

# **CENTRAL KAROO DISTRICT MUNICIPALITY**

## **AIR QUALITY MANAGEMENT BY-LAW, 2018**

**To provide for Air Quality Management and matters incidental thereto:**

### **PREAMBLE**

**WHEREAS** the Council of the Central Karoo District Municipality (CKDM) acting in terms of section 156(2) of the Constitution of the Republic of South Africa Act, 1996, read with section 13(a) of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) and section 11 (1) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) has made the Air Quality Management By-law hereunder,

**AND WHEREAS** section 24 of the said Constitution, 1996 provides for individual rights on a clean and healthy environment,

**AND WHEREAS** the National Environmental Management: Air Quality Act, 2004 enforces this right by regulating the same,

**AND WHEREAS** the Central Karoo District Municipality in its capacity as a Licensing Authority in terms of the said National Environmental Management: Air Quality Act, 2004, is charged with certain duties and responsibilities in order to implement licencing system as provided in section 22 of the above mentioned Act;

**AND WHEREAS** these By-laws are aimed at advancing the said rights and regulations of all activities with the aim of achieving those objectives set in Chapter 1 section 3 hereunder in order to strengthen Government strategies for protection of the environment and, more specifically the enhancement of quality of ambient air, in order to secure an environment that is not harmful to the health and well-being of;

**AND NOW THEREFORE, BE IT ENACTED** by the Council of the Central Karoo District Municipality, as follows:-

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## CHAPTER I

### DEFINITIONS AND FUNDAMENTAL PRINCIPLES

#### 1. Definitions

In this By-law, unless the context indicates otherwise -

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

**“air pollutant”** includes dust, smoke, fumes and gas that 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 will have such an effect in the future;

**“air quality act”** means the National Environment Management: Air Quality Act, 2004 (Act No. 39 of 2004);

**“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 14(3) of the Air Quality Act;

**“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;

**“atmospheric emission”** or **“emission”** means any emission or entrainment process emanating from a point, non-point or mobile source that results in air pollution;

**“authorised person”** means any employee authorised by the Municipality to implement any of the provisions of these by-laws and in possession of an appointment card issued by the Municipality attesting thereto, including any member of the Municipal Police Services or any peace officer.

**“best practicable environmental option”** means the option that provides the most benefit, or causes the least damage to the environment as a whole, at a cost acceptable to society in the long term as well as in the short term;

**“constitution”** means Constitution of Republic of South Africa, 1996 (Act No.106 of 1996)

**“controlled activities”** means dust emissions, emissions caused by open burning, emissions caused by burning of waste, emissions caused by tyre burning and burning of rubber products and cables, pesticide spraying emissions, spray painting emissions, sand blasting emissions;

**“controlled emitter”** means any appliance or activity declared as a controlled emitter in terms of section 23 of the National Environmental Air Quality Act, 39 of 2004;

**“council”** means the Council of the Central Karoo District Municipality or any of the other political structures, political office bearers, councillors or staff members, of the Central Karoo District Municipality duly authorised by delegation;

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

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

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

**“listed activity”** means a list of activities contemplated in Section 21(1)(a) of the Air Quality Act;

**“Municipality”** means the Central Karoo District Municipality established by Provincial Notice No. 479 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Municipal Manager”** means a person appointed by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

**“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 and enjoyment by an owner or occupier of his or her property or environment;

**“offensive odour”** 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 closed system that has a chimney to vent the emitted products of combustion to the atmosphere;

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

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

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

**“pest”** means an injurious, noxious or troublesome living organism;

**“pesticide”** means a micro-organism or material that is used or intended to be used to prevent, destroy, repel or mitigate a pest and includes herbicides, insecticides, fungicides and rodenticides;

**“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 locomotives which operates or is present within the area of jurisdiction of the Council;

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

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

**“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 recognized specialist of appropriate qualifications and competency in the discipline of air quality management;

**“Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

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

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

## **2. Application of this By-law**

- (1) This By-law applies to all premises within the area of jurisdiction of the Municipality.
- (2) This By-law must be read with any applicable provisions of the National Environmental Management: Air Quality Act, 2004 and the National Framework for Air Quality Management in the Republic of South Africa.
- (3) The provisions of this By-law do not remove the need for any other permit, consent, or authorisation required under any other statutory acts, By-law and regulatory documents.

