the adoption of any other methods which, having regard to local conditions and circumstances, the prevailing extent of technical knowledge and the cost likely to be involved, may be reasonably practicable and necessary for the protection of any section of the public against the emission of poisonous or noxious gases, dust or any such fumes;

“**board**” means the Air Pollution Appeal Board established under paragraph (a) of subsection (1) of [section five](#);

“**chief officer**” means the chief air pollution control officer appointed under [section six](#), and includes the Director-General: Minerals and Energy or the Chief Inspector of Explosives acting in pursuance of authority conferred upon him or her in terms of subsection (2) of that section and any person performing any of the functions of the chief officer by virtue of authority conferred upon him or her in terms of subsection (5) of that section;

[Definition of “chief officer” substituted by s. 2 of Act 51/97]

“**committee**” means the National Air Pollution Advisory Committee established under [section two](#);

“**controlled area**” means any area which has under [section eight](#) been declared to be a controlled area;

“**dark smoke**” means smoke which, if compared in the prescribed manner with a chart of the kind shown in the [First Schedule](#), appears to be of a shade not lighter than shade 2 on that chart;

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

**“dwelling-house”** means any building or other structure intended for use or used as a dwelling for a single family, and any outbuildings appurtenant thereto;

**“employee”** .....  
[Definition of “employee” deleted by s. 2 of Act 51/97]

**“explosives factory”** means an explosives factory within the meaning of [section one](#) of the Explosives Act, 1956 (Act No. 26 of 1956);

**“fixed date”**, in relation to any area in respect of which a notice has been issued under subsection (1) of [section 14](#), means the date contemplated in that subsection, but in relation to an area which has under [section 20](#) (1) been declared a smoke control zone, means the date determined in terms of [section 20](#) (8);  
[Definition of “fixed date” substituted by s. 1 of Act 17/73]

**“fuel burning appliance”** means any furnace, boiler or other appliance designed to burn or capable of burning liquid fuel or gaseous fuel or wood, coal, anthracite or other solid fuel, or used to dispose of any material by burning or to subject solid fuel to any process involving the application of heat;

**“inspector”** means an inspector appointed under [section six](#), and includes any person acting in pursuance of authority conferred upon him in terms of paragraph (c) of subsection (2) or performing any of the functions of an inspector by virtue of authority conferred upon him in terms of subsection (5) of that section;

**“local authority”** means a local government body within the meaning of [section 1](#) of the Local Government Transition Act, 1993 (Act No. 209 of 1993).  
[Definition of “local authority” substituted by s. 1 of Act 15/85 and s. 2 of Act 51/97]

**“mine”** means a mine within the meaning of [section 102](#) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);  
[Definition of “mine” substituted by s. 2 of Act 51/97]

**“Minister”** means the Minister of Environmental Affairs and Tourism;  
[Definition of “Minister” substituted by s. 1 of Act 21/81, s. 1 of Act 15/85 and s. 2 of Act 51/97]

**“noxious or offensive gas”** means any of the following groups of compounds when in the form of gas, namely, hydrocarbons; alcohols; aldehydes; ketones; ethers; esters; phenols; organic acids and their derivatives; halogens, organic nitrogen, sulphur and halogen compounds; cyanides; cyanogens; ammonia and its compounds; inorganic acids; fumes containing antimony, arsenic, beryllium, chromium, cobalt, copper, lead, manganese, mercury, vanadium or zinc or their derivatives; cement works fumes and odours from purification plants, glue factories, cement works and meat, fish or whale processing factories; and any other gas, fumes or particulate matter which the Minister may by notice in the *Gazette* declare to be noxious or offensive gas for the purpose of this Act; and includes dust from asbestos treatment or mining in any controlled area which has not been declared a dust control area in terms of [section twenty-seven](#);

**“occupier”**, in relation to any premises, means the occupier of those premises or of any particular part thereof, as the circumstances may require;

“**officer**” means an officer within the meaning of [section 1](#) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

[Definition of “officer” substituted by s. 2 of Act 51/97]

“**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 such building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which operates or is present within the area of a local authority or the precincts of any harbour;

“**prescribed**” means prescribed by or under this Act;

“**provisional registration certificate**” means a provisional registration certificate issued under sub-paragraph (i) of paragraph (b) of sub-section (2) or sub-section (3) of [section ten](#);

“**registration certificate**” means a registration certificate issued under sub-paragraph (i) of paragraph (a) of sub-section (2) or sub-section (3) of [section ten](#);

“**scheduled process**” means any works or process specified in the [Second Schedule](#);

“**sell**” includes offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or exchange, or dispose of to any person in any manner, whether for a consideration or otherwise; and “**selling**” and “**sale**” have corresponding meanings;

[Definition of “sell” inserted by s. 1 of Act 17/73]

“**smoke**” includes soot, grit and gritty particles emitted in smoke;

“**this Act**” includes any regulation made under [section thirty-three](#) or [forty-four](#);

“**town clerk**” means the chief administrative officer of a local authority;

“**works**” means works within the meaning of [section 102](#) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).

[Definition of “works” substituted by s. 2 of Act 51/97]

- (2) The Minister may, after consultation with the committee, by notice in the *Gazette* amend the [Second Schedule](#) by including therein or excluding therefrom any process or works or in any other manner as he may deem fit.

## PART I

### ESTABLISHMENT OF NATIONAL AIR POLLUTION ADVISORY COMMITTEE AND APPEAL BOARD AND APPOINTMENT AND POWERS OF OFFICERS

#### 2. Establishment of National Air Pollution Advisory Committee

- (1) There is hereby established a committee to be known as the National Air Pollution Advisory Committee which shall consist of not less than seven and not more than eleven persons appointed by the Minister.

- (2) The Minister shall designate one of the members of the committee as the chairman and one such member as the vice-chairman of the committee.

### 3. Functions of committee

The functions of the committee shall be -

- (a) to advise the Minister on all matters relating to the control, abatement and prevention of air pollution;
- (b) to study and report to the Minister upon measures taken outside the Republic for the control of air pollution;
- (c) to stimulate interest in the problem of air pollution and for that purpose (but without limiting the generality of the foregoing) to arrange for the delivery of lectures and addresses, the holding of discussions and the display of pictures, cinematograph films or exhibitions relating to that problem; and
- (d) to advise the Minister generally in regard to any matter relating to air pollution as to which the committee considers it necessary to advise the Minister or which he may refer to the committee for its advice.

### 4. Sub-committees

- (1) The Minister may on the recommendation of the committee appoint such sub-committees, including sub-committees in respect of particular areas, as he may consider necessary to advise and assist the committee in the performance of its functions under this Act, and may assign to a sub-committee so appointed such of the powers of the committee as the Minister may deem fit: Provided that the committee shall not be divested of any powers which may have been assigned to any such sub-committee.
- (2) In appointing any such sub-committee the Minister shall have due regard to the desirability of ensuring that the sub-committee shall as far as may be reasonably practicable be representative *inter alia* of industry, including the mining industry, and local authorities.
- (3) A member of the committee shall be eligible for appointment to any such subcommittee.

### 5. Appeal Boards

- (1) The Minister shall establish -
  - (a) a board to be known as the Air Pollution Appeal Board to hear and determine appeals in terms of [section 13](#), [35](#) or [38](#), or from decisions of any regional appeal board in terms of [section 25](#);  
[Para. (a) substituted by s. 2 of Act 17/73]
  - (b) so many regional appeal boards as he may consider necessary to hear and determine appeals from the decisions of local authorities in terms of [section twenty-five](#).

- (2) The board and every regional appeal board shall consist of three members who shall be appointed by the Minister after consultation with the committee and shall be persons who in the opinion of the Minister are suitably qualified to perform the functions devolving upon them under this Act.
- (3) The Minister may, at the request of the board or any regional appeal board or any person who lodges an appeal with the board or a regional appeal board, appoint not more than two persons who in the opinion of the Minister have expert knowledge of any matter to which any appeal relates, to serve as assessors on the board or that regional appeal board in connection with such appeal.

**6. Appointment of chief officer and inspectors**

- (1) The Minister may, subject to the laws governing the public service, appoint -
  - (a) an officer to be styled the chief air pollution control officer who shall under the directions of the Minister exercise the powers and perform the functions assigned to the chief officer under this Act; and
  - (b) so many persons as he may consider necessary to be inspectors under this Act.

- (2) The Minister may -
  - (a) after consultation with the Minister of Mineral and Energy Affairs, authorize the Director-General: Minerals and Energy to exercise and perform during the Minister's pleasure, and in consultation with the chief officer, with reference to mines and works all the powers, duties and functions of the chief officer under this Act;

[Para. (a) amended by s. 2 of Act 51/97]

- (b) after consultation with the Minister of Trade and Industry, authorize the Chief Inspector of Explosives to exercise and perform during the Minister's pleasure, and in consultation with the chief officer, all such powers, duties and functions with reference to explosives factories;
- (c) authorize -
  - (i) any inspector appointed under [section 49](#) (1) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), or any Director: Mineral Development appointed in terms of [section 4](#) of the Minerals Act, 1991 (Act No. 50 of 1991) to exercise or perform with reference to mines and works;
  - (ii) any inspector of explosives appointed under [section two](#) of the Explosives Act, 1956 (Act No. 26 of 1956), to exercise or perform with reference to explosives factories; or

- (iii) .....

[Subpara. (iii) repealed by s. 36 of Act 9/89]

all the powers, duties and functions of an inspector under this Act.

- (3) The chief officer and inspectors appointed under sub-section (1) shall be persons who are technically qualified to exercise control over atmospheric pollution by virtue of their academic training in the natural sciences or engineering and their practical experience in industry together with a knowledge of the problems concerning atmospheric pollution related thereto.
- (4) Every inspector shall be furnished with a certificate signed by the chief officer stating that he has been appointed or authorized to act as an inspector under this Act.
- (5) The chief officer may with the approval of the Minister, and after consultation with the local authority concerned or on the recommendation of a person authorized after such consultation, authorize any competent person in the service of a local authority to perform in the area under the jurisdiction of that local authority, and subject to the directions of the chief officer, such of the functions of the chief officer or an inspector as the chief officer may determine.
- (6) Any person so authorized shall be furnished with a certificate signed by the chief officer specifying the functions which may be performed by such person and the area in respect of which those functions may be so performed.
- (7) The chief officer may at any time, with the approval of the Minister, withdraw any authorization under subsection (5), and shall cause the local authority concerned to be notified in writing of such withdrawal and of the date on which it shall take effect.

## **7. Powers of chief officer and inspectors**

- (1) The chief officer or any inspector may in the exercise of his powers or the performance of his duties or functions under Part II of this Act or under any regulation made under [section thirty-nine](#) or [forty-four](#) and subject to the production, in the case of any such inspector, to the person in charge of the premises, of the certificate furnished to him under subsection (4) of [section six](#) -
  - (a) without previous notice at any time enter any premises where a scheduled process is or is suspected to be carried on, and examine any process in which any noxious or offensive gas is used or produced and any apparatus for condensing any such gas or otherwise preventing the discharge thereof into the atmosphere or for rendering any such gas harmless or inoffensive when discharged;
  - (b) require from the person in charge of any such premises where a scheduled process is carried on, the production of the registration certificate or provisional registration certificate issued in respect of such premises under [section ten](#) of this Act;
  - (c) apply such tests and take such samples and make such enquiries and investigations as appear to him to be necessary for the due performance of his functions under this Act.
- (2) Any person who -
  - (a) falsely holds himself out to be the chief officer or an inspector; or

- (b) refuses or fails to answer to the best of his ability any question lawfully put to him by the chief officer or an inspector in the exercise of his powers or the performance of his duties or functions under this section; or
- (c) refuses or fails to comply to the best of his ability with any lawful requirement of the chief officer or an inspector in the exercise of such powers or the performance of such duties or functions; or
- (d) obstructs or interferes with the chief officer or an inspector in the exercise of such powers or the performance of such duties or functions,

shall be guilty of an offence.

