

NOTICE 171 OF 2013

**NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004
(ACT NO. 39 OF 2004)**

**DRAFT REGULATIONS PRESCRIBING THE ATMOSPHERIC EMISSION LICENCE PROCESSING
FEE CALCULATOR.**

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby give notice of my intention to make regulations, under sections 53(o), 37, 44, 45 and 47 read with section 57(1) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 60 (sixty) days after the publication of the notice in the *Gazette*, written representations or objections on the draft regulations prescribing the atmospheric emission licence processing fee calculator to the following addresses:

By post to: The Director-General: Department of Environmental Affairs
Attention: Adv Avhantodi Munyai
Private Bag X 447
Pretoria
0001

By hand at: 2nd Floor (Reception), Fedsure Forum Building, 315 Pretorius Street, Pretoria

By e-mail: amunyai@environment.gov.za, or by fax to: 012 320 0488

Any inquiries in connection with the notice can be directed to Dr Thuli Mdluli at 012 310 3436 or Adv Avhantodi Munyai at 012 310 3153

Comments received after the closing date may not be considered.



**BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

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CHAPTER 1

DEFINITIONS AND PURPOSE OF THE REGULATIONS

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates—

“applicant” means a person who has submitted or intends to submit an application;

“application” means an application for an atmospheric emission licence submitted in terms of Chapter 5 of the Act;

“**atmospheric emission licence processing fee calculator**” means the processing fee calculator prescribed in regulation 3;

“**prescribed processing fee**” means the administrative fee payable to the licensing authority for an application contemplated in Chapter 5 of the Act, for the purposes of calculation, the processing fee includes the Value Added Tax (VAT).

2. Purpose of regulations

- (1) The purpose of the regulations is to prescribe the atmospheric emission licence processing fee calculator to be used by the licensing authorities when determining the prescribed processing fees, and to regulate the administrative process of determining the prescribed processing fees and the prescribed processing fees bands, as contemplated in Chapter 5 of the Act.
- (2) These regulations must be read together with the atmospheric emission licence fee processing calculator.

CHAPTER 2

LICENSING AUTHORITIES

3. Atmospheric emission licence processing fee calculator

- (1) The processing fee calculator is prescribed for the purposes of determining the prescribed processing fees as contemplated in Chapter 5 of the Act.
- (2) The format of the atmospheric emission licence processing fee calculator is set out in Annexure-A to the regulations.
- (3) The licensing authority must use the atmospheric emissions licence processing fee calculator when determining the prescribed processing fee.
- (4) The prescribed processing fee calculator is available on www.saaqis.org.za

4. Prescribed processing fees

- (1) The processing fees are prescribed as follows:

APPLICATION BANDS	PROCESSING FEES
BAND 1	R 20 000.00
BAND 2	R 50 000.00
BAND 3	R 80 000.00
BAND 4	R 110 000.00
BAND 5	R 300 000.00
BAND 6	R 400 000.00

5. Criteria and guidelines to determine prescribed processing fee

- (1) The licensing authority must use the scoring criteria and guidelines contained in the atmospheric emission licence processing fee calculator when determining the prescribed processing fee.
- (2) The licensing authority is not allowed to use different scoring criteria and guidelines to those contained in the atmospheric emission licence processing fee calculator.

6. Determination of the prescribed processing fee

- (1) The licensing authority must determine the prescribed processing fee as follows:
 - (a) *Scoring of applications:* after the receipt of the application for an atmospheric emission licence, the licensing authority must score the application using the criteria set out in the atmospheric emission licence processing fee calculator (see section 2 of Annexure A of this regulation). Once the application has been scored, the processing fee calculator will automatically allocate the application a final score;
 - (b) *Allocation to processing fee band:* the allocation of the application to a processing fee band is automatic. At the same time when the processing fee calculator allocates a final score to an application, it also allocates the application a processing fee band;
 - (c) *Processing fee determination:* the processing fee determination is again automatic once the final score has been determined. The processing fee bands are attached to the processing fee payable; and
 - (d) *Invoicing:* after the determination of the processing fee, the calculator automatically generate an invoice. The licensing authority will prepare and issue an invoice for the applicant.

CHAPTER 3

PAYMENT OF PROCESSING FEE

7. Payments to licensing authorities

- (1) The processing fee must be paid to the licensing authority that considers and decides on the application for the atmospheric emission licence.
- (2) Where the provincial department responsible for environmental affairs has been delegated the atmospheric emission licensing function in terms of section 238 of the Constitution, intervened in terms of section 139 of the Constitution, or if a metropolitan or district municipality is the applicant, the processing fee is payable to the relevant provincial department responsible for environmental affairs .

8. Payment of processing fee

- (1) The processing fee is payable annually in equal instalments over a period of 5 years.
- (2) The initial payment is payable on application
- (3) The remaining payments are due annually on the same date as the application, in four equal instalments

CHAPTER 4

GENERAL MATTERS

9. Review of the atmospheric emission licence processing fee calculator

- (1) The atmospheric emission licence processing fee calculator must be reviewed by the Minister at intervals of not more than 5 years from the date of commencement of the regulations.
- (2) The Minister may, when necessary, amend the atmospheric emission licence processing fee calculator by:
 - (a) adding new criteria in the calculator;
 - (b) removing criteria in the calculator;

- (c) changing the application band sizes; or
 - (d) changing the processing fee bands.
- (3) The Minister must follow a consultative process in accordance with sections 56 and 57 of the Act before any amendment to the processing fee calculator.

