

**SALDANHA BAY MUNICIPALITY
AIR QUALITY BY-LAW**

Under section 156 of the Constitution of the Republic of South Africa, 1996, the Saldanha Bay Municipality, enacts as follows:-

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CHAPTER 1: INTERPRETATION AND OBJECTIVES

1. Definitions

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

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

“air pollutant” means any substance (including but not limited to dust, smoke, fumes and gas) that causes or may cause air pollution;

“**air pollution**” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or may have such an effect in the future;

“**air pollution control zone**” means a geographical area declared in terms of section 9 of this by-law to be an air pollution control zone for purposes of Chapter IV of the by-law;

“**air quality management plan**” means the air quality management plan referred to in section 15 of the Air Quality Act;

“**air quality officer**” means the air quality officer designated as such in terms of section 4 of this by-law;

“**ambient air**” means “**ambient air**” as defined in section 1 of the Air Quality Act;

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

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

“**atmospheric emission**” or “**emission**” means energy or substance or combination of substances emanating from a point, non-point or mobile source that results in air pollution;

“**authorised official**” means any person authorised by the municipality to implement any provision of this by-law;

“**best practicable means**” means the most effective measures that can reasonably be taken to prevent, reduce or minimize air pollution, having regard to all relevant factors including, among others, local conditions and circumstances, the likelihood of adverse effects, the current state of technical knowledge and the financial implications relative to the degree of environmental protection expected to be achieved by application or adoption of the measures;

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

“**compressed ignition powered vehicle**” means a vehicle powered by an internal combustion, compression ignition, diesel or petrol driven engine;

“**dark smoke**” means in respect of Chapter 8 of this by-law-

- (a) smoke which has a density of 60 Hartridge smoke units or more, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a density of 66 Hartridge smoke units or more; or
- (b) smoke which has a light absorption co-efficient of more than 2.125 m, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a light absorption coefficient of more than 2.51 m;

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

“**dwelling**” means any building or other structure, or part of a building or structure, used as a dwelling, and any outbuildings ancillary to it, but excludes shacks and informal settlements;

“**environment**” means the surroundings within which humans exist and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

“**environmental management inspector**” means an environmental management inspector designated as such in terms of section 31C of the National Environmental Management Act, 1998, (Act 107 of 1998);

“**free acceleration test**” means the method described in section 22 of this by-law employed to determine whether vehicles are being driven or used in contravention of section 20;

“**fuel-burning equipment**” means any furnace, boiler, incinerator, or other equipment, including a chimney that is-

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

“**fumes**” means any pungent or toxic vapour, gas, or smoke including but not limited to diesel fumes, spray painting fumes and exhaust fumes.

“**light absorption meter**” means a measuring device that uses a light-sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

“**living organism**” means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

“**mobile source**” means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

“**municipality**” means the Saldanha Bay Municipality and includes any political structure, political office bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this by-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated, to such political structure, political office bearer, agent or employee;

“**municipal manager**” means a person appointed as such by the municipality in terms of section 54A of the Local Government: Municipal Systems Act, 2000(Act 32 of 2000);

“**NEMA**” means the National Environmental Management Act, 1998, (Act 107 of 1998);

“**non-point source**” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

“**nuisance**” means an unreasonable interference or likely interference caused by air pollution with-

- (a) the health or well-being of any person or living organism; or
- (b) the use or enjoyment by an owner or occupier of his or her property;
- (c) the ordinary comfort, convenience, peace or quiet of another person; and
- (d) the natural state of the environment;

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

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

“**open burning**” means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and “burning in the open” has a corresponding meaning;

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

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

“**point source**” means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

“**proclaimed township**” means any land unit zoned and utilized for residential purposes;

“**person**” means a natural and juristic person or entity;

“**premises**” means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in that building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality or the precincts of any harbour;

“**public road**” means a road which the public has the right to use;

“**Provincial Government**” means the Provincial Government of the Western Cape;

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

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

“spray area” means an area or enclosure referred to in section 25 used for spray painting, and **“spray booth”** has a corresponding meaning;

“vehicle” means any motor, car, motor carriage, motor cycle, bus, lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power.