## **3. Objectives**

- (1) The objectives of this by-law are to:
  - (a) Give effect to the right contained in Section 24 of the Constitution by regulating air pollution within the area of the municipality’s jurisdiction in a cooperative manner between the District and Local Municipalities taking cognizance of the respective air quality management plans;
  - (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the Municipality can manage and regulate activities that have the potential to adversely impact the environment, public health and well-being; and
  - (c) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimized.
- (2) Any person exercising a power under this by-law must exercise such power in order to give effect to the objectives as set out in subsection (1) above.

## **4. Administration and Enforcement**

- (1) The Municipal Manager is responsible for the administration and enforcement of this By-law. The Municipal Manager may in writing delegate any power granted to him/her in terms of this By-law to any competent official in the municipality.

## **5. Municipality's right of access to premises**

- (1) The Municipality shall have access to or over any premises for the purpose of-
  - (a) doing anything authorized or required to be done by the Municipality under this By-law or the Air Quality Act, 2004 (Act 39 of 2004) or any other law regulating air quality matters;
  - (b) inspecting and examining atmospheric emissions or anything connected therewith;
  - (c) enquiring into and investigating any possible sources of atmospheric emissions or the suitability of immovable property for any work, scheme or undertaking that results in atmospheric emissions;
  - (d) ascertaining whether there is or has been contravention of the provisions of this By-law or the Air Quality Act, 2004 (Act 39 of 2004); and
  - (e) enforcing compliance with the provisions of this By-law or Air Quality Act, 2004 (Act 39 of 2004).
- (2) The Municipality may by notice in writing, e-mail, telephonically or verbally served on the owner or occupier of any premises, require such owner or occupier to provide, on the day and at the hour specified in such notice, access to such premises to an authorized person and for a purpose referred to in sub-section (1).
- (3) The Municipality may gain access to, or over any property without notice and may take whatever steps or action as may, in its opinion, be necessary or desirable in consequence of the existence of, or the occurrence of any emergency or disaster, or for the purpose of sub-section (1) (d).

## **6. Levying of tariffs**

- (1) The Municipality may levy and recover fees, charges or tariffs for any permission granted in terms of this By-law, or implement tariffs as prescribed by the National Environmental Management: Air Quality Act and may require the deposit of an amount of money as security for damages, repair, losses and other costs.

## **7. Conflict with other By-laws**

- (1) In the event of any conflict between this By-law and any other By-law or any policy which regulates air pollution in the area of jurisdiction of the Central Karoo District Municipality that include the three Local Municipalities, the provisions of this By-law shall prevail, unless it is an exclusive local municipality power or function.

## **CHAPTER II**

### **DUTY OF CARE**

#### **8. Reasonable measures to prevent air pollution**

- (1) Any person who is entirely or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures including the best practicable environmental option—
  - (a) to prevent any potential significant air pollution from occurring; and
  - (b) to mitigate and, as far as reasonably possible, remedy any significant air pollution that has occurred.
- (2) The Municipality may direct any person who fails to take the measures required under subsection (1) to—
  - (a) investigate, evaluate and assess the impact of specific activities and report thereon;
  - (b) commence taking specific reasonable measures before a given date;
  - (c) to continue those measures; and;
  - (d) complete them before a specified reasonable date,provided that prior to such direction the Municipality must give such person adequate notice and direct him or her to inform the air quality officer of his or her relevant interests, and the air quality officer may consult with any other organ of state.
- (3) The Municipality may, if a person fails to comply or inadequately complies with a directive contemplated in subsection (2), take reasonable measures to remedy the situation.
- (4) The Municipality may, if a person fails to carry out the measures referred to in subsection (1), recover all reasonable costs incurred as a result of him or her acting under subsection (3) from any or all of the following persons:
  - (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution;
  - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred;
  - (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 the—
    - (i) activity or the process in question is or was performed or undertaken; or
    - (ii) situation came about; or

- (d) any person who negligently failed to prevent the—
  - (i) activity or the process being performed or undertaken; or
  - (ii) situation from coming about.
- (5) No person may:
  - (a) unlawfully and intentionally or negligently commit any act or omission which causes or is likely to cause air pollution; or
  - (b) refuse to comply with a directive issued under this section.
- (6) Any person who fails to comply with subsection (5) commits an offence.
- (7) If more than one person is liable under subsection (4), the liability may be apportioned among the persons concerned according to the degree to which each person was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (2).

