



VICTOR KHANYE LOCAL MUNICIPALITY
AIR QUALITY MANAGEMENT
BY-LAW
2018

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The Council of Victor Khanye Local Municipality acting in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) has made the air quality management by-law hereunder:

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CHAPTER 1

INTERPRETATION AND AIR POLLUTION DUTY OF CARE

1. Definitions

In this by-law any word or expression to which a meaning has been assigned in the by-law and the relevant SANS Standards, shall have the meaning so assigned to it and, unless the context otherwise indicates:

"air pollution" means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances;

"air quality officer" means an officer appointed in terms of section 14 of the AQA;

"ambient sound level" means the reading of an integrating sound level meter measured at the measuring point at the end of total period of at least 10 minutes after such integrating sound level meter has been put into operation, during which period a noise alleged to be a noise nuisance is absent;

"authorised person" means any employee authorised by the municipality to implement any of the provision of this by-law and in possession of an appointment card issued by the municipality attesting thereto, including any member of the municipal police service or any peace officer;

"AQA" means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), as amended;

"change" means any modification which is made to an existing structure, plant, road, land use, procedure, action which may have an effect on the noise increases originating from an activity related to or connected with the use of such structure, the operation of such plant, the use of such road or railway, such land use, such procedure or such action;

"combustible liquid" means a liquid which has a close-cap flash point of 38 degrees Celsius or above;

"compressed ignition powered vehicle" means a vehicle powered by an internal combustion, compression ignition engine, diesel or similar fuel;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"control measure" means a technique, practice or procedure used to prevent or minimise the generation, emission, suspension or airborne transport of fugitive dust, pesticide or sandblasting activities;

"Council" means (Victor Khanye Local Municipality)

"dark smoke" means smoke:

- (a) which has a density of 60 Hartridge smoke units or more (coastal areas), or in relation to emissions from a turbo-charged compressed ignition powered engine, means a density of 66 Hartridge smoke units or more (inland areas); or
- (b) which has a light absorption co-efficient of more than 2.125 m^{-1} or more, or in relation to emissions from a turbo-charged compressed ignition powered engines, means a light absorption co-efficient of more than 2.51 m^{-1} ;

"erect" means alter, convert, extend or re-erect;

"exempted vehicle" means a vehicle listed in Annexure-A to SANS 10281;

"flammable gas" means a gas which at 20 degrees Celsius and a standard pressure of 101, 3 kilopascals—

- (a) is ignitable when in a mixture of 13% or less by volume with air; or
- (b) has a flammable range with air of at least 12%, regardless of the lower flammable limit;

"flammable liquid" means a liquid or combustible liquid which has a closed cup flash point of 60 degrees Celsius or below or an open cup flash point of 65.6 degrees Celsius;

“flammable substance” means any flammable liquid, combustible liquid or flammable gas;

“measuring point” relating to:

- (a) a piece of land from which an alleged disturbing noise emanates, or may emanate, means a point outside the property projection plane where noise shall be measured, or calculated in accordance with the provisions of SANS 10103 and/or SANS 10328;
- (b) a building with more than one occupant, means a point in or outside the building where noise shall be measured, or calculated in accordance with the provisions of SANS 10103 and/or SANS 10328; and
- (c) a stationary vehicle, means a point as described in SANS 10181 where a measuring microphone shall be placed;

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

“Municipality” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), as amended;

“National Framework” means the National Framework for Air Quality Management in the Republic of South Africa, as established in terms of section 7(4) of the AQA, as amended;

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

“noise nuisance” means any sound in terms of section 18 of the by-law, which impairs or may impair the convenience or peace of any reasonable person;

“non-exempted vehicle” means a vehicle not listed in Annexure-A to SANS 10281;

“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;
- (b) the use or enjoyment by an owner or occupier of his or her property or environment; and
- (c) the ordinary comfort, convenience and peace.

“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, excluding the burning of sugar cane;

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

"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, avicides and rodenticides;

"property projection plane" means a vertical plane on, and including the boundary line of a piece of land defining the boundaries of such piece of land in space or with reference to a dimension of space;

"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, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the Council or the precincts of any harbour;

"public road" means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), as amended;

"recreational vehicle" means:

- (a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;
- (b) a model aircraft, vessel or vehicle;
- (c) any aircraft or helicopter used for sport or recreational purposes but not for gain, including but not limited to a micro-light aircraft and a hot air balloon;
- (d) a vessel used for sport on water or recreational purposes but not for gain, including but not limited to a jet ski and a ski-boat; or
- (e) any other conveyance vessel or model which is used for sport or recreational purposes, but not for gain;