2. Purpose and objectives

The purpose and objectives of this by-law are to give effect to the right contained in section 24 of the Constitution of the Republic of South Africa, 1996 by-

- (i) the protection and enhancement of the quality of air within the jurisdictional area of the municipality;
- (ii) the prevention of air pollution and ecological degradation; and
- (iii) securing ecologically sustainable development while promoting justifiable economic and social development

CHAPTER 2: DUTY OF CARE

3. Duty to take care

(1) Any person who is wholly or partially causes air pollution or creating a risk of air pollution occurring must take all reasonable measures-

- (a) to prevent any air pollution from occurring; and
- (b) to mitigate and, as far as reasonably possible, to remedy any air pollution that has occurred.

(2) The municipality may monitor the impact and effectiveness of the measures taken in terms of sub section (1) and, if necessary, issue instructions to a person contemplated in sub section (1) with regard to specific measures to be undertaken.

(3) The municipality may direct any person who fails to take the measures required under sub section (1) –

- (a) to investigate, evaluate and assess the impact of specific activities and report thereon;
- (b) to take effective control measures to abate the air pollution before a given date;
- (c) to continue with those measures; and
- (d) to comply with set requirements before a specified date .

(4) Should a person fail to comply, or inadequately comply, with a directive under sub section (3), the municipality may take reasonable measures to remedy the situation.

(5) If a person fails to take the measures required of him or her under sub section (1) or (2), the municipality may recover all reasonable cost incurred

as a result of it acting under sub section (4) from any or all of the following persons –

- (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution;
 - (b) the owner of the land at the time when the air pollution occurred, or that owner's successor in title;
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when –
 - (i) the activity or the process in question is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who failed to prevent –
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.
- (6) If more than one person is liable under sub section (5), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the cost to be recovered.

CHAPTER 3: DESIGNATION OF AIR QUALITY OFFICER AND ENVIRONMENTAL MANAGEMENT INSPECTORS

4. Designation of air quality officer and environmental management inspectors

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

5. Powers and functions of the air quality officer

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

6. Powers and functions of designated environmental management inspectors

A designated environmental management inspector shall have all the powers and functions as set out in sections 31G to 31L of NEMA.

CHAPTER IV LOCAL EMISSIONS STANDARDS, NORMS AND STANDARDS AND SMOKE CONTROL ZONES

Part 1: Local Emissions Standards

7. Legal mandate

- (1) The municipality may, by notice -
 - (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the area of jurisdiction of the municipality or which the air quality officer reasonably believes present such a threat; and
 - (b) in respect of each of those substances or mixtures of substances, publish local standards for emissions from point, non-point or mobile sources in the area of jurisdiction of the municipality.
- (2) The municipality may take the following factors into consideration in setting local emission standards:
 - (a) health, safety and environmental protection objectives;
 - (b) analytical methodology;
 - (c) technical feasibility;
 - (d) monitoring capability;
 - (e) socio-economic consequences;
 - (f) ecological role of fire in vegetation remnants; or
 - (g) the best practicable environmental option.
- (3) Any person who is emitting substances or mixtures of substances as referred to in sub section (1) must comply with the local emission standards published in terms of this by-law and the failure to do so constitutes an offence.

Part 2: Norms and Standards

8. Substances identification process

- (1) The municipality must when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment consider the following:
 - (a) the possibility, severity and frequency of effects with regard to human health and the environment as a whole, with irreversible effects being of special concern;

- (b) ubiquitous and high concentrations of the substance in the atmosphere;
 - (c) potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxic persistence in the environment, particularly if the substance is not biodegradable and is able to accumulate in humans, the environment or food chains;
 - (d) the impact of the substance taking the following factors into consideration:
 - (i) size of the exposed population, living resources or ecosystems;
 - (ii) the existence of particularly sensitive receptors in the zone concerned; and
 - (iii) substances that are regulated by international conventions.
- (2) The air quality officer must, using the criteria set out in sub section (1), compile a list of substances in ambient air that present a threat to public health, well-being or the environment.