### **CHAPTER III**

#### **DESIGNATION OF THE AIR QUALITY OFFICER AND ENVIRONMENTAL MANAGEMENT INSPECTORS**

- 9. Designation of the air quality officer and environmental management inspectors**
  - (1) The Municipal Manager must designate or appoint a qualified employee of the Central Karoo District Municipality as the air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the Central Karoo District Municipality.
  - (2) The Municipal Manager may request the MEC responsible for environment in the Province to appoint Environmental Management Inspectors in terms of section 31C of the NEMA.

#### **10. Duties 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 Central Karoo District Municipality, in accordance with Chapter 5 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000).
  - (b) prepare an annual report of the Central Karoo District Municipality on air quality;
  - (c) exercise the duties and powers 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 the environment in the Province.

- (2) The annual report referred to in subsection (1)(b) must, amongst others, include the progress of the Central Karoo District Municipality towards the implementation of the Air Quality Management Plan.
- (3) The Air Quality Officer may require the holder of a provisional atmospheric emission licence or the holder of an atmospheric emission licence to designate an emission control officer as contemplated in section 48 of the Air Quality Act.

## **CHAPTER IV**

### **LOCAL EMISSIONS STANDARDS, NORMS AND STANDARDS**

#### ***Part 1: Local Emission Standards***

#### **11. 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 Central Karoo District 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 or non-point or mobile sources in the Central Karoo District Municipality.
- (2) The Municipality shall 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; and
  - (g) best practicable environmental option.
- (3) Any person who is emitting substances or mixtures of substances as referred to in subsection(1) must comply with the local emission standards published in terms of this By-law.

## Part 2: Norms and Standards

### **12. Substances identification process**

- (1) The authorised person must apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:
  - (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 toxicity or introduce other uncertainties;
  - (d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
  - (e) 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
  - (f) substances that are regulated by international conventions.
- (2) The authorised person must, using the criteria set out in subsection (1), compile a list of substances in ambient air that present a threat to public health, well-being or the environment.

### **13. Publication of local emission standards**

- (1) For the purposes of publication of the local emission standards, the Central Karoo District Municipality must follow a consultative process in terms of Chapter 4 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000).

## CHAPTER V

### **CONTROLLED EMITTERS**

### **14. Installation of controlled emitters**

- (1) No person shall install, alter, extend or replace any controlled emitter on any premises without the prior written authorization of the Municipality, which may only be given after consideration of the relevant plans and specifications and any applicable emission standards developed for controlled emitters that have been determined in terms of section 24 of the Air Quality Act.

- (2) After considering the application submitted in terms of subsection (1), the Municipality must either:
- grant an application and issue an authorization, subject to any conditions that may be imposed; or
  - refuse an application with reasons.
- (3) The authorization issued in terms of subsection (1) must specify:
- the product name and model of the controlled emitter;
  - the premises in respect of which it is issued;
  - the person to whom it is issued;
  - the period for which the authorization is issued;
  - the name of the municipality;
  - the periods at which the authorization may be reviewed;
  - the fuel type and quality;
  - the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
  - any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
  - any other matters which are necessary for the protection or enforcement of air quality.
- (4) The Municipality must review the authorization issued in terms of this section at intervals specified in the authorization, or when circumstances demand that a review is necessary.
- (5) Any controlled emitter installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved for the purposes of this section by the Municipality, shall be presumed until the contrary is proved to comply with the provisions of subsection (1).
- (6) Where any controlled emitter has been installed, altered, extended or replaced on premises contrary to subsection (1), the Municipality may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.
- (7) The Municipality may take whatever steps necessary in order to remedy the harm caused by the installation, alteration, extension or replacement on premises and prevent any further occurrence, and may recover the reasonable costs so incurred from the person responsible for causing such harm.