"repair notice" means a notice as referred to in section 8(4), regarding the re-testing of vehicle;

"rubber product" means anything composed of rubber including anything containing or coated with rubber;

"SANS 10103" means the latest edition of Standards South Africa publication No. 10103 titled: "The measurement and ratings of environmental noise with respect to annoyance and to speech communication", as amended from time to time or its corresponding replacement;

"SANS 10181" means the latest edition of Standards South Africa publication No. 10181 titled: "The measurement of noise emitted by road vehicles when stationary", as amended from time to time or its corresponding replacement;

"SANS 10281" means the latest edition of Standards South Africa publication No. 10281 titled: "Engine speed (S values), reference sound levels and permissible sound levels of stationary road vehicles", as amended from time to time or its corresponding replacement;

"SANS 10328" means the latest edition of Standards South Africa publication No. 10328 titled: "Methods for environmental noise impact assessments", as amended from time to time or its corresponding replacement;

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

"use" in relation to all terrain vehicles includes driving, operating or being conveyed by, that vehicle;

"vehicle" means a vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), as amended;

"zone" means land set apart by a zoning scheme for a particular zoning irrespective of whether it comprises one or more land units or part of a land unit.

2. 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;
- (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the Council 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 minimised.

(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.

3. Application

(1) This by-law must be read with any applicable provisions of the National Environmental Management: Air Quality Act, 2004 and the National Framework.

- (2) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the municipality, regulates air pollution, the provisions of this by-law shall prevail to the extent of the inconsistency.

4. Air Pollution Duty of Care

- (1) Every person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures:
- (a) to prevent any potential of air pollution from occurring; and
 - (b) where it cannot be prevented, to mitigate any air pollution that may occur.
- (2) The Council may direct any person in writing who fails to take the measures required under subsection (1):
- (a) to commence taking specific reasonable measures before a given date;
 - (b) to diligently continue with those measures; and
 - (c) to complete them before a specified reasonable date.
- (3) Prior to making such a decision as contemplated in subsection (2), the Council must give the affected person adequate opportunity to make representation as to why a directive should not be issued.
- (4) The Council must give due consideration to all representations submitted before taking a decision as contemplated in subsection (2).
- (5) The Council must issue the directive under subsection (2) should a person fail to submit representations within the specified period in terms of subsection (3).
- (6) The Council may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief should a person fail to comply, or inadequately comply, with a directive under subsection (2).
- (7) The Council may recover costs for reasonable remedial measures to be undertaken under subsection (6), before such measures are taken and all costs incurred as a result of it acting under subsection (6) from any person who is or was responsible for, or who contributed to, the air pollution, provided such person failed to take the measures required of him under subsection (2).
- (8) 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.
- (9) Any person who fails to comply with subsection (8) commits an offence.

CHAPTER 2

LOCAL EMISSION STANDARDS, MOTOR VEHICLE EMISSIONS, SMALL BOILERS AND CONTROLLED ACTIVITIES

Part 1: Local Emission Standards

5. Identification of Substances and Development of Local Emission Standards

- (1) The Council has identified the substances in ambient air, as set out in Schedule 1 to the by-law, and for each substance developed local emission standards.
- (2) The Council may 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) widespread 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.
 - (f) Substances that are regulated by international conventions.
- (3) The Council may, when developing the local emissions standards:
 - (a) identify the critical factors for public health impacts;
 - (b) identify sensitive sub-populations;
 - (c) review available databases for public health status;

- (d) review available databases for ambient air quality information; and
 - (e) review and assess international guidelines and standards.
- (4) The Council 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; and
 - (e) Socio-economic consequences.

6. Consequences of Identification

- (1) Any person emitting those substances or mixtures of substances must comply with the emission standards established in terms of section 5.
- (2) Any person who fails to comply with the emission standards established in terms of section 5 commits an offence.

7. Public Participation Process

For the purposes of the publication of the local emission standards, the Council must follow the public participation process as set out in section 13 of the Municipal Systems Act, 2000, as amended.

Part 2: Motor Vehicle Emissions, Small Boilers and Controlled Activities

8. Emissions from Compressed Ignition Powered Vehicles

Prohibition of emission of dark smoke

- (1) No person may drive a vehicle on a public road if it emits dark smoke.
- (2) A person commits an offence if he or she contravenes subsection (1).