9. Declaration of air pollution control zone

- (1) The entire area of the jurisdiction of the municipality is hereby declared to be an air pollution control zone.
- (2) The municipality may, within the air pollution control zone, from time to time by notice in the Provincial Gazette -
- (a) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;
 - (b) prohibit or restrict the combustion of certain types of fuel;
 - (c) prescribe different requirements in an air pollution control zone relating to air quality in respect of:
 - (i) different geographical portions;
 - (ii) specified premises;
 - (iii) classes of premises;
 - (iv) premises used for specified purposes; or
 - (v) mobile sources.
- (3) The municipality may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.
- (4) No owner or occupier of any premises shall cause or permit the emanation or emission of smoke of such a density or content from such premises as will obscure light to an extent greater than twenty (20) per cent.

CHAPTER 5: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS

10. Application

For the purposes of this chapter, “premises” does not include dwellings.

11. Prohibition

(1) Subject to sub section (2), smoke may not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes.

(2) This section does not apply to smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practicable means available.

(3) Sub sections (1) and (2) do not apply to holders of atmospheric emission licenses for activities listed in section 21 of the Air Quality Act and the emission standards listed in such license shall apply.

12. Installation of fuel-burning equipment

(1) No person may install, alter, extend or replace any fuel-burning equipment on any premises without the written authorisation of the municipality, which may only be given after consideration of the relevant plans and specifications.

(2) Fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved by the municipality, shall be presumed until the contrary is proved, to comply with the provisions of sub section (1).

(3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of sub section (1), the municipality may, on written notice to the owner or occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner or occupier within the period stated in the notice.

(4) The municipality may take whatever steps it considers necessary in order to remedy the harm caused by the installation, alteration or extension or replacement on any premises and prevent any further occurrence and may recover the reasonable costs so incurred from the person responsible for such harm.

13. Operation of fuel-burning equipment

(1) No person may use or operate any fuel-burning equipment on any premises contrary to the authorisation referred to in section 12(1) of this by-law.

(2) Where fuel-burning equipment has been used or operated on the premises in contravention of sub section (1) the municipality may on written notice to the owner or occupier of the premises

(a) revoke its authorisation under section 12(1); and

- (b) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator within the period stated in the notice.

(3) Where the owner of the premises or operator of the fuel-burning equipment fails to comply with a notice issued in terms of sub section (2), the authorised official may remove the fuel-burning equipment from the premises, and recover the reasonable costs incurred from the owner or operator in question.

14. Presumption

In any prosecution for an offence under sections 12 and 13, smoke shall be presumed to have been emitted from premises if it is shown that any fuel or material was burnt on the premises and the circumstances were such that the burning would be reasonably likely to give rise to the emission of smoke, unless the owner, occupier or operator, as the case may be, proves that no smoke was emitted.

15. Installation and operation of obscuration measuring equipment

An authorised official may give notice to any operator of fuel burning equipment or any owner or occupier of premises on which fuel burning equipment is used or operated to install, maintain and operate measuring equipment at his or her own cost if-

- (a) unauthorised and unlawful emissions of smoke from the relevant premises occurs consistently or regularly;
- (b) fuel burning equipment has been or is intended to be installed on the relevant premises which is likely, in the opinion of an authorised official, to emit smoke;
- (c) the person on whom the notice is served has been convicted previously under this chapter and has not taken adequate measures to prevent further contravention of the provisions of this chapter;
- (d) the authorised official is of the opinion that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard or nuisance to human health or the environment;
- or
- (e) the authorised official considers that the nature of the air pollutants emitted from the relevant premises is likely to pose a risk to human health or the environment.

16. Monitoring and sampling

An occupier or owner of premises, and the operator of any fuel burning equipment, who is required to install air pollution measuring equipment in terms of section 15 must-

- (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
- (b) if requested to do so by an authorised official, produce the record of the monitoring and sampling results for inspection;
- (c) if requested to do so by an authorised official, provide a written report (in a form and by a date specified) of part or all of the information in the record of the monitoring and sampling results; and
- (d) ensure that the air pollution measuring equipment is calibrated at least once per year or as specified by the manufacturer of the equipment and provide records of such calibration on request by the authorised official.