## **15. Operation of controlled emitters**

- (1) No person may use or operate any controlled emitter on any premises contrary to the authorisation referred to in section 14.
- (2) Where any controlled emitter has been used or operated on the premises in contrary to subsection (1), the Municipality may on written notice to the owner and occupier of the premises–
  - (a) revoke his or her authorisation under section 14; and
  - (b) order the removal of the controlled emitter from the premises at the expense of the owner and operator within the period stated in the notice.
- (3) The Municipality may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2), remove the controlled emitter from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

## **16. Monitoring and sampling**

- (1) An occupier or owner of listed activities, and the operator of controlled emitters, must install emission measuring equipment and or must do emissions monitoring if and when required by the air quality officer and must –
  - (a) record all monitoring and sampling results and maintain a copy of this record for at least five years after obtaining the results;
  - (b) if requested to do so by an air quality officer, produce the record of the monitoring and sampling results for inspection; and
  - (c) if requested to do so by an air quality officer, provide a written report, in a form and by a date specified by the air quality officer, of part or all of the information in the record of the monitoring and sampling results.

## **17. Dust Emissions from listed activities and controlled emitters**

- (1) Any person conducting a listed activity or controlled emitter that produces emissions of dust that may be harmful to public health, well-being and/or cause a nuisance shall take control measures to prevent or minimize emissions into the atmosphere.
- (2) Any person who undertakes any listed activity or controlled emitter that causes dust emissions must implement one or more of the following control measures:
  - (i) pave;
  - (ii) use dust palliatives or suppressants;
  - (iii) uniformly apply and maintain any surface gravel;
  - (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
  - (v) use ground covers;

- (vi) re-vegetation which is similar to adjacent undisturbed native conditions; or
  - (vii) any alternative control measure approved in writing by the air quality officer.
- (3) The control measures must be consistent with the provisions of any applicable legislation.
- (4) The provisions of this section are not applicable to:
- (i) landscaping activities by a person at his place of residence;
  - (ii) emergency maintenance activities on publicly maintained roads, road shoulders and rights of way;
  - (iii) unpaved roads having vehicular traffic of less than 500 vehicles per day;
  - (iv) non-commercial and non-institutional private driveways;
  - (v) horse trails, hiking paths, bicycle paths or other similar paths; and
  - (vi) any other path that has been designated as an exclusive use area for purposes other than travel by motor vehicle.
- (5) Any person who contravenes subsection (1) commits an offence.

## **CHAPTER VI**

### **EMISSIONS THAT CAUSE AN OFFENSIVE ODOUR**

#### **18. Prohibition of emissions that cause offensive odours**

- (1) No person shall, within the area of jurisdiction of the Central District Municipality conduct any listed activity and or part of any listed activity or controlled emitter which cause an offensive odour that is in contravention of Atmospheric Emission Licence conditions or minimum emission standards published in terms of Section 21 of the Air Quality Act ; or
- (2) Any person conducting listed and / or controlled emitter activities that produce emissions of offensive odours that may be harmful to public health and / or well-being or cause a nuisance that is in contravention of Atmospheric Emission Licence conditions or minimum emission standards published in terms of Section 21 of the Air Quality Act, shall take control measures to prevent odorous emissions into the atmosphere.
- (3) Any person undertaking an activity referred to in (2) must implement the necessary measures such as, but not limited to, monitoring or any other measure determined by the air quality officer to identify the substance(s) causing the offensive odour.
- (4) Any person undertaking an activity referred to in (2) must implement the necessary offensive odour control measures and any alternative control measure approved by the air quality officer or his or her delegated representative.

- (5) If an occupier or owner of any premises from which an offensive odour emanates, or where an offensive odour exists, refuses to control the offensive odour or refuses to implement the control measures referred to in subsection (3) such an occupier or owner is guilty of an offence.