- (3) Whenever the chief officer or an inspector or a local authority or any person in the service of a local authority is alleged to have caused injury to any person or damage to any property or in any other manner to have detrimentally affected the rights of any person, whether in respect of property or otherwise, in the exercise of any power or the performance of any duty or function under this Act, it shall be a defence in any legal proceedings founded on such allegation and brought against the State, the chief officer or such inspector or local authority or person that the chief officer or such inspector, local authority or person has used the best known or the only or most practicable available methods and has acted without negligence in the exercise of the powers or the performance of the duties or functions aforesaid, and a certificate signed by the Director-General: Environmental Affairs and Tourism to the effect that, having regard to all the circumstances, defendant or respondent has used the best known or the only or the most practicable methods, shall be accepted by the court as *prima facie* evidence of that fact.

[Sub-s. (3) amended by s. 2 of Act 21/81]

## PART II

### CONTROL OF NOXIOUS OR OFFENSIVE GASES

#### 8. Controlled areas

The Minister may, after consideration of a report by the committee and after consultation with the Minister of Trade and Industry, by notice in the *Gazette* -

- (a) declare any area to be a controlled area for the purposes of this Act;
- (b) include any area in or exclude any area from a controlled area.

#### 9. Premises on which scheduled process carried on to be registered

- (1) Save as provided in sub-section (4) of [section eleven](#), no person shall within a controlled area -
  - (a) carry on a scheduled process in or on any premises, unless -
    - (i) he is the holder of a current registration certificate authorizing him to carry on that process in or on those premises; or

(ii) in the case of a person who was carrying on any such process in or on any premises immediately prior to the date of publication of the notice by virtue of which the area in question is a controlled area, he has within three months after that date applied for the issue to him of a registration certificate authorizing the carrying on of that process in or on those premises, and his application has not been refused; or

(b) erect or cause to be erected any building or plant, or alter or extend or cause to be altered or extended any existing building or plant, which is intended to be used for the purpose of carrying on any scheduled process in or on any premises, unless he is the holder of a provisional registration certificate authorizing the erection, alteration or extension of that building or plant for the said purpose; or

[Para. (b) substituted by s. 3 of Act 17/73]

(c) alter or extend or cause to be altered or extended an existing building or plant in respect of which a current registration certificate has been issued unless he has, before taking steps to bring about the proposed alteration or extension, applied to the chief officer for provisional registration of the proposed alteration or extension or unless such alteration or extension will not affect the escape into the atmosphere of noxious or offensive gases produced by the scheduled process in question.

[Para. (c) substituted by s. 3 of Act 17/73]

(2) Any person who contravenes any provision of sub-section (1) shall be guilty of an offence.

#### **10. Application for and issue of registration certificates and provisional registration certificates**

(1) An application for a registration certificate or a provisional registration certificate under [section nine](#) shall be lodged with the chief officer in the prescribed form and shall be accompanied by such information as may be prescribed.

(2) The chief officer shall after consideration of any such application -

(a) in the case of an application under sub-paragraph (ii) of paragraph (a) of sub-section (1) of the said section -

(i) if he is satisfied that the best practicable means are being adopted for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases produced or likely to be produced by the scheduled process in question, grant the application and issue to the applicant a registration certificate in the form prescribed; or

(ii) if he is not so satisfied, by notice in writing require the applicant to take the necessary steps within a period specified in the notice for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases produced or likely to be produced by the said scheduled process;

[Para. (a) amended by s. 4 of Act 17/73]

(b) in the case of an application under paragraph (b) or (c) of the said subsection, and subject to the provisions of subsection (4) -

- (i) if he is satisfied in regard to the matters referred to in subparagraph (i) of paragraph (a) of this subsection, grant the application and issue to the applicant a provisional registration certificate in the form prescribed; or
- (ii) if he is not so satisfied, by notice in writing advise the applicant to take the necessary steps of the nature contemplated in subparagraph (ii) of paragraph (a), within a period specified in the notice, in order that he may be so satisfied.

[Para. (b) amended by s. 4 of Act 17/73]

- (3) An applicant who has complied with the requirements of any notice under subparagraph (ii) of paragraph (a) or subparagraph (ii) of paragraph (b) of subsection (2), within the period specified in that notice or within such further period as the chief officer may allow, shall, subject to the provisions of subsection (4), be entitled to the issue to him of a registration certificate or a provisional registration certificate, as the case may be.
- (4) No provisional registration certificate shall be issued under this section, unless the chief officer is satisfied that the scheduled process in question may reasonably be permitted to be carried on in the locality affected, having regard to the nature of that process, the character of the locality in question, the purposes for which other premises in such locality are used and any other consideration which in his opinion have a bearing on the matter, and that the carrying on of that process in or on the premises in question would not be in conflict with any town-planning scheme in operation or in course of preparation in respect of such locality.
- (5) In the case of an application under paragraph (b) of subsection (1) of [section nine](#) the chief officer shall consult the local authority, if any, in whose area of jurisdiction the proposed scheduled process will be in operation and any local authority in whose area of jurisdiction there are residents who may in the opinion of the chief officer be affected by the carrying on of the scheduled process to which the application relates, and shall record and consider the opinion and recommendation of such local authority or authorities.

## **11. Period of validity and conditions of provisional certificate**

- (1) A provisional registration certificate shall, subject to the provisions of subsection (3), be valid for such period as may be determined by the chief officer and specified in that certificate, and the chief officer may, if he is satisfied that good reasons exist for doing so, from time to time extend the period of validity of any such certificate.
- (2) Every provisional registration certificate shall specify -
  - (a) the situation and extent of the proposed building or plant to which the certificate relates;
  - (b) the nature of the scheduled process intended to be carried on;
  - (c) the raw materials intended to be used, the nature of the operations intended to be carried out and the products intended to be produced;

- (d) the appliances intended to be installed and any other measures intended to be taken with a view to preventing or reducing to a minimum the escape into the atmosphere of any noxious or offensive gases likely to be produced by the operations intended to be carried on; and
  - (e) the proposed measures for the purification of the effluents discharged from appliances installed for preventing or reducing to a minimum the escape into the atmosphere of any noxious or offensive gases from the processes that will be in operation, and for the prevention of the release of noxious or offensive constituents from such effluents when they come into contact with other effluents in drains or drainage canals.
- (3) If any building or plant in respect of which a provisional registration certificate has been issued, is, within the period specified in subsection (1), or within such further period as the chief officer may allow, completed to the satisfaction of the chief officer in accordance with the particulars specified in that certificate, the chief officer shall, on application by the holder of that certificate, issue to him a registration certificate in the prescribed form authorizing the carrying on of the scheduled process to which that provisional registration certificate relates in or on the premises in respect of which such provisional registration certificate was issued, and thereupon such provisional registration certificate shall lapse.
- (4) The holder of a provisional registration certificate may carry on in or on the premises to which that certificate relates any process specified in such certificate, and the provisions of [section twelve](#) shall *mutatis mutandis* apply with reference to the carrying on of such process in or on those premises.

## **12. Conditions of registration certificates**

- (1) A registration certificate shall be subject to the condition that all plant and apparatus used for the purpose of carrying on the scheduled process in question and all appliances for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases, shall at all times be properly maintained and operated and that the holder of the certificate shall ensure that all other necessary measures are taken to prevent the escape into the atmosphere of noxious or offensive gases: Provided that in applying the provisions of this subsection due allowance shall be made for the unavoidable escape into the atmosphere of noxious or offensive gases during the starting up of any plant or apparatus in respect of which the registration certificate was issued or during the period of any breakdown or shutting down or disturbance of such apparatus or plant.
- (2) The chief officer may at any time by notice in writing require the holder of any such certificate to take steps to ensure the more effective operation of the appliances provided for in such certificate for the prevention of the escape into the atmosphere of noxious or offensive gases produced by the scheduled process to which the certificate relates.
- (3) (a) The chief officer may at any time by notice in writing require the holder of any such certificate to take such steps as may be reasonable, having regard to the cost involved, to ensure the more effective prevention of the escape into the atmosphere of noxious or offensive gases, produced by the scheduled process to which the certificate

relates, by means of some other or improved process or equipment specified in such notice.

- (b) Any such holder shall be allowed a reasonable period within which to take any steps specified in the relevant notice.
- (4) If the holder of a registration certificate fails to comply with the conditions referred to in subsection (1) or any requirement under subsection (2) or (3), the chief officer may by notice in writing call upon such holder to comply with such conditions or requirement within a reasonable period specified in the notice, and in the event of failure on the part of such holder to comply with the said conditions or requirement within the period so specified, the chief officer may cancel the registration certificate or suspend the operation thereof for such period as he may deem fit.

### **13. Appeals from decisions of chief officer**

- (1) (a) Any person who is aggrieved by a decision of the chief officer refusing an application for a registration certificate or a provisional registration certificate or cancelling or suspending a registration certificate or provisional registration certificate or imposing any requirement under subsection (2) or (3) of [section 12](#), may within one month appeal against such decision to the board, which shall have power to make such order on the appeal as it may consider equitable.

[Para. (a) substituted by s. 27 of Act 88/96]

- (b) Any person who so appeals may continue to carry on the scheduled process to which such appeal relates pending the decision of the board on such appeal, if such scheduled process was being carried on prior to the decision of the chief officer or the imposition by him of the requirement which is the subject of the appeal, and if the chief officer has been satisfied that the escape into the atmosphere of gases produced by the said process is not, or is not likely to give rise to, a danger to the health of man, and has granted permission that the carrying on of that process be continued.

[Para. (b) substituted by s. 5 of Act 17/73]

- (2) If a provisional registration certificate is granted under paragraph (b) of subsection (1) of [section nine](#), notwithstanding an objection by a local authority referred to in subsection (5) of [section ten](#), such local authority may within one month appeal against the decision of the chief officer to the board which shall have power to make such order on any such appeal as it may consider equitable and whose decision shall be final.
- (3) Any person who lodges an appeal under subsection (1) or (2) shall submit with his appeal written arguments or explanations of the grounds of his appeal and may further appear before the board in person or through a representative (who shall be an attorney or an advocate) and cause any evidence to be tendered or any argument or explanation to be submitted to the board in support of the written arguments or explanations of his grounds of appeal.