CHAPTER 6: SMOKE EMISSIONS FROM DWELLINGS

17. Smoke emissions from dwellings

- (1) No person shall emit or permit the emission of smoke from any dwelling that may cause a nuisance.
- (2) Subject to section 37 and on application in writing by the owner or occupier of any dwelling, the municipality may grant temporary exemption in writing from one or all of the provisions of this chapter.

CHAPTER 7: EMISSIONS CAUSED BY OPEN BURNING, TYRE BURNING AND BURNING OF RUBBER AND OTHER MATERIAL FOR RECOVERY OF METAL

18. Emissions caused by open burning

- (1) Subject to sub section (3), no person may carry out open burning of any material on any land or premises without the written authorisation of the municipality.
- (2) The municipality may, in the written authorisation referred to in sub section (1) impose conditions with which the person requesting written authorisation must comply.
- (3) The municipality may not authorise open burning under sub section (1) unless -
 - (a) the applicant in terms of sub section (1) has investigated and assessed every reasonable alternative for reducing, re-using or recycling the material in order to minimise the amount of material to be burnt in the open;
 - (b) the person requesting authorisation has either placed a notice in a local newspaper circulating in the area or notified in writing the owners and or occupiers of all adjacent properties of –
 - (i) all known details of the proposed open burning; and

- (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the municipality within seven days of being notified;
 - (c) the land on which that person intends to open burn the material is state land, a farm or small-holding, or land within a proclaimed township that is not utilised for residential purposes;
 - (d) a fire warning under section 10(1)(b) of the National Veld and Forest Fires Act , 1998 (Act 101 of 1998) has not been published for the region;
 - (e) the open burning is conducted at least 100 metres from any buildings or structures;
 - (f) the open burning will not pose a potential hazard to human health or safety, private property or to the environment; and
 - (g) the prescribed fee has been paid to the municipality.
- (3) The provisions of this section shall not apply to-
- (a) outdoor barbecue or braai activities on private premises;
 - (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
 - (c) any other defined area or defined activity which is exempted by the municipality from this section.

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

(1) No person may, without authorisation by the municipality, on any premises –

- (a) carry out or permit the burning of any tyres, rubber products, cables, synthetically covered or insulated products, equipment or any other similar product for purposes of-
 - (i) recovering the metal contained therein;
 - (ii) disposing of tyres or any other product described in (a) above as waste; or
 - (iii) for any other reason, except for the thermal treatment of general and hazardous waste in any device licensed in terms of section 41(1)(a) of the Air Quality Act;
- (b) possess, store, transport or trade in any burnt metal recovered as a result of unauthorised burning.

(2) An authorised official may for the purpose of gathering evidence, seize any burnt metal or metal in the process of being burnt where authorisation in terms of section 19(1) has not been obtained or cannot be provided by a person referred to in that sub section.

CHAPTER 8: EMISSIONS FROM COMPRESSED IGNITION POWERED VEHICLES

20. Prohibition

- (1) No person may drive or use a compressed ignition powered vehicle that emits dark smoke.
- (2) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

21. Stopping of vehicles for inspection and testing

- (1) The driver of a vehicle must comply with any reasonable direction given by an authorised official-
 - (a) to stop the vehicle; and
 - (b) to facilitate the inspection or testing of the vehicle.
- (2) The authorised official may-
 - (a) inspect and test the vehicle in which case inspection and testing must be carried out-
 - (i) at or as near as practicable to the place where the vehicle is stopped; and
 - (ii) as soon as practicable after the vehicle is stopped; or
 - (b) conduct a visual inspection of the vehicle and, if he or she believes that an offence has been committed under section 20(1), instruct the driver of the vehicle to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 22.

22. Testing procedure

- (1) An authorised official must use the free acceleration test method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of section 20(1).
- (2) The following procedure must be adhered to -
 - (a) the driver must start the vehicle, place it in neutral gear, engage the clutch and disengage the exhaust brake;
 - (b) the authorised official or the driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle;
 - (c) while the throttle pedal is depressed, the authorised official must measure the smoke emitted from the vehicle's emission system with a Hartridge Smoke meter in order to determine whether or not it is dark smoke; and
 - (d) the throttle pedal of the vehicle must be released when directed to do so by the authorised official.
- (3) If the authorised official is satisfied that the vehicle-

- (a) is not emitting dark smoke, he or she must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 20(1); or
- (b) is emitting dark smoke, the authorised official must issue the driver of the vehicle with a repair notice in accordance with section 23.