## **19. Abatement notice**

- (1) An air quality officer may serve an abatement notice on any person whom he or she reasonably believes is likely to act in contrary or has acted in contrary of section 18, calling upon that person -
  - (a) to abate the offensive odour within a period specified in the notice;
  - (b) to take all necessary steps to prevent a recurrence of the offensive odour; and
  - (c) to comply with any other conditions contained in the notice.
- (2) An abatement notice under subsection (1) may be served -
  - (a) upon the owner of any premises, by -
    - (i) delivering it to the owner or, if the owner cannot be traced or is living abroad, the agent of the owner;
    - (ii) transmitting it by registered post to the last known address of the owner or the last known address of the agent; or
    - (iii) delivering it to the address where the premises are situated, if the address of the owner and the address of the agent are unknown;
  - (b) upon the occupier of the premises, by -
    - (i) delivering it to the occupier; or
    - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

## **CHAPTER VII**

### **CONTROLLED ACTIVITIES AND SMALL BOILERS**

## **20. Small Boilers**

- (1) No person may install, alter, extend or replace any small boiler on any premises without the prior written authorization of the Municipality, which may only be given after consideration of the relevant plans, specifications and any applicable emission standards developed for controlled emitters that have been determined in terms of section 24 of the AQA.
- (2) Application for an authorization to operate a small boiler shall be made on a form prescribed by the Municipality.

- (3) Where a small boiler has been installed, altered, extended or replaced on premises in contravention of subsection (1):
  - (a) the owner or occupier of the premises commits an offence;
  - (b) the Municipality may, on written notice to the owner or occupier of the premises, order the removal of the small boiler from the premises at the expense of the owner or occupier and within the period stated in the notice.
- (4) In considering an application submitted in terms of subsection (1), the air quality officer may require the applicant to furnish such information as the air quality officer may require.
- (5) After considering the application submitted in terms of subsection (1), the Municipality must either:
  - (a) grant an application and issue an authorization, subject to any conditions that may be imposed; or
  - (b) refuse an application with reasons.
- (6) The authorization issued in terms of subsection (1) must specify:
  - (a) the product name and model of the small boiler;
  - (b) the premises in respect of which it is issued;
  - (c) the person to whom it is issued;
  - (d) the period for which the authorization is issued;
  - (e) the name of the municipality;
  - (f) the periods at which the authorization may be reviewed;
  - (g) the fuel type and quality;
  - (h) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
  - (i) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
  - (j) any other matters which are necessary for the protection or enforcement of air quality.
- (7) The Municipality must review the authorization issued in terms of this section at intervals specified in the authorization, or when circumstances demand that a review is necessary.

## **21. Emissions Caused by Open Burning**

- (1) A person who carries out or permits open burning of any material on any land or premises are committing an offence, unless:
  - (a) the prior written authorization of the Municipality has been obtained, which authorization may be granted by the Municipality with conditions, and

- (b) that person has notified in writing the owners and occupiers of all adjacent properties and electricity powerlines traversing such properties of:
    - (i) all known details of the proposed open burning;
    - (ii) the right of owners and occupiers of adjacent properties and electricity power lines traversing such properties to lodge written objections to the proposed open burning with the municipality within 14 days of being notified; and
- (2) The Municipality may not authorize open burning:
- (a) unless it is satisfied that the requirements set out in subsection (1) above have been adequately addressed or fulfilled; or
  - (b) where a warning under section 10(1)(b) of the National Veld and Forest Act, 1998 (Act No. 101 of 1998) has been published for the region.
- (3) The provisions of this section shall not apply to:
- (a) recreational outdoor activities on private premises or residential areas; and
  - (b) controlled fires in dwellings for the purposes of heating any area within the dwelling, cooking, heating water and other domestic purposes.

**22. Emissions Caused by Burning of Industrial Waste, Domestic Waste and Garden Waste in Waste Bins or Skips on Any Land or Premises**

A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste, is committing an offence unless the industrial, domestic or garden waste is legally disposed of in terms of section 26 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

**23. Emissions Caused by Tyre Burning and Burning of Rubber Products and Cables in Open Spaces**

- (1) No person may carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for any purpose unless the premises has been approved by the Air Quality Officer..
- (2) Any person who contravenes subsection (1) commits an offence.