## **PART III**

### **ATMOSPHERIC POLLUTION BY SMOKE**

#### **14. Application of this Part**

- (1) The provisions of this Part, excluding the provisions of [section 14A](#), shall apply only in areas in which the Minister has, after consultation with the Minister of Trade and Industry, by notice in the *Gazette* declared them to be applicable, and with effect from such date in the case of any such area as may be specified in the relevant notice.  
[Sub-s. (1) substituted by s. 3 of Act 21/81]
- (2) Save as provided in subsection (6), no such notice shall be issued in respect of any area or part of an area under the jurisdiction of a local authority except with the concurrence of that local authority.
- (3) Subject to the provisions of sub-sections (4) and (6), the powers conferred by this Part upon local authorities shall in respect of any area under the jurisdiction of a local authority which is the subject of a notice under subsection (1), be exercised by that local authority, unless the Minister has in consultation with the Minister of Finance and after consultation with the said local authority, by notice in the *Gazette* directed that the said powers shall be exercised by the chief officer.
- (4) The Minister may at the request of any local authority by notice in the *Gazette* direct that the powers which may in terms of subsection (3) be exercised by that local authority, shall be exercised by the chief officer, and may in that event recover from that local authority such costs incurred by the chief officer in the exercise of the said powers as may be determined by agreement between the Minister, acting in consultation with the Minister of Finance, and such local authority.
- (5) Where any notice under subsection (1) is issued in respect of any area which is not under the jurisdiction of a local authority, the Minister may in that notice or by subsequent notice in the *Gazette* -
  - (a) direct that the powers conferred by this Part upon local authorities be exercised in respect of such area by the chief officer; or
  - (b) if such area adjoins the area under the jurisdiction of a local authority, authorize that local authority to exercise the said powers in respect of such area.
- (6) If after consideration of a report submitted to him by the committee in pursuance of any enquiry made by it the Minister is satisfied that smoke emanating from any premises is causing a nuisance the Minister may -
  - (a) if the premises from which the smoke emanates are situated within an area in which the provisions of this Part have in terms of subsection (1) been declared to be applicable, and within the area of jurisdiction of a local authority, and in the opinion of the Minister that local authority has not taken or is not taking reasonable steps with a view to preventing the continuation of the nuisance, by notice in the *Gazette* direct that the powers conferred by this Part upon local authorities shall, in respect of the said area, be exercised wholly, or to the extent specified in the notice, by the chief officer;
  - (b) if the said premises are not situated within an area in which those provisions have been so declared to be applicable, by notice in the *Gazette* declare the provisions of this Part to be applicable in such area as he may consider necessary to permit of effective action being taken in accordance with the said provisions in order to prevent the continuation of the nuisance;

- (c) in any notice under paragraph (b) or by subsequent notice in the *Gazette* direct that the powers conferred by this Part upon local authorities shall in respect of the area which is the subject of such first-mentioned notice be exercised wholly, or to the extent specified in the notice, by the chief officer;
  - (d) where any powers are in terms of a notice under this subsection exercised by the chief officer in the area of jurisdiction of any local authority, recover in consultation with the Minister of Finance, the costs incurred in connection with the exercise of such powers from that local authority.  
[Sub-s. (6) substituted by s. 6 of Act 17/73]
- (7) The Minister may at any time by notice in the *Gazette* withdraw or amend any notice issued under subsection (6).
  - (8) The Minister may, after consultation with the committee, by notice in the *Gazette* -
    - (a) withdraw any notice under subsection (1) or include any area within the area to which that notice relates or exclude therefrom any area which is included therein;
    - (b) withdraw any notice under subsection (3), (4) or (5) and issue any other notice under subsection (5) in respect of the area or any part of the area to which any notice under that subsection relates: Provided that no notice under subsection (3) or (4) or paragraph (b) of subsection (5) shall be withdrawn except after consultation with the local authority concerned.
  - (9) Any reference in this Part to a local authority shall -
    - (a) in relation to any area in respect of which any powers are by virtue of a notice under subsection (3) or (4) or paragraph (a) of subsection (5) required to be exercised by the chief officer, be construed as a reference to the chief officer; and
    - (b) in relation to an area in respect of which a local authority has under paragraph (b) of sub-section (5) been authorized to exercise the powers conferred upon local authorities by this Part, be construed as a reference to that local authority.
  - (10) Whenever any notice issued under this section has the effect of vesting -
    - (a) in the chief officer any powers which prior to the date on which the notice came into operation were vested in a local authority; or
    - (b) in a local authority any powers which prior to that date were vested in the chief officer,

any order duly issued or other action duly taken prior to the said date by the authority which was then competent to make such order or take such action shall be deemed to have been duly issued or taken by the authority which has become competent to issue such order or to take such action by virtue of the notice.

**14A. Prohibition of manufacture or import of certain fuel burning appliances and parts therefor**

- (1) No person shall manufacture or import -
  - (a) any fuel burning appliance for use in a dwelling-house which does not comply with the requirements prescribed by regulation under [section 44](#); or
  - (b) any part for such an appliance which does not comply with the requirements so prescribed,

unless he has previously obtained written authority for the manufacture or import thereof from the chief officer.

- (2) The chief officer may in his discretion grant or refuse the authority referred to in subsection (1), and any such authority shall be subject to such conditions as may be prescribed by regulation under [section 44](#) and to such supplementary conditions as may be determined by the chief officer and set out in the authority concerned.
- (3) Any person who contravenes the provisions of sub-section (1) or manufactures or imports any fuel burning appliance for use in a dwelling-house or any part for such an appliance contrary to any condition contemplated in sub-section (2), shall be guilty of an offence.

[S. 14A inserted by s. 4 of Act 21/81]

## **15. Installation of fuel burning appliances**

- (1) No person shall install or cause or permit to be installed in or on any premises -
  - (a) any fuel burning appliance, unless such appliance is so far as is reasonably practicable capable of being operated continuously without emitting dark smoke or smoke of a colour darker than may be prescribed by regulation: Provided that in applying the provisions of this paragraph due allowance shall be made for the unavoidable emission of dark smoke or smoke of a colour darker than may be so prescribed during the starting up of the said appliance or during the period of any breakdown or disturbance of such appliance; or
  - (b) any fuel burning appliance designed -
    - (i) to burn pulverised solid fuel; or
    - (ii) to burn solid fuel in any form at a rate of one hundred kilograms or more per hour; or
    - (iii) to subject solid fuel to any process involving the application of heat,

unless such appliance is provided with effective appliances to limit the emission of grit and dust to the satisfaction of the local authority or the chief officer, as the case may be.

[Para. (b) substituted by s. 7 of Act 17/73]

- (2) No person shall install any fuel burning appliance in respect of which sub-section (1) applies, in or on any premises unless prior notice in writing has been given to the local authority or the chief officer, as the case may be, of the proposed installation of such appliance.

- (3) The provisions of sub-sections (1) and (2) shall not apply -
- (a) in respect of the installation of any fuel burning appliance in any dwelling-house; or
  - (b) in respect of any fuel burning appliance if the installation thereof was commenced or any agreement for the acquisition thereof was entered into prior to the fixed date.
- (4) In this section and in [sections sixteen](#) and [eighteen](#) -
- (a) “appliance” means any one mechanical stoker or any one burner on which there may be more than one stoker, but does not include a single chimney through which the products of several burners or furnaces may be discharged; and
  - (b) “stoker” means any mechanism or other means intended for feeding fuel into any place for the purpose of burning it in such place; and
  - (c) “burner” means any furnace, combustion chamber, grate or other place to which fuel is fed by one or more stokers or manually for the purpose of burning such fuel in such furnace, combustion chamber, grate or other place.
- (5) A fuel burning appliance which has been installed in accordance with plans and specifications approved by the local authority concerned, shall not for the purposes of subsection (1) be deemed to have been installed in contravention of the provisions of that subsection, but nothing in this subsection shall be construed as precluding any action under [section seventeen](#) or [nineteen](#) in respect of any such fuel burning appliance.
- (6) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence.

## **16. Siting of fuel burning appliances and construction of chimneys**

- (1) No local authority shall approve of any plan which provides for the construction of any chimney or other opening for carrying smoke, gases, vapours, fumes, grit, dust or other final escapes from any building or for the installation of any fuel burning appliance, unless it is satisfied -
- (a) in the case of any such chimney or other opening, that the height thereof will as far as practicable be sufficient to prevent smoke or any other product of combustion from becoming prejudicial to health or a nuisance to occupiers of premises in the surrounding areas; or
  - (b) in the case of any such fuel burning appliance, that it is suitably sited in relation to other premises in the surrounding areas.
- (2) For the purposes of paragraph (a) of subsection (1), a local authority may have regard to -
- (a) the purpose for which any chimney or other opening in question is intended;

- (b) the provisions contained in any approved draft town-planning scheme or other requirement having the force of law relating to the use of land where any chimney is to be constructed;
- (c) the position and nature of any other buildings in the surrounding areas;
- (d) the levels of land in the surrounding areas; and
- (e) any other matter which in the opinion of the local authority should be considered.

**17. Procedure where smoke or other products of combustion cause nuisance**

- (1) If as a result of representations made to it by any occupier of premises (hereinafter referred to as the affected premises), a local authority is satisfied that smoke or any other product of combustion emanating from any premises is a nuisance to the occupier of the affected premises, that local authority shall cause to be served on the person responsible for such nuisance a notice calling upon him to abate the nuisance within a period determined by the local authority after consultation with the chief officer and specified in the notice and to take all such steps as may be necessary to prevent a recurrence of the nuisance.
- (2) For the purposes of subsection (1) smoke which is prejudicial to health or which adversely affects the reasonable comfort of the occupier or occupiers of adjoining or nearby premises or which affects the use of such premises for the purposes for which they are normally permitted to be used, shall be deemed to be a nuisance and the person responsible for any nuisance referred to in that subsection shall be -
  - (a) if the nuisance is due to defects in any building erected or adapted by the owner or a predecessor in title of the premises in question for the carrying on of the activities giving rise to the nuisance, or to any plant or appliance installed by the owner or such a predecessor in title or for the maintenance of which the owner is responsible, the owner of such premises; and
  - (b) in any other case, the occupier of such premises.
- (3) A notice under subsection (1) may be served -
  - (a) upon the owner of any premises, by delivering it to him or his agent or transmitting it by post under registered cover to him or his agent at his last known address or the last known address of such agent, as the case may be, or, if his address and the address of his agent are unknown, at the address where the premises are situated;
  - (b) upon the occupier of the premises, by delivering it to such occupier or his agent or transmitting it by post to such occupier under registered cover at the address where the premises are situated.
- (4) Any person who fails to comply with any notice under subsection (1) shall be guilty of an offence, and the court convicting any person of any such offence, shall, apart from any penalty which may be imposed in respect of that offence, order the person convicted to take such steps as may be necessary to prevent a recurrence of the nuisance within a period determined by the court.

- (5) Where it is necessary in order to comply with any notice under subsection (1) for the person upon whom such notice is served to carry out any works or install any appliances, he may apply to any court having jurisdiction for an order directing the owner of the affected premises to contribute towards the cost of carrying out such works or installing such appliances.
- (6) On an application under subsection (5) the court may, if it is satisfied that the relevant building on the affected premises was erected after the process from which the smoke or other products giving rise to the nuisance emanates, was put into operation and that it is equitable to require the owner of the affected premises to pay or contribute a share of the cost of carrying out the work or installing the appliances in question, order him to pay such cost or contribute such share as it may determine towards such cost, as the court may in the circumstances consider equitable, but not exceeding the amount by which the value of the premises will be enhanced in consequence of the removal of the nuisance.
- (7) If within a period of one month after the conviction of any person charged with an offence under subsection (4), steps have not been taken to the satisfaction of the local authority concerned with a view to the abatement of the nuisance which gave rise to the conviction, the local authority may itself execute such works and install such appliances and take such other steps as it may consider necessary to abate such nuisance and recover the cost thereby incurred from the person convicted: Provided that if any person has under subsection (6) been ordered to pay or contribute towards the cost involved in abating the nuisance, the local authority may in its discretion recover from that person so much of the amount, if any, which that person is in terms of the order required to pay, as remains unpaid, and such person shall in that event be discharged from liability under the order to the extent of the amount so recovered.