Stopping of Vehicles for Inspection and Testing

- (3) For the purposes of enforcing the provisions of section 8, an authorised person may:
 - (a) by means of a signal instruct the driver of a vehicle to stop that vehicle; and

- (b) instruct that driver to give all assistance required for the purpose of the inspection and testing of that vehicle.
- (4) The authorised person must, prior to any testing being undertaken in terms of subsection (7) inform the driver of the vehicle that:
 - (a) the vehicle has been stopped to test it in terms of this by-law for the emission of dark smoke;
 - (b) the vehicle is being detained for the purpose of such testing;
 - (c) if the results of such testing indicate that dark smoke is emitted from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this by-law.
- (5) Any person who fails to comply with a direction given under subsection (3)(a) commits an offence.
- (6) When a vehicle has stopped in compliance with a direction given under subsection (3)(a), the authorised person may test the vehicle at the roadside, in which case testing must be carried out at or as near as practicable to the place where the direction to stop the vehicle is given; and as soon as practicable, and in any case within 1 hour, after the vehicle is stopped in accordance with the direction.

Testing procedure

- (7) An authorised person must use the following testing procedure in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of subsection (1):
 - (i) when instructed to do so by the authorised person, the driver of the vehicle must apply a handbrake, start the vehicle, place it in neutral gear and engage the clutch;
 - (ii) for a period required by an authorised person smoothly depress the accelerator pedal of the vehicle, until the engine reaches a revolution level of 3000 revolutions per minute or in the absence of a revolution counter to the extent directed by an authorised person;
 - (iii) while the accelerator pedal is depressed, the authorised person must measure the smoke emitted from the vehicle's emission system in order to determine whether or not dark smoke is emitted;
- (8) After having conducted a test, an authorised person must furnish the driver of the vehicle concerned with the test results which indicate that either the vehicle is not emitting dark smoke or is emitting dark smoke in contravention of subsection (1) and if the driver is not

the owner of the vehicle concerned, then it is presumed that the driver is the owner of the vehicle unless he or she produces evidence to the contrary.

- (9) An authorised person must furnish the driver of the vehicle with a certificate (valid for a period of 24 months) indicating that the vehicle is not being driven in contravention of subsection (1), if the test results indicate that the vehicle concerned is not emitting dark smoke.
- (10) An authorised person must issue the driver of the vehicle with a repair notice in accordance with subsection (11), if the test results indicate that the vehicle concerned is emitting dark smoke.

Repair notice

- (11) A repair notice must direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry date of that period.
- (12) The repair notice must contain, amongst others, 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
 - (c) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.
- (13) A person commits an offence under this section if the person fails:
 - (a) to comply with the repair notice referred to in subsection (11);
 - (b) to take the vehicle for re-testing as referred to in subsection (11).
- (14) It shall not be a defence in proceedings under subsection (13) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- (15) The authorised person must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended, where the owner of the vehicle fails to take the vehicle for re-testing as referred to in subsection (11).

9. Emissions Caused by Open Burning

- (1) A person who carries out or permits open burning of any material on any land or premises is committing an offence, unless:
 - (a) the prior written authorisation of the Council has been obtained, which

authorisation may be granted by the Council 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 powerlines traversing such properties to lodge written objections to the proposed open burning with the municipality within 14 days of being notified; and
 - (iii) the administrative fee that has been paid to the municipality.

(2) The Council may not authorise 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.

10. 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).

11. 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, for the purposes of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, of the rubber products or cables as waste.

- (2) Any person who contravenes subsection (1) commits an offence.

12. Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of pesticides, 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 the spraying of pesticides, either by tractor or aerial, within the municipal jurisdiction, must comply with the following control measures:
- (a) obtain a prior written authorisation from the Council, which authorisation may be granted valid for a period of 12 months from the date of issue;
 - (b) notification in writing of all the owners and occupiers of adjacent properties (including surrounding communities) of the treatment area of:
 - (i) the details of the proposed treatment area;
 - (ii) the reason for the pesticide use;
 - (iii) the active ingredient;
 - (iv) the dates or months of the pesticide use;
 - (v) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
 - (vi) the right of owners and occupiers of adjacent properties (including surrounding communities) to lodge written objections to the proposed spraying of pesticides with the Council within 14 days of being notified; and
 - (viii) the administrative fee has been paid to the municipality.
- (3) The Council must notify in writing, within 30 days, the applicant and all registered affected parties about a decision on an application.
- (4) The authorisation issued in terms of subsection (1) must specify-
- (a) the person to whom it is issued;
 - (b) the areas on which the pesticide may be applied;
 - (c) the dates or months of the pesticide spraying;
 - (d) the period for which the authorisation is issued;

- (e) measures which are necessary for the protection of the environment.
- (5) Any person who contravenes subsection (2) commits an offence.
- (6) A person may apply to the Council for an exemption if the spraying of the pesticide 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 is urgent.
- (7) The provisions of this section are not applicable to:
 - (a) residential areas;
 - (b) buildings or inside buildings and the domestic use of pesticides; or
 - (c) any other defined area or defined activity to which the Council has declared this section not to apply.