**24. Pesticides Spraying Emissions**

- (1) No person may carry out or permit the spraying of a pesticide, herbicide or other related material unless such pesticide, herbicide or material is registered in terms of section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

- (2) Any person who contravenes subsection (1) of this By-law is guilty of an offence as set out in section 18(1)(c) of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (3) A person who carries out or permits the spraying of pesticides, herbicides or other materials referred to in subsection (1), within the area of jurisdiction of the Municipality, must comply with the following controlled measures:
- (a) obtain prior written authorization of the Municipality which may be granted by the Municipality with conditions, including —
    - (i) the area of land on which the pesticide, herbicide or other material may be applied; and
    - (ii) the period of time in which the pesticide, herbicide or other material may be applied;
  - (b) notify in writing the owners and occupiers of all adjacent properties within 150 meters of the proposed area of land, of —
    - (i) the details of such land;
    - (ii) the reason for use of pesticide, herbicide or other material;
    - (iii) the active ingredient of pesticide, herbicide or other material;
    - (iv) the date and approximate time of the use of pesticide, herbicide or other material;
    - (v) in the event of inclement weather conditions, an alternative date or dates on which the use of pesticide, herbicide or other material may occur;
    - (vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application of the pesticide, herbicide or other material;
    - (vii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Council within seven days of being notified; and
    - (viii) the prescribed fee has been paid to the Council.
- (4) Any person who contravenes subsection (3) is guilty of an offence.
- (5) A person may apply to the Municipality for an exemption if —
- (a) the spraying of the pesticide is for the management of pests that transmit human diseases or adversely impact agriculture or forestry;
  - (b) the spraying of the pesticide is for the management of pests that threaten the integrity of sensitive ecosystems; or
  - (c) the need for the use of the pesticide is urgent.

- (6) The provisions of this section are not applicable to —
  - (a) residential areas of farms;
  - (b) buildings or inside of buildings; or
  - (c) any other defined area or defined activity to which the Municipality has declared this section not to apply.
- (7) Any person who contravenes subsection (6) is guilty of an offence.

## **25. Spray Painting Emissions**

- (1) No person shall, within the Municipality's jurisdiction, spray, coat, plate, or epoxy-coat any vehicle, article, object or allow them to be sprayed, coated, plated, or epoxy-coated with any substance in such a manner that it may cause nuisance.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.

## **26. Sand Blasting Emissions**

- (1) Any person conducting sand blasting activities which customarily produce emissions of dust that may be harmful to public health, well-being and/or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
- (2) Any person who undertakes any sand blasting activity that causes dust emissions must implement the following control measure:
  - (a) dust extraction control measure; or
  - (b) any alternative dust control measure approved in writing by the air quality officer.
- (3) A person that contravenes subsections (1) and (2) commits an offence.

## **CHAPTER VIII**

### **LICENSING OF LISTED ACTIVITIES**

## **27. Establishment of Atmospheric Emission Licensing (AEL) System**

- (1) The Municipality hereby establishes an Atmospheric Emission Licensing System as contemplated in Chapter 5 of the Air Quality Act.

## **28. Application for atmospheric emission licence (AEL)**

- (1) No person shall undertake a listed activity, as published in terms of section 21 of the Air Quality Act, without being in possession of an atmospheric emission licence issued by the Air Quality Officer.
- (2) An application for an atmospheric emission licence must be -
  - (a) made in writing on the Central Karoo District Municipality application form;

- (b) accompanied by documents or information as may be required by the air quality officer; and
  - (c) accompanied by payment of the prescribed processing fee determined by Council from time to time.
- (3) Before considering an application made in terms of subsection (2), the Air Quality Officer may require the applicant to furnish additional information such as, but not limited to, a specialist air quality impact study and / or proof of a public participation process.
- (4) Any person who undertakes a listed activity without an atmospheric emission licence is guilty of an offence and is subject to the penalties as set out in section 52 of the Air Quality Act.

## **29. Appeal process for atmospheric emission licensing (AEL)**

- (1) The appeal process as governed by section 62 of the Systems Act will apply.

## **CHAPTER IX**

### **OFFENCES AND PENALTIES**

## **30. Offences and penalties**

- (1) Any person who continues to commit an offence after notice has been served on him or fails to cease committing such offence after he has been convicted of such offence, is guilty of a continuing offence.
- (2) Any person who-
  - (a) contravenes any of the provisions of this By-law, condition or restriction or fails to comply therewith; or
  - (b) contravenes or fails to comply with any order made hereunder or any notice served in connection herewith; or
  - (c) furnishes a false statement, or give false or misleading information knowing it to be false or misleading; is guilty of an offence and liable to a-
    - (i) fine or imprisonment, or to both such fine and such imprisonment and;
    - (ii) in the case of a continuing offence, to an additional fine or an additional period of imprisonment for each day on which such offence is continued and;
    - (iii) a further amount equal to any cost and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.
- (3) 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 the 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 emission measuring equipment referred to in section 16.
- (4) In addition to any other penalty the court may impose, it may order a person convicted of an offence under this By-law to take such steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the offense.