10. Short title and commencement

These regulations shall be called the Regulations prescribing the atmospheric emission licence processing fee calculator , 2012, and shall come into operation on a date of publication in the *Gazette*.

ANNEXURE-A
FORMAT OF THE ATMOSPHERIC EMISSION LICENCE PROCESSING FEE CALCULATOR

The atmospheric emission licence processing fee calculator is in electronic Microsoft Excel and consists of the following 4 sheets:

1. APPLICATION DETAILS

This sheet contains the details of the applicant.

2. SCORING CRITERIA AND GUIDELINES
Complexity of Application

The complexity of the application criteria refers to the complexity of the industrial process or listed activity, the emissions occurring and the abatement options for these emissions. The complexity of the polluting process or listed activity is a key determinant in the level of effort and resources required in the licensing authority and are also an important determinant in the complexity and costs of compliance monitoring.

SCORING CRITERIA	SCORING GUIDELINES	Weight
Routine Application	One unit, one process or listed activity	10%
Straight forward	Two units, one process or listed activity	20%
Medium complexity application	Two units, two processes or listed activities	50%
Complex application	More than two units, more than two processes or listed activities	80%
Extremely Complex application	Multiple units, multiple processes or listed activities	100%

Nature of Applicant: SMME Status

The economic size of the enterprise is used here as the key indicator as the small, medium, and micro enterprise (SMME) sector is an important component of the government's economic policy. The criterion takes into account the total gross asset value (fixed property excluded) of the enterprise. This criterion is aligned with the Department of Trade and Industry policy and legislation on SMMEs, namely National Small Business Act, 1996 (Act No. 102 of 1996).

SCORING CRITERIA	SCORING GUIDELINES	Weight
Micro Enterprise	Total gross asset value(fixed property excluded) less than R100,000	10%
Very Small Enterprise	Totals gross asset value (fixed property excluded) less than R1. 5 million	20%
Small Enterprise	Totals gross asset value (fixed property excluded) is less than R3. 75 million	30%
Medium Enterprise	Totals gross asset value (fixed property excluded) is less than R15 million	80%
Large Enterprise	Totals gross asset value (fixed property excluded) is more than R15 million	100%

Type of Application

This criterion comes from Chapter 5 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)(AQA). Sections 37(2)(a), 44(3)(a), 45(1) and 47(3)(a) of the AQA requires the payment of the processing fee before the applicant is issued with the atmospheric emission licence. These are new, transfer, review and renewal applications respectively. The approach is that new application requiring an Environmental Impact Assessment (EIA) to be undertaken before a licence is issued, will take demand more time from the licensing authority than an application for a transfer. For example, the former will require attending meetings with competent authorities for EIAs, reviewing and commenting on air quality specialist studies and reviewing the EIA environmental authorisation. This criterion considers such issues.

SCORING CRITERIA	SCORING GUIDELINES	Weight
Application for a transfer	Application for the transfer of the licence in terms of section 44(3)(a) of the AQA	10%
Application for a review	Application for the review of the licence in terms of section 45(1) of the AQA	25%
Application for a renewal	Application for the renewal of the licence in terms of section 47(3)(a) of the AQA	50%
New application without a full EIA (Basic Assessment)	New application for a licence with basic assessment in terms of section 37(2)(a) of the AQA	80%
New application with EIA (Full Assessment)	New application for a licence with a full EIA in terms of section 37(2)(a) of the AQA	100%

Specialist Expertise

This criterion is based on the time that will be spent by the specialists when processing the application.

SCORING CRITERIA	SCORING GUIDELINES	Weight
No specialist expertise required	Application is straight forward and deals with well knows processes	10%

Some basic specialist advise required	The application needs no more than 12 hours of specialist time	20%
Relatively uncomplicated and require some input from expert	The application needs up to 40 hours of specialist time	50%
Relatively complicated and requires some input from specialist	The application needs up to 60 hours of specialist time	75%
Very complicated and requires significant input from expert	The application needs more than 60 hours of specialist time	100%

3. PROCESSING FEE BANDS

This process is largely automatic; once the application has been scored the calculator will automatically allocate the application a final score and at the same time allocate it a processing fee band. The following processing fee bands:

Applicant Bands	Bands Sizes	Processing Fee Bands
Band 1	0 – 13	R20 000-00
Band 2	13– 21	R50 000-00
Band 3	21 – 40	R80 000-00
Band 4	40 – 60	R110 000-00
Band 5	60 – 80	R300 000-00
Band 6	80-100	R400 000-00

The final band score of an application is determined by the combination of the above criteria, each with their own weighting. The following are the different criteria, each with their own weighting:

Scoring Criteria	Scores	Weighting	Final Score
Complexity of the application	Criteria A – score	35%	Criteria A – final score
Nature of applicant: SMME status	Criteria B – score	25%	Criteria B – final score
Type of application	Criteria C – score	15%	Criteria C – final score
Specialist expertise	Criteria D – score	25%	Criteria D – final score

4. INVOICE

This process is also largely automatic; once the application has been allocated a processing fee band the atmospheric emission licence processing fee calculator will automatically generate an invoice.