## **18. Smoke control regulations**

- (1) A local authority may make regulations -
  - (a) prohibiting the emission or emanation from any premises of smoke which is of a darker colour or greater density or content than is specified in such regulations after the appliance or appliances from which such smoke emanates have been started but excluding specified periods during which a furnace is being overhauled or the period of any breakdown or disturbance;
  - (b) prohibiting the installation in any premises or the alteration or extension of any fuel burning appliance which does not comply with such requirements as may be specified in such regulations or determined by a person authorized thereto by or in accordance with such regulations or otherwise than in accordance with and subject to such conditions as may be so specified or determined;
  - (c) requiring or authorizing the removal of any fuel burning appliance which has been installed, extended or altered or is being used in contravention of any such regulation or otherwise than in accordance with any condition imposed by or under any such regulation;
  - (d) prohibiting the use or sale for use of solid fuel or the use in a dwelling-house of any fuel burning appliance which does not comply with such requirements as may

be specified in the regulations or determined by a person authorized thereto by or in accordance with such regulations, except in such cases and on such conditions as may be so specified or determined;

[Para. (d) substituted by s. 8 of Act 17/73 and amended by s. 5 of Act 21/81]

- (e) prescribing the records to be kept and the returns to be rendered to the local authority by any person who has in his possession or under his control any fuel burning appliance, as to the quantity, nature and type of fuel consumed by such appliance, and the form in which such records shall be kept and the form in which and the times at which such returns shall be rendered;
  - (f) providing for the inspection of fuel burning appliances, whether or not installed in any premises, and the powers and functions of persons engaged in such inspection;
  - (g) requiring the owner or occupier of any premises in or on which any fuel burning appliance is used, or in or on which any fuel or any fuel of a particular type is consumed at the rate or above the rate specified in the regulations, to install, maintain and use at his own expense such apparatus as may be specified in such regulations or determined by the local authority or a person designated by it or specified in the regulations, for the purpose of indicating or recording the colour, density or content of such smoke as may be emitted by such appliance or as may emanate from the premises in or on which it is used or may be emitted by the fuel so consumed, and for the purpose of facilitating the observance of such smoke with a view to determining its colour, density or content, and requiring such owner or occupier to make available to the local authority any results recorded by or ascertained by means of such apparatus;
  - (h) prescribing such requirements in respect of the provision of heating or cooking facilities in buildings as the local authority may consider necessary for reducing to a minimum the emanation of smoke from such buildings, and prohibiting the installation in any building of any appliances other than specified types of appliances or any appliances which do not comply with the requirements so prescribed;
  - (i) providing for the constitution, functions and procedure of any committee established under [section twenty-two](#);
  - (j) prescribing the manner in which appeals under [section 22](#) (3) shall be submitted, the amount, if any, to be deposited with the local authority in respect of any such appeal, and the procedure for dealing with any such appeal, and providing for the refund of any amount so deposited if the appeal is successful; and  
[Para. (j) substituted by s. 8 of Act 17/73]
  - (k) generally for the effective control of the emission or emanation of smoke from any premises.
- (2) Different regulations may be made under subsection (1) in respect of different parts of the area under the control of a local authority or different classes of premises or premises used for different purposes or in respect of different times or of different periods of the year, and any such regulations may provide for exemption from compliance therewith in such cases and under such circumstances and on such conditions as may be prescribed in such regulations.

- (3) Any such regulations may provide that for the purpose of determining the density of smoke, use shall be made of the chart set out in the [First Schedule](#) or of any other method of determination specified in such regulations.
- (4) Such regulations may provide for penalties for any contravention thereof or failure to comply therewith, but not exceeding, in the case of a first offence, a fine of two hundred rand or, in default of payment, imprisonment for a period of six months and in the case of a second or subsequent offence, a fine of one thousand rand or, in default of payment, imprisonment for a period of one year.
- (5) No such regulation shall have any force or effect unless it has been approved by the Minister on the recommendation of the committee (and in the case of any regulations under paragraph (d) or (h) of subsection (1) also after consultation with the Minister of Trade and Industry), and has been promulgated by the Minister by notice in the *Gazette*.  
[Sub-s. (5) substituted by s. 8 of Act 17/73]

## **19. Procedure in event of contravention of regulations**

- (1) If smoke is emitted or emanates from any premises in contravention of any regulation made under [section eighteen](#), the local authority concerned may, subject to the provisions of subsection (3), cause to be served on the owner or occupier of such premises, a notice in writing calling upon him to bring about, within a period specified in the notice, the cessation of the emission or emanation of such smoke from those premises.
- (2) Such a notice may be served by delivering it to the owner or occupier concerned personally or to the person in charge of the premises in question or by transmitting it to such owner or occupier by post under registered cover at the address at which such premises are situated, describing him by name or as the owner or occupier of those premises.
- (3) No such notice shall be served in respect of any premises in or on which a scheduled process is being carried on, except after consultation with the chief officer.
- (4) In determining the period to be specified in any such notice, the local authority shall have regard to the nature and magnitude of the measures to be taken in order to comply with the notice.
- (5) Any person who fails to comply with any such notice, shall be guilty of an offence.
- (6) (a) If after the expiration of a period of one month from the date of the conviction of any person of an offence under subsection (5), steps have not been taken to the satisfaction of the local authority concerned to comply with the relevant notice, that local authority may cause such works to be undertaken and such appliances to be installed and such other measures to be taken as it may consider necessary to bring about the cessation of the emission or emanation of the smoke which was the subject of the notice, and recover the cost incurred from the person upon whom the notice was served.  
(b) Any amount recoverable under paragraph (a), together with interest thereon calculated at the rate of six per cent per annum with effect from the date upon

which such amount became due, shall, notwithstanding anything to the contrary in any law contained, form a first charge against the land upon which the premises in question are situated, and shall rank in priority to all other debts whatsoever other than expenses, costs, fees and charges referred to in [section eighty-nine](#) of the Insolvency Act, 1936 (Act No. 24 of 1936).

- (7) The fact that any regulation made under [section eighteen](#) defines the permissible density or colour of smoke by reference to the chart set out in the [First Schedule](#), shall not prevent any court from determining on other evidence submitted to it, the density or colour of smoke for the purposes of any proceedings under that section whether or not there has been any comparison with the said chart.

## **20. Establishment of smoke control zones**

- (1) A local authority may by order confirmed by the Minister after consultation with the committee, and promulgated by the Minister by notice in the *Gazette* -
- (a) declare the area within its jurisdiction or any part of that area to be a smoke control zone; and
  - (b) prohibit the emanation or emission from any premises in that zone of smoke of a darker colour or greater density or content than is specified in the order.  
[Sub-s. (1) substituted by s. 9 of Act 17/73]
- (2) For the purposes of subsection (1), the area under the jurisdiction of a local authority includes any area in respect of which that local authority is empowered to exercise any powers under this Act.
- (3) An order under subsection (1) -
- (a) may apply to all premises or to specified premises or classes of premises or to premises used for specified purposes or for purposes other than specified purposes;
  - (b) may prescribe different requirements in respect of different portions of a smoke control zone or for different classes of premises or for premises used for specified purposes or for purposes other than specified purposes and premises not so used;
  - (c) may provide for exemption, on such conditions as may be specified in the order, from the provisions thereof in respect of specified premises or classes of premises or premises used for specified purposes or for purposes other than specified purposes and premises not so used, or in respect of specified fuel burning appliances or types of such appliances; and
  - (d) may provide for the operation of any regulation made under [section eighteen](#) to be suspended in respect of any area in respect of which the order applies.
- (4) Before submitting an application to the Minister for confirmation of an order in terms of subsection (1), the local authority shall publish in three consecutive issues of an Afrikaans newspaper and in three consecutive issues of an English newspaper circulating in its area of jurisdiction, a notice in Afrikaans and English, respectively, of its intention to make such application, and -

- (a) stating the general effect of the order;
  - (b) describing the area to which the order is to apply; and
  - (c) stating that within one month after the date of the first publication of such notice any person may object to the confirmation of the order by giving notice in writing to the Minister and sending a copy of the notice so given to the town clerk concerned.
- (5) (a) Where any objection is so lodged, the Minister may, if he considers it advisable to do so, refer the objection to any sub-committee appointed under [section four](#) in respect of the area in question or, if there is no such sub-committee, to the committee or to a special committee consisting of one or more persons appointed by the Minister, for enquiry into and report upon the advisability or otherwise of confirming the order, and if an objection is so referred, the order in question shall not be confirmed by the Minister until he has received and considered the report of the sub-committee or the committee or special committee to which the objection has been referred.
- (b) Notice that any such objection has been referred to any sub-committee or the committee or any special committee, and of the subject matter of the enquiry to be undertaken by such sub-committee or the committee or such special committee, shall be published in Afrikaans and English, respectively, in an Afrikaans newspaper and in an English newspaper circulating in the area of the local authority concerned together with a notification that the person who lodged the relevant objection may, subject to the approval of the sub-committee or the committee or special committee to which the objection has been referred, submit representations in connection with the objection to such sub-committee or the committee or such special committee.
- (6) Subject to the provisions of subsection (4), the Minister may confirm any such order either with or without modification, or may refuse to confirm such order, and where the order is confirmed, notice of the confirmation, and of the general effect of the order as so confirmed, shall be published by the local authority in Afrikaans and in English, respectively, in an Afrikaans newspaper and in an English newspaper circulating in the area of jurisdiction of the local authority.
- (7) Any expenses incurred by the Minister under this section shall be defrayed by the local authority.
- (8) An order which has been confirmed by the Minister shall come into operation on a date to be determined by the Minister and specified in the notice by which the order is promulgated, not being a date earlier than nine months from the date on which the order was confirmed.
- (9) An order under this section may contain such provisions as the Minister may consider expedient -
- (a) for enabling the occupier of any premises within the area to which the order relates who has to incur expense in executing works or providing, altering or adapting fixtures, fittings or appliances for the purpose of complying with the

order, to enter into and fulfil agreements with the owner of such premises, making such variations of the terms of the lease or tenancy of the premises as may be reasonable having regard to the expense to be incurred and other relevant circumstances; and

- (b) for enabling any such occupier who is unable to make an agreement with the owner concerned under paragraph (a) of this subsection to apply to any competent court for an order making such variation of the terms of the lease or tenancy of the premises as aforesaid, and for enabling the court to make such an order.
- (10) An order under subsection (1) may be amended or withdrawn by another order made by the local authority and confirmed by the Minister, and such order shall be promulgated by the Minister by notice in the *Gazette*, and the provisions of subsections (3) to (7) inclusive shall *mutatis mutandis* apply with reference to any amendment of such an order.

[Sub-s. (10) substituted by s. 9 of Act 17/73]

- (11) Any person who contravenes or fails to comply with the provisions of any order under subsection (1) shall be guilty of an offence.
- (12) Where any exemption is granted in terms of paragraph (c) of subsection (3) on the condition that a particular type of fuel is to be used, it shall in proceedings for an offence under this section be a defence to prove that the emission of smoke was not caused by the use of any fuel other than that authorized.
- (13) (a) A local authority may, either alone or jointly with one or more other local authorities, appoint as many full-time smoke control officers as the Minister may approve, to enforce compliance, within its area of jurisdiction, with any order under subsection (1) (b).
- (b) The Minister may, out of moneys appropriated by Parliament for the purpose, refund to a local authority such portion of the salary of any such full-time smoke control officer approved by the Minister and paid by it as is prescribed by regulation under [section 44](#) (dB).
- (c) The refund of a portion of a salary in terms of paragraph (b) shall be discontinued with effect from the date from which no order under subsection (1) (a) applies any longer in respect of the local authority concerned.

[Sub-s. (13) added by s. 9 of Act 17/73]

## **21. Contracts for the supply of fuel**

A local authority may, notwithstanding the provisions of any law, with the consent of the Premier of the province in which the area of such local authority is situated and of the Minister of Trade and Industry and the Minister in such a manner and subject to such conditions as it may deem fit, enter into a contract with any natural person or any body corporate for the supply, by such person or body to users, of any fuel which will facilitate or render possible the application of or compliance with the regulations made by such local authority in terms of this Part, and may, subject to such consent, without prejudice to its general powers under this section, indemnify or guarantee any producer or supplier of fuel against any loss, or itself act as wholesale or retail dealer in such fuel or make a contribution towards the cost of producing such fuel or the cost of establishing an industry for the production of such fuel.