13. 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 outside approved spray painting room or booth.
- (2) No person may spray, coat, plate, or epoxy-coat any vehicle, article, object, or building or part thereof or allow them to be sprayed, coated, plated or epoxy-coated with any substance unless:
 - (a) that person is in possession of a spraying authorisation contemplated in subsection (1);
 - (b) the spraying, coating, plating or epoxy-coating as the case may be is conducted in a spraying room approved by the designated fire officer, in consultation with the air quality officer, on premises registered for that purpose.
- (3) A person that contravenes subsections (1) and (2) commits an offence.
- (4) Any person who wishes to obtain a spraying authorisation must complete and submit to the designated fire officer an application form for such permit in the form and manner as prescribed.

- (5) The designated fire officer, in consultation with the air quality officer, may grant or refuse a spraying authorisation contemplated in subsection (1) based on the information submitted.
- (6) A spray room or booth or area designated for the application of a substance must be constructed and equipped according to the requirements in Schedule 5 to this by-law.
- (7) The designated fire officer may cancel the spraying authorisation if there is reason to believe that the holder of the spraying authorisation contravenes or fails to comply with any provision of this by-law.
- (8) Subject to subsection (9), before the designated fire officer cancels the spraying authorisation as contemplated in subsection (7), that officer must:
 - (a) give the holder of the spraying authorisation written notice of the intention to cancel the spraying authorisation and the reasons for such cancellation;
 - (b) give the holder a period of at least 30 days to make written representations regarding the matter to the municipality.
- (9) If the designated fire officer has reason to believe that the failure to cancel the spraying authorisation may endanger any person, that officer may cancel the spraying authorisation without prior notice to the holder as contemplated in subsection (7).

14. Noise Pollution Management

Prohibition of noise nuisance

- (1) Where it shall cause a noise nuisance, a person shall not:
 - (a) operate or play, allow to be operated or played, a radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound;
 - (b) allow an animal owned or controlled by him to make noise;
 - (c) build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft, or object, or allow it to be built, made, constructed, repaired, rebuilt, modified, operated or tested, in or near a residential zone or premises;
 - (d) erect, demolish or alter a building or structure, or allow it to be erected, demolished or altered if it affects a residential zone or premises unless permission is granted by the municipality to conduct building operations within the hours specified in SANS 10400 for the control of noise, if building operations are to be carried out outside of these hours then an exemption is required;
 - (e) use or discharge any explosive, firearm or similar device that emits impulsive sound or allow it to be used or discharged, except with the prior consent in writing

of the municipality and subject to such conditions as the municipality may deem necessary, save as such person may otherwise be authorised in law to use or discharge;

- (f) on a piece of land or in water or in airspace above water or in airspace above a piece of land used for recreational purposes:
 - (i) operate a recreational vehicle; or
 - (ii) as the owner or person in control of the piece of land, water or airspace, allow any person to operate a recreational vehicle on such land or in such water or such airspace;
- (g) except in emergency situations, emit a sound, or cause or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device;
- (h) drive a vehicle on a public road;
- (i) use any power tool or power equipment used for construction purposes, drilling or demolition work, or allows it to be used, in or near a residential area, unless permission was granted by the municipality to conduct normal construction or repair work to public and private property.

Land Use

- (2) A person shall not:
 - (a) establish any zone unless a Noise Impact Assessment has been undertaken in accordance with SANS 10328. The assessment must indicate that either the outdoor equivalent continuous day/night rating level ($L_{R,dn}$), the outdoor equivalent continuous day-time rating level ($L_{R,d}$) or the outdoor continuous equivalent night-time rating level ($L_{R,n}$) appropriate for the particular district will not be exceeded at any position within the boundaries of the proposed zone;
 - (b) construct or erect any building or make changes to existing facilities on a premises which will house an activity which does not conform with the dominant land use specified in the applicable zoning scheme;
 - (c) construct or erect any building or make changes to existing facilities on premises which will house an activity which produces more noise with respect to that of the dominant land use specified in the applicable zoning scheme or will create a disturbing noise unless it has been proven that precautionary measures will be implemented. Such measures must be to the satisfaction of the municipality in that the premises, after being erected or developed or changes made, will be adequately insulated against the transmission of sound to the outside, so that

either the outdoor equivalent day/night rating level ($L_{R,dn}$), the outdoor equivalent continuous day-time rating level ($L_{R,d}$) and/or the outdoor equivalent continuous night-time rating level ($L_{R,n}$), will not exceed the appropriate rating level for outdoor noise specified in SANS 10103 at any position on the property projection plane of the premises; or