23. Repair notice

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

CHAPTER 9: EMISSIONS THAT CAUSE A NUISANCE

24. Prohibition

No person may create or permit emissions that cause a nuisance.

25. Spray Painting Emissions

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

26. Sand Blasting Emissions

- (1) Any person conducting sand blasting activities which produce emissions of dust that may cause a nuisance must prevent emissions into the atmosphere by implementing dust extraction control measures or any alternative dust control measure approved by the air quality officer.
- (2) Any person undertaking an activity referred to in sub section (1) must implement at least the following control measures:
 - (a) dust extraction control measures;
 - (b) any alternative control measure approved by the air quality officer or his or her delegated representative.
- (3) An occupier or owner of any premises must prevent the existence in, or mission of any air pollution nuisance from, his or her premises.

CHAPTER 10: OFFENSIVE ODOURS

27. Control of offensive odours

The occupier or owner of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.

CHAPTER 11: DUST EMISSIONS

28. Dust emissions

- (1) Any person who conducts an activity which causes or permits dust emissions into the atmosphere that may be harmful to public health and wellbeing or is likely to cause a nuisance to persons residing or present in the vicinity of such land, activity or premises shall adopt the best practical environmental option to the satisfaction of the authorised official, to prevent and abate dust emissions.
- (2) An authorised official may require any person suspected of causing a dust nuisance to submit a dust management plan within the time period specified in the written notice.
- (3) The dust management plan contemplated in sub section (2) must:
 - (a) identify all possible sources of dust within the affected site;
 - (b) detail the best practicable measures to be undertaken to mitigate dust emissions;
 - (c) detail an implementation schedule;
 - (d) identify the person responsible for implementation of the measures;
 - (e) incorporate a dustfall monitoring plan; and
 - (f) establish a register for recording all complaints received by the persons regarding dustfall, and for recording follow up actions and responses to the complaints.
- (4) The authorised official may require additional measures to be detailed in the dust management plan.

(5) The dust management plan must be implemented within a time period specified by the authorised official in a written notice.

(6) Failure to comply with the provisions of this section constitutes an offence.

CHAPTER 12: FUME NUISANCE

29. Control of fumes

The occupier or owner of any premises must take all reasonable steps to prevent the nuisance by fumes caused by any activity on such premises.

CHAPTER 13: PESTICIDE AND HERBICIDE SPRAYING EMISSIONS

30. Pesticide and herbicide spraying emissions

(1) No person may carry out or permit the spraying of pesticides or herbicides, except as permitted by section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

(2) A person who carries out or permits the spraying of pesticides or herbicides, within the municipal jurisdiction, must also comply with the following control measures-

- (a) the authorisation of the municipality must be obtained, which authorisation may be granted on conditions, including-
 - (i) the area of land on which the pesticide or herbicide may be applied; and
 - (ii) the period of time in which the pesticide or herbicide may be applied.
- (b) the applicant must notify in writing the owners and occupiers of all adjacent properties within 150 metres of the treatment area of-
 - (i) the details of the proposed treatment area;
 - (ii) the reason for the pesticide or herbicide used;
 - (iii) the active ingredient;
 - (iv) the date and approximate time of the pesticide or herbicide use;
 - (v) in the event of inclement weather conditions, an alternative date or dates on which the pesticide or herbicide use may occur;
 - (vi) the time, if any, indicated on the product label specifying when the area can be re-entered after application;
 - (vii) the right of owners and occupiers of adjacent properties to lodge objections to the proposed spraying of pesticides or herbicides with the municipality within seven days of being notified; and
 - (viii) the prescribed fee has been paid to the municipality.