## **22. Delegation of powers by local authority**

- (1) A local authority may in such manner and subject to such conditions as it may think fit, delegate to any of its officers or servants, or to any committee constituted as provided in subsection (2), any of the powers conferred on it by this Part, except the powers conferred by [section eighteen](#) or [twenty](#).
- (2) Any such committee may consist -
  - (a) wholly of members of the governing body of the local authority; or
  - (b) partly of such members and partly of officials of such governing body; or
  - (c) wholly of such officials; or
  - (d) wholly of persons who are not such members or officials; or
  - (e) partly of such members or officials and partly of persons who are not such members or officials.
- (3) Any person upon whom any notice is served under [section seventeen](#) or [nineteen](#) by an officer or servant of a local authority by virtue of a delegation under subsection (1) of this section, may within fourteen days after receipt of such notice, appeal to the local authority which shall have power to confirm or withdraw the notice.

## **23. Power to enter upon premises**

- (1) A local authority may authorize any person to enter any premises, except the explosives area of any explosives factory, for the purpose of making any investigation in connection with the emission or emanation of smoke or in connection with any fuel burning appliance, or for the purpose of executing any work or taking any steps which the local authority is authorized by this Act to execute or take: Provided that no such person shall enter any part of a building used for residential purposes without the consent of the occupier thereof.
- (2) Any such person shall be provided with a certificate signed by an officer designated by the local authority and indicating that he has been so authorized.
- (3) Subject to the proviso to subsection (1), any person who fails to give or refuses admission to a person so authorized after the production by that person of the certificate issued to him under subsection (2), or who obstructs or interferes with any such person in the performance of his functions under this section, shall be guilty of an offence.

## **24. Information to be supplied to local authorities**

- (1) A local authority may by notice in writing served on -
  - (a) the owner or occupier of any premises from which smoke is emitted or emanates, require such owner or occupier to furnish within the time and to the officer of such local authority specified in the notice, such information as to the fuel burning

appliances in such premises and the fuel or waste burned in such appliances as the local authority may require;

- (b) any person selling fuel within its area of jurisdiction, require such person to furnish within the time and to the official specified in the notice -
  - (i) such information as to the quantity, type and source of the fuel sold by such person as may be specified in the notice; and
  - (ii) information as to the quantity, type and source of every quantity of not less than five tons of fuel sold by him to any single buyer on any one occasion, and the address at which the fuel sold was delivered.
- (2) Any person who fails to comply with any such notice or who in reply to such a notice knowingly furnishes any information which is false or misleading in any material respect, shall be guilty of an offence.

## **25. Appeals**

- (1) Any person upon whom a notice has been served under [section 17](#) or [19](#) by a local authority or who is aggrieved by the decision of a local authority on appeal to it under subsection (3) of [section 22](#), may within 30 days after the date on which such notice was served or such decision was given, appeal against that notice or decision to the regional appeal board established under subsection (1) of [section 5](#) for the area in question, which may confirm or set aside such notice or decision, but subject to a right of appeal to the board, provided notice of intention so to appeal is given to the board and the regional appeal board concerned within 14 days after the decision of such regional appeal board was received.

[Sub-s. (1) substituted by s. 28 of Act 88/96]

- (2) The operation of any notice or the enforcement of any decision of a local authority which is the subject of an appeal under subsection (1) shall be suspended pending the decision of the relevant regional appeal board or the board, as the case may be, on the appeal.
- (3) Any person who lodges an appeal under subsection (1) shall submit with his appeal written arguments or explanations of the grounds of his appeal and may further appear before the relevant regional appeal board or the board, as the case may be, in person or through a representative (who shall be an attorney or an advocate) and cause any evidence to be tendered or any argument or explanation to be submitted to such regional appeal board or the board, as the case may be, in support of the written arguments or explanations of his grounds of appeal.

## **26. Expenditure by local authority**

A local authority may incur expenditure in connection with the exercise of the powers and the performance of the functions conferred or imposed upon it by this Act, and may -

- (a) with the approval of the Premier of the province concerned, given after consideration of a recommendation to that effect from the committee or a sub-committee thereof, incur expenditure out of its revenue and, where any loan has been authorized, out of moneys borrowed by the local authority, for the purpose of making loans or grants to persons in

connection with the installation or improvement of fuel burning appliances and equipment designed to prevent or minimize the emission of smoke or of electrical or other equipment in the stead of such appliances;

- (b) undertake or contribute towards the cost of investigations and research relevant to the problem of atmospheric pollution;
- (c) arrange for the publication of information on the problem of atmospheric pollution and for the delivery of lectures and addresses and the holding of discussions thereon.

## PART IV

### DUST CONTROL

#### 27. Dust control areas

- (1) The Minister may, after consideration of a report by the committee and after consultation with the Minister of Trade and Industry, by notice in the *Gazette* -
  - (a) declare any area to be a dust control area for the purposes of this Act;
  - (b) include any area in or exclude any area from a dust control area.
- (2) The Minister may, after consideration of a report by the committee, by notice in the *Gazette* withdraw any notice under subsection (1).

#### 28. Steps to be taken by certain persons for preventing atmospheric pollution by dust

- (1) Any person who in a dust control area -
  - (a) carries on any industrial process the operation of which in the opinion of the chief officer causes or is liable to cause a nuisance to persons residing or present in the vicinity on account of dust originating from such process becoming dispersed in the atmosphere; or
  - (b) has at any time or from time to time, whether before or after the commencement of this Act, deposited or caused or permitted to be deposited on any land a quantity of matter which exceeds or two or more quantities of matter which together exceed twenty thousand cubic metres in volume, or such lesser quantity as may be prescribed, and which in the opinion of the chief officer causes or is liable to cause a nuisance to persons residing or present in the vicinity of such land on account of dust originating from such matter becoming dispersed in the atmosphere,

[Para. (b) substituted by s. 10 of Act 17/73]

shall take the prescribed steps or (where no steps have been prescribed) adopt the best practicable means for preventing such dust from becoming so dispersed or causing such nuisance.

- (2) For the purposes of subsection (1) the expression “best practicable means” includes in any particular case any steps within the meaning of that expression as defined in [section one](#) which may be determined by the chief officer and specified in a notice signed by

him and delivered or transmitted by registered post to the person who is in terms of the said subsection required to adopt such means.

- (3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

## **29. Prevention of atmospheric pollution by dust by owners or occupiers of land in certain circumstances**

- (1) Whenever in the opinion of the chief officer dust originating on any land in a dust control area and in relation to which the provisions of paragraph (b) of subsection (1) of [section twenty-eight](#) do not apply, is causing a nuisance to persons residing or present in the vicinity of that land, he may by notice in writing delivered or transmitted by registered post to the owner or occupier of the land require such owner or occupier to take the prescribed steps or (where no steps have been prescribed) adopt the best practicable means for the abatement of such nuisance.
- (2) No requirement shall be imposed under subsection (1) upon an occupier of land who is not the owner thereof, unless the chief officer is of the opinion that the dust in question is caused by activities carried on by such occupier or that it is equitable, having regard to the duration of the period for which he is entitled to remain in occupation of such land or other relevant circumstances, to require him to take any steps or adopt any means contemplated in that subsection.
- (3) In this section the expression “best practicable means” has the meaning assigned thereto in subsection (2) of [section twenty-eight](#).
- (4) Any person who fails to comply with the requirements of any notice under subsection (1) shall be guilty of an offence.

## **30. Procedure where special circumstances exist**

- (1) If in any case where the provisions of paragraph (b) of subsection (1) of [section 28](#) apply, the person liable to take any steps or adopt any means prescribed in that subsection is deceased or has (in the case of a corporate body) ceased to exist, or the Minister is of the opinion that it would in all the circumstances be impracticable or inequitable to require such person to take such steps or adopt such means, the Minister may, in consultation with the Minister of Finance, and after consultation with the Premier of the province in which the dust control area is situated, the committee and any local authorities which in the opinion of the Minister may be concerned, cause such steps to be taken or such means to be adopted by the chief officer or any such local authority which is willing to do so or by any other person designated by the Minister, and direct that the cost involved, except so much (if any) as may be paid from any Dust Control Levy Account which may be established under [section 31](#), shall be paid by the State, any such local authorities and the owner concerned to such an extent or in such proportions as may be determined by the Minister in consultation with the Minister of Finance and after consultation with the said Premier, the committee and any such local authorities: Provided that the Minister may in consultation with the Minister of Finance exempt any such local authority or owner from payment of any amount in respect of such cost if he is of the opinion that such local authority or owner is not financially in a position to pay such amount or that it would be impracticable or inequitable to require such local authority or owner to pay such amount.

[Sub-s. (1) substituted by s. 11 of Act 17/73]

- (2) The Minister shall cause any such local authority or owner to be advised in writing of any amount which that local authority or owner is required to pay in pursuance of any determination under sub-section (1) and of the time at which such amount or (if it is to be paid in instalments) any instalment thereof shall be payable.
- (3) Any amount or instalment payable as aforesaid may be recovered from the local authority or owner concerned by the Minister by action in any competent court.
- (4) Any amount payable as aforesaid by the State shall be paid out of moneys appropriated by Parliament for the purpose.
- (5) For the purposes of this section “owner”, in relation to land on which any matter from which dust originates has been deposited at any time in the course of any mining or prospecting activities, includes any person who is the holder of -
  - (a) rights granted under any law relating to mining or prospecting for minerals to carry on mining or prospecting activities on the said land; or
  - (b) any right to the use of the surface of the land in terms of any such law.

[Sub-s. (5) substituted by s. 11 of Act 17/73 and s. 6 of Act 21/81]

### **31. Establishment of Dust Control Levy Account**

- (1) The Minister may, if after consultation with the Minister of Mineral and Energy Affairs, the Minister of Trade and Industry and the committee, he is satisfied that special provision is necessary to meet wholly or in part any expenditure required to be incurred for the more effective prevention of the pollution of the atmosphere by dust, establish an account to be known as the Dust Control Levy Account, hereinafter referred to as the account, into which shall be paid the contributions made in terms of subsection (3) and any moneys which may be donated to the fund or may accrue thereto from any other source.
- (2) Every person to whom any provision of [section 28](#) or [30](#) applies shall contribute to the account as provided in this section: Provided that the Minister may, after consultation with the Minister of Mineral and Energy Affairs, if the person liable so to contribute is or was the holder of the rights referred to in paragraph (a) or (b) of subsection (5) of [section 30](#), or, in any other case, with the Minister of Trade and Industry, exempt any person from liability to contribute if he is of the opinion that it would for any other reason be impracticable or inequitable to require such person to contribute.

[Sub-s. (2) substituted by s. 12 of Act 17/73]

- (3)
  - (a) Any such contribution may consist of a single payment or of periodical payments on such a basis as the Minister may, after consultation as provided in subsection (2), in each case consider appropriate, and may vary according to the nature or magnitude of the operations carried on or the quantities of matter deposited on any land by the person liable for payment, or any other circumstances relating to such operations.
  - (b) Where any such contribution consists of a single payment, the Minister may in his discretion permit the person concerned to pay the amount involved by instalments.