## **CHAPTER X**

### **GENERAL MATTERS**

#### **31. Compliance Monitoring**

- (1) The air quality officer may request from any polluter that significantly contributes or is likely to contribute to poor air quality, ambient and point or non-point source monitoring and any other air quality related study, programs or reports to be conducted by a recognised and competent third party, at the cost of the polluter.

#### **32. Enforcement**

- (1) The authorised person must take all lawful, necessary and reasonable practicable measures to enforce the provisions of this By-law.
- (2) The Central Karoo District Municipality may develop enforcement procedures which should take into consideration any national or provincial enforcement procedures.
- (3) The Municipality may, in any case where it seems that any action or neglect by any person or owner of property may lead to a contravention of the provisions of this By-law, give notice in writing to such person or owner of property to comply with such requirements as the Municipality may deem necessary to prevent the occurrence or repetition of such contravention.

#### **33. Recognition programmes**

- (1) An air quality officer may establish a programme for the public recognition of significant achievements in the area of pollution prevention.

#### **34. Co-operation between municipalities**

- (1) In an effort to achieve optimal service delivery in terms of this By-law, the Municipality may enter into any written agreement with any person, organ of state or organization 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.
- (2) The Municipality must monitor the effectiveness of any agreement entered into in terms of sub-section (1), in achieving the purposes for which it was entered into and may cancel the agreement after giving reasonable notice to the other party if the Municipality has reason to believe that the agreement is not effective, or is inhibiting the attainment of the purpose of this By-law.

### **35. Appeals**

- (1) Any person may appeal against a decision taken by an air quality officer under this By-law by giving a written notice of the appeal in accordance with the provisions of section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

### **36. Exemptions**

- (1) Any person may, in writing, apply for exemption from the application of a provision of this By-law to the Municipality.
- (2) An application in terms of subsection (1) must be accompanied by substantive reasons.
- (3) The Municipality may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant interested and affected persons and the public.
- (4) The steps contemplated in subsection (3) may include the publication of a notice in at least two newspapers, one circulating provincially and one circulating within the jurisdiction of the Central Karoo District Municipality.
  - (a) giving reasons for the application; and
  - (b) containing such other particulars concerning the application as the air quality officer may require.
- (5) The Municipality may -
  - (a) from time to time review any exemption granted in terms of this section, and may impose such conditions as it may determine; and
  - (b) on good grounds withdraw any exemption.
- (6) The Municipality may not grant an exemption under subsection (1):
  - (a) until it has taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
  - (b) until it has provided such persons with a reasonable opportunity to object to the application; and

(c) until it has duly considered and taken into account any objections raised.

### **37. Policy**

- (1) The Municipality may adopt and implement in a policy document measures for the regulation of Air Quality, and activities and to provide for incidental matters.
- (2) The application of the provisions of the policy may be limited to a specific area/or any categories of premises or activities and may permit deviation and exemptions from, and the relaxation of, any such provisions on reasonable grounds.
- (3) Any person contravening the provision of the Policy or furnish false or misleading information, is guilty of an offence, and on conviction liable to a fine or imprisonment, or both such fine and imprisonment.
- (4) The Policy must be made public and conveyed to the community in terms of section 21 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

### **38. Indemnity**

- (1) The Central Karoo District Municipality shall not be liable for any damage caused to any property or premises by any action or omission of the employees or officials of the Central Karoo District Municipality when exercising any function or performing any duty in terms of this By-law, provided that such employees or officials must, when exercising such function or performing such duty, take reasonable steps to prevent any damage to such property or premises.

### **39. Repeal and savings**

- (1) 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.

### **40. Short title**

- (1) This By-law is called the Central Karoo District Municipality: Air Quality Management By-law, 2018, and shall come into operation on the date of publication thereof in the Provincial Gazette, with exclusion of section 14, which will come into operation on a date decided by Council.