- (3) A person may apply to the municipality for an exemption if the spraying of the pesticide or herbicide is for-
 - (a) the management of pests that transmit human diseases or adversely impact agriculture or forestry;
 - (b) the management of pests that threaten the integrity of sensitive ecosystems; or
 - (c) the need for the use of the pesticide or herbicide is urgent.
- (4) The provisions of this section are not applicable to:
 - (a) residential areas of farms;
 - (b) buildings or inside buildings;
 - (c) domestic use of pesticides or herbicides; or
 - (d) any other defined area or defined activity exempted by municipality from the provisions of this section.

CHAPTER 14: GENERAL PROVISIONS

31. Compliance Notice

- (1) An authorised official may serve a notice on any person whom he or she reasonably believes is likely to commit or has committed an offence under this by-law, calling upon that person-
 - (a) to abate the nuisance or transgression within a period specified in the notice;
 - (b) to take all necessary steps to prevent a recurrence of the nuisance or transgression; and
 - (c) to comply with any other conditions contained in the notice.
- (2) For the purposes of sub section (1), an authorised official may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the compliance notice is to be served.
- (3) A notice referred to in sub section (1) must contain the following information-
 - (a) the action that constitutes a contravention or non-compliance;
 - (b) the right to make representations;
 - (c) the relevant legislative provisions contravened;
 - (d) the measures to be implemented to remedy the situation
 - (e) the time frame within which remedial measures must be executed;
 - (f) the possible consequences if the notice is not complied with; and
 - (g) the right to appeal under section 33 of this by-law.
- (4) A compliance notice under sub section (1) may be served-
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;

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

32. Steps to abate nuisance or transgression

The municipality may at its own cost take whatever steps it considers necessary in order to remedy or abate a nuisance or transgression or to prevent a recurrence of it and may recover the reasonable costs so incurred from the person responsible for causing the nuisance or transgression.

33. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

34. Co-operation between municipalities

In an effort to achieve optimal service delivery, the municipality may enter into written agreements with any person, organ of state or organisation with which legislative and executive powers are shared, in respect of the following-

- (a) the practical arrangements with regard to the execution of the provisions of this by-law;
- (b) the recovery of costs and expenses related to any action in terms of this by-law;
- (c) any other matter regarded necessary by the parties to achieve optimal service delivery in terms of this by-law.

35. Conflict

(1) In the event of a conflict within any other by-law which directly or indirectly regulates air pollution, the provisions of this by-law shall prevail.

(2) In the event of a conflict with the Air Quality Act, 2004 (Act 39 of 2004) the provisions of the Act will prevail within the area of jurisdiction of the municipality.

36. Offences and penalties

(1) A person who contravenes or fails to comply with any of the provisions of sections 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29 or 30, or fails to comply with a notice issued in terms of this by-law, commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

(2) It is an offence to-

- (a) furnish false information to an authorised official in respect of any issue pertaining to this by-law;
- (b) to refuse to co-operate with the request of an authorised official made in terms of this by-law; or
- (c) to hinder or obstruct an authorised official in the execution of his or her duties in terms of this by-law.

(3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.

(4) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this by-law:

- (a) to remedy any harm caused;
- (b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and
- (c) to install and operate at the person's own expense air pollution measuring equipment in accordance with the provisions of section 13.

37. Exemptions

(1) The municipality may grant exemption in writing from one or all of the provisions of this by-law provided that the municipality-

- (a) is satisfied that granting the exemption will not significantly prejudice the purpose referred to in section 2(1); and
- (b) grants any exemption subject to conditions that promote the attainment of the purpose referred to in section 2(1).

(2) The municipality may not grant an exemption under sub section (1) until it has-

- (a) taken reasonable measures to ensure that all persons whose rights may be adversely effected by the granting of the exemption, including but not limited to adjacent land owners or

- occupiers, are aware of the application for exemption and how to obtain a copy of it;
- (b) provided such person with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.

38. Savings

Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this by-law or until anything done under this by-law overrides it.

39. Repeal of By-laws

The Saldanha Bay Municipality Air Pollution Control By-law published in Provincial Gazette No.7077dated 24 December 2012 is hereby repealed as a whole.

40. Short title and commencement

This By-law shall be known as the Saldanha Bay Municipality Air Quality By-law and comes into effect on the date of publication thereof in the Provincial Gazette.