- (4) The chief officer shall cause to be delivered or transmitted by registered post to every person liable for the payment of any such contribution, a notice signed by the chief officer setting out the amount payable by that person and the period within which payment shall be effected, or, in the case of contributions payable periodically or of a single amount payable by instalments, the times at which such periodical amounts or instalments shall be paid, and any such notice may require the person to whom it is addressed to furnish with any payment made such particulars in respect of the operations carried on by him as may be specified in the notice.
- (5) All contributions for which any person is liable under this section shall be paid to the chief officer, who shall cause any amount so paid to him to be transmitted to the Director-General: Environmental Affairs and Tourism to be deposited to the credit of the account.

[Sub-s. (5) amended by s. 7 of Act 21/81]

- (6) Any person who fails to pay on or before the due date any contribution for the payment of which he is liable under this section or to furnish any particulars required in terms of any notice under subsection (4) when making payment of any amount in respect of any such contribution, shall be guilty of an offence.
- (7) (a) The account shall be administered by the Director-General: Environmental Affairs and Tourism, who shall cause proper records to be kept of all moneys received and expended, and any money in the account may subject to the directions of the Minister be applied -
- (i) for the payment of any expenditure incurred in connection with any operations undertaken with the approval of the Minister for the purpose of the prevention of the pollution of the atmosphere by dust;
  - (ii) towards the payment wholly or in part of any expenditure incurred under [section thirty](#); and
  - (iii) to meet wholly or in part any expenditure incurred or to be incurred by any person in complying with any provision of [section twenty-eight](#) or [twenty-nine](#).

[Para. (a) amended by s. 7 of Act 21/81]

- (b) Any moneys in the account which are not required for immediate use shall be invested with the Public Debt Commissioners.

### **32. Prohibition in regard to disposal of assets by mines**

- (1) Whenever the Chief Inspector as contemplated in the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) is of the opinion that having regard to the known and disclosed ore reserves of any mine, that mine is likely to cease mining operations within a period of five years, he shall in writing advise the Minister of Mineral and Energy Affairs and the owner of that mine accordingly and forward a copy of such advice to the Minister.

[Sub-s. (1) amended by s. 2 of Act 51/97]

- (2) Notwithstanding the provisions of the Minerals Act, 1991 (Act No. 50 of 1991), the owner of any mine who, after the date of receipt of any notification under subsection (1), without the consent of the Minister given after consultation with the Minister of Mineral and Energy Affairs, disposes of any asset of that mine before he has been

furnished with a certificate by the chief officer to the effect that the necessary steps have been taken or that adequate provision has been made to prevent the pollution of the atmosphere by dust arising from any matter emanating from that mine, deposited on any land in respect of which the said owner is the holder of rights granted under any law relating to mining or prospecting for minerals, to carry on mining or prospecting on such land, shall be guilty of an offence.

[Sub-s. (2) amended by s. 2 of Act 51/97]

- (3) Any consent given under subsection (2) may be in general terms or in respect of specified assets and may be made subject to such conditions as the Minister may deem fit.

### **33. Regulations in regard to dust**

- (1) The Minister may, after consideration of a report by the committee, make regulations -
    - (a) prescribing the steps that shall be taken to prevent the creation of a nuisance of the nature contemplated in [section twenty-eight](#) or [twenty-nine](#) or to prevent the continuation of such a nuisance or to minimize such a nuisance;
    - (b) providing for the inspection by the chief officer or an inspector or a person authorized under subsection (1) of [section thirty-four](#) subject to the production in the case of any such inspector or person, to the person in charge of the premises, of the certificate referred to in subsection (2) of [section thirty-four](#) of any premises within a dust control area where in the opinion of the chief officer a nuisance of the nature referred to in [section twenty-eight](#) or [twenty-nine](#) exists or may exist;
    - (c) prescribing any lesser quantity than twenty thousand cubic yards of matter in relation to which the provisions of paragraph (b) of subsection (1) of [section twenty-eight](#) shall apply;
    - (d) prohibiting damage to or regulating the removal of any means established for the abatement of a dust nuisance or potential dust nuisance, or any equipment which is used in connection with the establishment of such means.
- [Para. (d) added by s. 13 of Act 17/73]
- (2) Any steps prescribed under paragraph (a) of subsection (1) may vary according to the nature of any industrial process or any matter deposited on land in connection with which such steps are prescribed or according to other circumstances as the Minister may consider necessary.
  - (3) Regulations under subsection (1) (d) may impose, in respect of a contravention thereof, financial obligations in connection with the repair or replacement of the means or equipment concerned.

[Sub-s. (3) added by s. 13 of Act 17/73]

### **34. Delegation of powers of inspection**

- (1) The chief officer may, with the approval of the Minister, authorize any person to carry out, subject to the directions of the chief officer, inspections in terms of regulations made under paragraph (b) of subsection (1) of [section thirty-three](#).

- (2) Any person who has been authorized under subsection (1) shall be furnished with a certificate signed by the chief officer specifying the premises in respect of which he may carry out inspections.
- (3) The chief officer or any person so authorized may without previous notice at any time enter any premises (except the explosives area of an explosives factory) within a dust control area where in his opinion a nuisance of the nature referred to in [section twenty-eight](#) or [twenty-nine](#) exists or may exist: Provided that no premises under the control of the State shall be so entered without the prior consent of the person in charge of such premises, which consent shall not be withheld except for reasons connected with the security of the State.
- (4) Any person who fails to give or refuses admission to any such premises to the chief officer or any person so authorized or who obstructs or interferes with the chief officer or any such person in the performance of his functions under this Part, shall be guilty of an offence.
- (5) The chief officer may at any time, with the approval of the Minister, withdraw any authority granted under subsection (1) and shall notify the person concerned of such withdrawal and of the date on which it shall take effect.

### **35. Appeals**

- (1) Any person who is aggrieved by any notice served upon him or her under this Part may within 30 days after the date on which such notice was served or within such extended period as the board may for good and sufficient reason allow, lodge an appeal with the board against the notice, and the board may thereupon confirm, modify or set aside such notice.

[Sub-s. (1) substituted by s. 29 of Act 88/96]

- (2) The operation of any notice which is the subject of an appeal under subsection (1) shall be suspended pending the decision of the board on such appeal.
- (3) Any person who lodges an appeal under subsection (1) shall submit with his appeal written arguments or explanations of the grounds of his appeal and may further appear before the board in person or through a representative (who shall be an attorney or an advocate) and cause any evidence to be tendered or any argument or explanation to be submitted to the board in support of the written arguments or explanations of his grounds of appeal.

## **PART V**

### **AIR POLLUTION BY FUMES EMITTED BY VEHICLES**

#### **36. Application of this Part**

- (1) The provisions of this Part shall apply only in an area under the jurisdiction of a local authority in respect of which they have been declared to be applicable by the Minister by notice in the *Gazette* after consultation with the committee and the Premier of the province in which such area is situated, and with effect from such date in the case of any such area as may be specified in the relevant notice.

- (2) No such notice shall be issued in respect of any area except with the concurrence of the local authority having jurisdiction in that area.
- (3) Subject to the provisions of subsection (4), the powers conferred by this Part on local authorities shall, in respect of any area under the jurisdiction of a local authority which is the subject of a notice under subsection (1), be exercised by that local authority.
- (4) If after consideration of a report submitted to him by the committee the Minister is of the opinion that a local authority has not satisfactorily exercised the powers which it is in terms of subsection (3) required to exercise, the Minister may, in consultation with the Minister of Finance and after consultation with that local authority, by notice in the *Gazette* direct that the said powers shall be exercised by the chief officer, and may in that event, in consultation with the Minister of Finance, recover from that local authority the costs incurred by the chief officer in the exercise of the said powers.
- (5) The Minister may, after consultation with the committee, by notice in the *Gazette* withdraw any notice issued under this section.
- (6) Any reference in this Part to a local authority shall in relation to any area in respect of which any powers are by virtue of a notice under subsection (4) required to be exercised by the chief officer, be construed as a reference to the chief officer.

### **37. Procedure in event of contravention of regulations**

- (1) A person authorized thereto by a local authority may require the driver of any vehicle on any public road situated within the area under the jurisdiction of that local authority which is the subject of a notice under [section 36](#) (1) to stop such vehicle, and may carry out the prescribed examination of any vehicle on such a road or serve or cause to be served upon the person registered under any law as the owner of such vehicle a notice in writing calling upon him to make that vehicle available, within a period and at a place specified in the notice, for the prescribed examination by the person so authorized or a person designated by him.
- (2) If after examination of any vehicle under subsection (1), the person who carried out the examination is satisfied that noxious or offensive gases are being emitted from such vehicle contrary to the provisions of any regulation made under [section 39](#), such person shall serve or cause to be served on the person registered under any law as the owner of that vehicle a notice in writing calling upon him to take the necessary steps for preventing the emission of the said noxious or offensive gases from that vehicle and to make the vehicle available, within a period and at a place specified in the notice, for examination by the person authorized as contemplated in subsection (1), or a person designated by him.
- (3) A notice under this section shall be served on the owner of the vehicle referred to in the notice by delivering it to him or by transmitting it to him by registered post at his last known address.
- (4) Any person who fails to comply with a requirement or with the provisions of any notice under this section shall be guilty of an offence.

[S. 37 substituted by s. 14 of Act 17/73]

### **38. Appeals**

- (1) Any person who is aggrieved by any notice served upon him or her under [section 37](#) (2) may, within 14 days after the date on which such notice was served or within such further extended period as the board may for good and sufficient reason allow, lodge an appeal with the board against the notice, and the board may thereupon confirm, modify or set aside such notice.

[Sub-s. (1) substituted by s. 30 of Act 88/96]

- (2) Any person who lodges an appeal under subsection (1) shall submit with his appeal written arguments or explanations of the grounds of his appeal and may further appear before the board in person or through a representative (who shall be an attorney or an advocate) and cause any evidence to be tendered or any argument or explanation to be submitted to the board in support of the written arguments or explanations of his grounds of appeal.

[S. 38 substituted by s. 15 of Act 17/73]

### **39. Regulations**

- (1) The Minister may, after considering a report by the committee, make regulations -
  - (a) prohibiting the use on any public road within any area which is the subject of a notice under [section 36](#) (1) of any vehicle from which noxious or offensive gases specified in such regulations or noxious or offensive gases which are of a darker colour or greater density or content than is so specified are emitted;
  - (b) prescribing the steps that shall be taken to prevent the emission from any vehicle of noxious or offensive gases contrary to any regulation made under paragraph (a); and
  - (c) prescribing the methods that shall be applied in order to determine whether any vehicle emits noxious or offensive gases contrary to any regulation made under paragraph (a).

[Sub-s. (1) substituted by s. 16 of Act 17/73]

- (2) Different regulations may be made under subsection (1) in respect of different classes or categories of vehicles.

### **40. Delegation of powers of inspection**

- (1) Any local authority in respect of whose area of jurisdiction a notice under subsection (1) of [section thirty-six](#) is in operation may authorize any person in its employ to detain and inspect any vehicle on any public road within such area or to inspect any vehicle which is the subject of a notice under subsection (2) of [section thirty-seven](#).
- (2) Any person who has been authorized under subsection (1) shall be provided with a certificate signed by an official designated by the local authority and indicating that such person has been so authorized.
- (3) Any person authorized under subsection (1) may upon production by him, to the person in charge of the vehicle, of the certificate referred to in subsection (2) -
  - (a) at any time detain or enter and examine any vehicle on a public road within the area of jurisdiction of the local authority by which he is employed if he is of the

opinion that such vehicle emits fumes contrary to any regulation made under paragraph (a) of subsection (1) of [section thirty-nine](#); or

- (b) enter and examine any vehicle which is the subject of a notice under subsection (2) of [section thirty-seven](#).
- (4) Any person who fails to stop a vehicle on a public road as aforesaid when so requested by any person authorized under subsection (1) or who fails to give or refuses admission to such vehicle to any person so authorized or who obstructs or interferes with any person so authorized in the performance of his functions under this section, shall be guilty of an offence.

## **PART VI**

### **GENERAL PROVISIONS**

#### **41. Disclosure of information**

- (1) No person shall disclose any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him under this Act unless the disclosure is made -
  - (a) with the consent of the person carrying on that undertaking; or
  - (b) in connection with the performance of his functions under this Act; or
  - (c) for the purpose of legal proceedings arising out of this Act.
- (2) Any person who discloses any information in contravention of the provisions of subsection (1) shall be guilty of an offence.

#### **42. Court may authorize works and order payments**

If works are reasonably necessary in or in connection with a building, in order to enable the building to be used for any particular purpose without contravention of any of the provisions of this Act or any regulations made thereunder, the occupier of the building may -

- (a) if by reason of a restriction affecting his interest in the building he is unable to carry out the works without the consent of the owner of the building or some other person interested therein, and is unable to obtain such consent, apply to any competent court for an order authorizing him to carry out such works; and
- (b) if he considers that the whole or any portion of the cost of carrying out the works should be borne by the owner of the building or some other person interested therein, apply to such court for an order directing such owner or other person to pay such cost or such portion thereof,

and the said court may on any such application make such order as may appear to it to be just and equitable in the circumstances.

#### **43. Right of entry upon land, etc.**

- (1) The chief officer or any local authority or any person acting under the authority of the chief officer or a local authority or any person designated under subsection (1) of [section thirty-four](#) may enter upon any land, not being land which constitutes the explosives area of any explosives factory, and take with him such assistants, workmen, vehicles, appliances, instruments and materials as he may consider necessary for the purpose of carrying out any powers, duties or functions, or undertaking any work contemplated in this Act.
- (2) Any person so designated entering upon land shall on demand by the person in charge of the land produce the certificate issued to him under subsection (2) of [section thirty-four](#).
- (3) Any person who has been authorized under subsection (1) shall be provided with a certificate signed by the chief officer, or an official designated by the local authority, as the case may be, and indicating that such person has been so authorized and any such person entering upon land shall on demand by the person in charge of the land produce the certificate so provided.

#### **44. Regulations**

- (1) The Minister may after consultation with the committee make regulations for the more effective administration of this Act, including regulations -
  - (a) as to the calling of meetings of the committee or any sub-committee thereof or the board or any regional appeal board established under [section five](#), the quorum for and procedure at such meetings and the remuneration and allowances, conditions of service and tenure of office of members of the committee or any such sub-committee, the board or any regional appeal board who are not in the full-time employment of the State: Provided that any regulation in regard to the remuneration and allowances of the said members shall be made in consultation with the Minister of Finance;
  - (b) as to the form of any application for any registration certificate or provisional registration certificate and the plans, documents and other information to be submitted in connection with any such application, the fees to be paid in connection with any such application or any appeal under this Act and the circumstances under which the fees paid in connection with any such appeal shall be refunded: Provided that any regulation in regard to any fees as aforesaid shall be made in consultation with the Minister of Finance;
  - (c) as to the form of any registration certificate or provisional registration certificate;
  - (d) as to the matters which the court shall take into consideration in determining what portion of the costs of alterations to a building mentioned in [section forty-two](#) shall be borne by the owner, and how those costs which shall be so borne shall be recovered by means of an increase in rent or otherwise, and the matters which shall be taken into consideration under which an aggrieved person may in terms of [section seventeen](#) be ordered to contribute towards the execution of works or the installation of appliances, as well as the manner in which any contribution shall be made whether in cash or otherwise;
- (dA) (i) prescribing the requirements, including requirements with regard to

durability and performance, with which fuel burning appliances and parts therefor in general, or any particular kind or type of fuel burning appliances and parts therefor, shall comply, and the manner in which the said appliances and parts shall be tested to establish whether they comply with the prescribed requirements;

(ii) prohibiting the manufacture or import of, or regulating the use or sale for use of -

(aa) fuel burning appliances, other than such appliances for use in a dwelling-house, and parts therefor which do not comply with any requirement prescribed under subparagraph (i); and

(bb) parts for any fuel burning appliances for use in a dwelling-house which were manufactured or imported before the date of commencement of section 4 of the Atmospheric Pollution Prevention Amendment Act, 1981;

[Para. (dA) inserted by s. 17 of Act 17/73 and substituted by s. 8 of Act 21/81]

(dB) (after consultation with the Minister of Finance) as to the portion of the salary of a smoke control officer repayable by the Minister in terms of [section 20](#) (13) (b);

[Para. (dB) inserted by s. 17 of Act 17/73]

(e) generally in regard to any matter in respect of which it is necessary to make regulations in terms of this Act, or in respect of which the Minister may consider it necessary to make regulations in order that the objects of this Act may be achieved.

(2) Regulations under subsection (1) (dA) may provide for penalties for any contravention thereof or failure to comply therewith, but not exceeding, in the case of a first offence, a fine of five hundred rand or, in default of payment, imprisonment for a period of six months, and in the case of a second or subsequent offence, a fine of two thousand rand or, in default of payment, imprisonment for a period of one year.

[Sub-s. (2) inserted by s. 17 of Act 17/73]

#### **45. Operation of Act in relation to other laws**

(1) The provisions of this Act shall be in addition to and not in substitution for any other law which is not in conflict or inconsistent with this Act.

(2) Any regulations or by-laws made by any local authority in regard to any matter dealt with in this Act and in force at the commencement thereof, shall, in so far as they are not inconsistent with this Act, remain in force except in so far as they are repealed by the Minister by notice in the *Gazette*.

[Sub-s. (2) substituted by s. 18 of Act 17/73]

#### **45A. Contributions by State towards certain expenditure incurred in connection with combating of atmospheric pollution**

The Minister may out of moneys appropriated by Parliament for the purpose, and in consultation with the Minister of Finance and subject to such conditions as the Minister may in each case determine, contribute towards the expenditure -

- (a) incurred by any person in connection with research relating to the combating of atmospheric pollution; or
- (b) incurred by any local authority in connection with the acquisition of equipment to combat atmospheric pollution.

[S. 45A inserted by s. 19 of Act 17/73]

#### **46. Penalties**

Any person convicted of an offence under this Act shall be liable, in the case of a first conviction, to a fine not exceeding five hundred rand or imprisonment for a period not exceeding six months, and in the case of a second or subsequent conviction to a fine not exceeding two thousand rand or imprisonment for a period not exceeding one year.

[S. 46 substituted by s. 20 of Act 17/73]

#### **47. Act binds the State**

- (1) The provisions of this Act, except [sections 14](#) to 26, inclusive, shall bind the State.  
[Sub-s. (1) substituted by s. 21 of Act 17/73]
- (2) If at any time any chimney or fuel burning appliance of the nature contemplated in [section sixteen](#) is to be constructed or installed in or on any premises within a local authority area, which are under the control of the State, notice of the intention to construct such chimney or install such appliance shall be given to that local authority.
- (3) If at any time after the fixed date smoke in excess of the standards prescribed by any order under [section 20](#) (1) (b) or any regulations made under this Act is emitted or emanates from any premises as a result of the operation of any fuel burning appliance controlled by the State (including any provincial administration) the local authority concerned may give notice to that effect through the Minister to the Minister who administers the Department of State concerned or to the Premier concerned who shall cause such steps to be taken as may be necessary and practicable to prevent or minimise the emission of such smoke, and furnish a report to the Minister in regard to any steps taken in pursuance thereof: Provided that where the department concerned is administered by the Minister such notice shall be given to the Minister who shall thereupon cause steps to be taken as aforesaid.  
[Sub-s. (3) substituted by s. 21 of Act 17/73 and amended by s. 36 of Act 9/89]
- (4) If at any time after the fixed date smoke in excess of the standards prescribed by any order under [section 20](#) (1) (b) or any regulations made under this Act is emitted or emanates from any premises as a result of the operation of any fuel burning appliance controlled by Transnet Limited and The South African Rail Commuter Corporation Limited, the local authority concerned may give notice to that effect to the chairperson of Transnet Limited who shall cause such steps to be taken as may be necessary to prevent or minimize the emission of such smoke.  
[Sub-s. (4) substituted by s. 21 of Act 17/73 and amended by s. 9 of Act 21/81 and s. 2 of Act 51/97]
- (5) The chairperson of Transnet Limited shall each year furnish a comprehensive report to the Minister setting out details of any complaints received in terms of sub-section (4) and a brief summary of the action taken in pursuance of each such complaint.  
[Sub-s. (5) amended by s. 9 of Act 21/81 and s. 2 of Act 51/97]
- (6) (a) The Minister shall each year lay on the Table in the House of Assembly -

- (i) a copy of every notice sent to him by a local authority in terms of sub-section (3) during the preceding calendar year;
- (ii) a copy of every report submitted to him in terms of sub-section (3) or (5) during such calendar year; and
- (iii) a statement as to any complaints lodged with him during such calendar year under the proviso to sub-section (3) and of the steps taken in pursuance thereof.

[Para. (a) amended by s. 9 of Act 21/81]

- (b) A Premier shall each year lay before the provincial council concerned -
  - (i) a copy of every notice sent to him by a local authority under sub-section (3) during the preceding calendar year; and
  - (ii) a copy of every report sent to the Minister under sub-section (3) during such calendar year.

#### **48. Short title**

This Act shall be called the Atmospheric Pollution Prevention Act, 1965.

### **FIRST SCHEDULE**

### **SECOND SCHEDULE**

#### **SCHEDULED PROCESSES**

1. *Sulphuric acid processes*: That is to say, processes for the manufacture of sulphuric acid or processes in which sulphur trioxide is evolved or used.
2. *Phosphate fertilizer processes*: That is to say, processes in which any mineral phosphate is subjected to treatment involving chemical change, and processes for the granulating of materials containing phosphate.
3. *Gas liquor processes*: That is to say, processes in which hydrogen sulphide or any other noxious or offensive gas is evolved by the use of ammoniacal liquor, and processes in which any such liquor is desulphurized in any process connected with the purification of gas.
4. *Nitric acid processes*: That is to say, processes in connection with the manufacture of nitric acid or processes in which nitric acid is recovered from nitrogen oxides or in which nitrogen oxides are evolved.
5. *Ammonium sulphate and ammonium chloride processes*: That is to say, processes for the manufacture of ammonium sulphate or ammonium chloride.
6. *Chlorine processes*: That is to say, processes in which chlorine is made or used in any manufacturing process.

7. *Hydrochloric acid processes*: That is to say, processes for the manufacture or the bulk handling of hydrochloric acid or processes in which hydrogen chloride gas is evolved.
8. *Sulphide processes*: That is to say, chemical processes in which hydrogen sulphide is evolved or used.
9. *Alkali waste processes*: That is to say, processes in which alkali waste or the drainage therefrom is subjected to any chemical process for the recovery of sulphur or for the utilization of any constituent of such waste or drainage.
10. *Oxide pigment processes*: That is to say, processes for the manufacture of oxide pigments by heating metallic oxides or salts.
11. *Arsenic processes*: That is to say, processes in which any volatile compound of arsenic is evolved.
12. *Carbon disulphide processes*: That is to say, processes for the manufacture, use or recovery of carbon disulphide.
13. *Sulphocyanide processes*: That is to say, any process for the manufacture of sulphocyanide or any of its compounds.
14. *Hydrocarbon refining processes*: That is to say -
  - (a) the processing (such as distilling, cracking and refining) of crude shale oil, crude petroleum, natural gas, hydrocarbons from coal and used lubricating oils; or
  - (b) the bulk storage of crude petroleum and liquid petroleum products, in storage facilities with individual tank capacities of at least 1 000 cubic metres each.
15. *Bisulphite processes*: That is to say, processes in which sulphurous acid is used in the manufacture of acid sulphites of the alkalis or alkaline earths, and processes for the manufacture of liquid sulphur dioxide or of sulphurous acid or any sulphite in which oxides of sulphur are evolved in any chemical manufacturing process.
16. *Tar processes*: That is to say, processes in which tar, creosote or any other product of the distillation of tar is distilled or is heated in any manufacturing process.
17. *Zinc processes*: That is to say, processes in which, by the application of heat, zinc is processed or extracted.
18. *Benzene processes*: That is to say, processes (not being tar processes as defined above) in which any wash oil used for the scrubbing of coal gas is distilled.
19. *Pyridine processes*: That is to say, processes in which pyridine is recovered or used.
20. *Bromine processes*: That is to say, processes in which bromine is made or is used in any manufacturing process.
21. *Hydrofluoric acid processes*: That is to say, processes in which hydrofluoric acid is evolved or used.

22. *Cement processes*: That is to say, processes in which argillaceous or calcareous materials are used in the production of cement clinker, and processes in which cement clinker is ground or cement is packed, and also processes in which metallurgical slags are treated for the purpose of making cement or cement additives.
23. *Lead processes*: That is to say -
- (a) processes in which, by the application of heat, lead is melted or extracted from any material containing lead or its compounds; or
  - (b) processes in which compounds of lead are manufactured from metallic lead or its compounds by methods that give rise to noxious or offensive gases; or
  - (c) processes by which lead or any material containing lead or its compounds are used or handled in such a way as to give rise to noxious or offensive gases.
24. *Fluorine processes*: That is to say, processes in which fluorine or its compounds with other halogens are made or used or any chemical manufacturing process in which fluorine or its compounds with other halogens are evolved.
25. *Acid sludge processes*: That is to say, processes in which acid sludge produced in the refining of coal tar, petroleum or other hydrocarbon derivatives, is treated in such a manner as to cause the evolution of noxious or offensive gases.
26. *Alkali processes*: That is to say -
- (a) the manufacture of potassium or sodium sulphate; or
  - (b) the treatment of ores by common salt or other chlorides, whereby any sulphate is formed and in which hydrogen chloride gas is evolved.
27. *Roasting processes*: That is to say, processes in which sulphate and sulphide ores, including regulas, are calcined or smelted.
28. *Asbestos processes*: That is to say, processes involving the handling, grinding or utilization of asbestos.
29. *Power generation processes*: That is to say, processes in which -
- (a) fuel is burned for the generation of electricity for distribution to the public or for purposes of public transport;
  - (b) boilers capable of burning fuel at a rate of not less than 10 tons per hour are used to raise steam for the supply of energy for purposes other than those mentioned in (a) above;
  - (c) any fuel burning appliance is used that is not controlled in terms of Part III of this Act, excluding appliances in private dwellings.
30. *Iron and steel processes*: That is to say, processes -

- (a) in which iron, iron ores, steel or ferro-alloys are produced or processed so as to give rise to noxious or offensive gases; or
  - (b) involving the cleaning of castings and handling of casting mould materials.
31. *Copper processes*: That is to say, processes in which -
- (a) by the application of heat -
    - (i) copper is extracted from any ore or concentrate or from any material containing copper or its compounds; or
    - (ii) molten copper is refined; or
    - (iii) copper or copper alloy swarf is degreased; or
    - (iv) copper alloys are recovered from scrap, fabricated metal, swarf or residues by processes designed to reduce the zinc content; or
  - (b) copper or copper alloy is melted and cast in moulds the internal surfaces of which have been coated with grease-bound or oil-bound dressings: Provided that this paragraph shall not apply to processes in which the aggregate casting capacity does not exceed 10 tons per day.
32. *Aluminium processes*: That is to say, processes in which -
- (a) aluminium is produced from its oxide by means of an electrolytic furnace; or
  - (b) aluminium swarf is degreased by the application of heat; or
  - (c) aluminium or aluminium alloys are recovered from aluminium or aluminium alloy scrap, fabricated metal, swarf, skimmings, drosses or other residues by melting; or
  - (d) aluminium is recovered from slag; or
  - (e) molten aluminium or aluminium alloys are treated by any process involving the evolution of chlorine or its compounds.
33. *Producer gas processes*: That is to say, processes in which producer gas is made or in which the by-products of producer gas are incinerated.
34. *Gas, coke and charcoal processes*: That is to say, processes (not being producer gas processes) in which -
- (a) coal, oil, wood or other carbonaceous materials or products of petroleum refining or natural gas or methane from coal mines or gas derived from fermentation of carbonaceous materials are handled or prepared for carbonisation or gasification or reforming and in which these materials are subsequently carbonised or gasified or reformed; or
  - (b) water gas is produced or purified; or

- (c) coke or semi-coke is produced and quenched, cut, crushed or graded; or
  - (d) gases derived from any process referred to in paragraph (a) are subjected to purification processes.
35. *Ceramic processes*: That is to say, processes in which -
- (a) pottery products (including domestic earthenware and china, sanitary ware, electrical porcelain and glazed tiles) are made in kilns fired by coal or oil; or
  - (b) heavy clay or refractory goods are fired by solid, liquid or gaseous fuels; or
  - (c) salt glazing of any earthenware or clay material is carried on.
36. *Lime, dolomite and magnesite processes*: That is to say, processes in which calcium carbonate, calcium-magnesium carbonate, magnesium carbonate or calcium sulphate are so produced or processed that noxious or offensive gases are evolved.
37. *Sulphate reduction processes*: That is to say, processes in which metallic sulphates are reduced to the corresponding sulphides by heating with carbonaceous matter.
38. *Caustic soda processes*: That is to say, processes in which -
- (a) either concentrated solutions of caustic soda or fused caustic soda are produced in heated vessels; or
  - (b) black liquor produced in the manufacture of paper is calcined in the recovery of caustic soda.
39. *Waste incineration processes*: That is to say processes for the destruction by incineration of waste that contains chemically bonded halogens, nitrogen, phosphorus, sulphur or metal, or any other waste that can give rise to noxious or offensive gases.
40. *Beryllium processes*: That is to say, processes in which -
- (a) any ore or concentrate or any material containing beryllium or its compounds is treated for the production of beryllium or its alloys or its compounds; or
  - (b) any material containing beryllium or its alloys or its compounds is treated, processed or fabricated in any manner giving rise to noxious or offensive gases.
41. *Selenium processes*: That is to say, processes in which -
- (a) any ore or concentrate or any material containing selenium or its compounds is treated for the production of selenium or its alloys or its compounds; or
  - (b) any material containing selenium or its alloys or its compounds otherwise than as colouring matter is treated, processed or fabricated in any manner giving rise to noxious or offensive gases.
42. *Phosphorus processes*: That is to say, processes in which -

- (a) phosphorus is made; or
  - (b) yellow phosphorus or phosphoric acid is used in any chemical or metallurgical process.
43. *Ammonia processes*: That is to say, processes in which ammonia is -
- (a) made; or
  - (b) used in the ammonia-soda process; or
  - (c) used in the manufacture of carbonate, nitrate or phosphate of ammonia or urea.
44. *Hydrogen cyanide processes*: That is to say, processes in which -
- (a) hydrogen cyanide is made, or any chemical manufacturing process in which hydrogen cyanide is evolved or used; or
  - (b) solid sodium or calcium cyanide is made.
45. *Acetylene processes*: That is to say, processes in which acetylene is made or any chemical manufacturing process in which acetylene is used.
46. *Amine processes*: That is to say, processes in which methylamine, ethylamine or other malodorous amines are evolved or made.
47. *Calcium carbide processes*: That is to say, processes in which calcium carbide is made.
48. *Aldehyde processes*: That is to say, processes in which formaldehyde or acetaldehyde or acrolein or the methyl, ethyl or propyl derivatives of acrolein are made.
49. *Anhydride processes*: That is to say, processes in which acetic, maleic or phthalic anhydrides or the corresponding acids are made.
50. *Chromium processes*: That is to say, processes in which any chrome ore or concentrate is treated for the production therefrom of chromium compounds or processes in which chromium metal is made by dry methods giving rise to noxious or offensive gases.
51. *Magnesium processes*: That is to say, processes in which magnesium or magnesium alloys or any compound of magnesium is made by dry methods giving rise to noxious or offensive gases.
52. *Cadmium processes*: That is to say, processes in which metallic cadmium is recovered or cadmium alloys are made or any compound of cadmium is made by dry methods giving rise to noxious or offensive gases.
53. *Manganese processes*: That is to say, processes in which manganese or its alloys or any compound of manganese is made by dry methods giving rise to noxious or offensive gases.
54. *Metal recovery processes*: That is to say, processes in which metal is recovered from any form of scrap material containing combustible components.

55. *Galvanising processes*: That is to say, processes involving coating with zinc by dipping into molten metal, including pickling and fluxing giving rise to noxious or offensive gases.
56. *Bagasse incineration processes*: That is to say, processes involving the combustion of bagasse.
57. *Metal spray processes*: That is to say, processes in which any metal is deposited on to a surface in the form of a spray through the application of heat in such a way as to give rise to noxious or offensive gases.
58. *Macadam preparation processes*: That is to say, processes in which crushed stone is heated or dried, with or without the addition of tar or bituminous binders, for the purpose of preparing road surfacing or paving material.
59. *The bulk storage and handling of ore or coal*: That is to say, the storage and handling of ore or coal at dumps designed to hold 100 000 tons or more and not situated on the premises of a mine or works as defined in the Mines and Works Act, 1956.
60. *Vanadium processes*: That is to say, processes in which vanadium pentoxide or vanadium carbide is manufactured or handled in such a way as to give rise to noxious or offensive gases.
61. *Antimony processes*: That is to say, processes in which antimony or its alloys or any compound of antimony is made by dry methods giving rise to noxious or offensive gases.
62. *Mercury processes*: That is to say, processes in which mercury or any compound of mercury is treated or recovered by the application of heat.
63. *Silicon processes*: That is to say, processes in which metallic silicon is made by the application of heat.
64. *Carbon black processes*: That is to say, processes in which carbon black is produced or used.
65. *Glass processes*: That is to say, processes in which glass is manufactured.
66. *Metallurgical slag processes*: That is to say, processes in which the use of metallurgical slag gives rise to noxious or offensive gases.
67. *Wood-burning and wood-drying processes*: That is to say, processes in which wood is burned or subjected to heat in such a manner as to give rise to noxious or offensive gases that are not controlled in terms of Part III of the Act.
68. *Paper and paper pulp processes*: That is to say, processes in which pulp or paper is manufactured in any manner giving rise to noxious or offensive gases.
69. *Animal matter reduction processes*: That is to say, processes for the rendering, cooking, drying, dehydrating, digesting, evaporating or protein concentrating of any animal matter not intended for human consumption.
70. *Acrylonitrile processes*. That is to say, processes in which acrylonitrile is manufactured or any manufacturing process in which acrylonitrile is used.

71. *Nickel processes.* That is to say, dry processes in which nickel or nickel alloys or any nickel compound is manufactured, giving rise to noxious or offensive gasses.

72. *Vinyl chloride monomer processes:* That is to say, processes in which vinyl chloride monomer is manufactured or used.

[Second Schedule amended by GN 819/66, GN 1173/68, GN R1864/70, GN R5/72, GN R212/73, GN R303/73, GN R1020/74, GN R2239/82, GN 1353/87, GN R1702/94, GN 420/96 and GN R401/97]