- (d) undertake any activity which constitutes a noise source referred to in SANS 10328 and any of the listed activities requiring an EIA in terms of the NEMA Regulations, as amended, which are considered to have a potential noise impact unless a Noise Impact Assessment has been undertaken in accordance with SANS 10328.
- (3) The municipality may:
- (a) before changes are made to existing facilities or existing uses of land or buildings or before new buildings are erected, in writing require that Noise Impact Assessments or tests be conducted to the satisfaction of the municipality by the owner, developer, tenant or occupant of the facilities, land or buildings concerned. Such reports or certificates must be submitted by such owner, developer, tenant or occupier to the municipality. The report should prove that either the outdoor equivalent continuous day/night rating level ($L_{R,dn}$), the outdoor equivalent continuous day-time rating level ($L_{R,d}$) and the outdoor equivalent continuous night-time rating level ($L_{R,n}$) at any position on or outside the property projection plane of the existing facility, use of land or building will not exceed values for the appropriate level given in SANS 10103. The Noise Impact Assessment, if required shall be conducted in accordance with SANS 10328 or other applicable documentation and the tests, if required, shall be conducted in accordance with SANS 10103 or other applicable documentation; or
 - (b) if excavation, earthmoving, pumping, drilling, construction, or demolition, or any similar activity, power generation or music causes or may cause a noise nuisance or disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until such conditions as the municipality may deem necessary have been complied with.

Motor Vehicles

- (4) No person may drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point measured, when stationary, in accordance with the procedure prescribed in SANS 10181 exceeds:
- (a) in the case of a non-exempted vehicle, the stationary sound level specified in SANS 10281 for that type of vehicle; or
 - (b) in the case of an exempted vehicle, by more than 5 dBA the applicable reference sound level indicated in SANS 10281, for that type of vehicle.

- (5) The municipality may in order to determine whether a vehicle being used on any road in the area of jurisdiction of the municipality, including a private, provincial or national road crossing its area of jurisdiction, complies with the provisions of the by-law, instruct the owner or driver of the vehicle:
- (a) to stop the vehicle or cause it to be stopped; and
 - (b) to have any appropriate inspection or test, as the municipality may deem necessary, conducted on the vehicle on the roadside where it was stopped or on a place, date and time determined by the municipality in writing.
- (6) The authorised person must, prior to any testing being undertaken in terms of subsection (6)(b) inform the driver of the vehicle that:
- (a) the vehicle has been stopped to test it in terms of this by-law for noise nuisance;
 - (b) the vehicle is being detained for the purpose of such testing;
 - (c) if the results of such testing indicates noise nuisance from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this by-law; and
 - (d) A person who fails to comply with a direction given under subsection (6)(a) commits an offence.
- (7) An inspection done in terms of subsection (6)(b) shall be carried out:
- (a) at or as near as practicable to the place where the direction to stop the vehicle is given; and
 - (b) within 1 hour of the vehicle being stopped in accordance with the direction of the authorised person.
- (8) If, after conducting a sound level test, the authorised person is satisfied that the vehicle:
- (a) is not exceeding the permitted sound levels prescribed in subsection (5), then the authorised person must furnish the driver of the vehicle with a certificate (valid for a period of 24 months) indicating that the vehicle is not being driven or used in contravention of subsection (5); or
 - (b) is exceeding the permitted sound levels prescribed in subsection (5), the authorised must issue the driver of the vehicle with a repair notice within specified period of time in accordance with subsection (9).
- (9) A repair notice must:

- (a) direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period; and
 - (b) contain, amongst others, the following information:
 - (i) the make, model and registration number of the vehicle;
 - (ii) the name, address and identity number of the driver of the vehicle; and
 - (iii) if the driver is not the owner, the name and address of the vehicle owner.
- (10) A person commits an offence under this section if the person fails:
- (a) to comply with the repair notice referred to in subsection (10)(a);
 - (b) to take the vehicle for re-testing as referred to in subsection (10)(a).
- (11) It shall not be a defence in proceedings under subsection (11) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- (12) The authorised person must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended, where the owner of the vehicle fails:
- (a) to comply with a repair notice issued in terms of subsection (9)(b); or
 - (b) to take the vehicle for re-testing as required by subsection (10)(a).

Music, open-air music festivals, shows, inclusive of air shows and similar gatherings

- (13) (a) No person may stage any open-air entertainment festival, such as, but not limited to a show, an air show, music concert, festival, sports event or similar gathering without a prior written consent of the municipality.
- (b) If any music causes or may cause a noise nuisance, the municipality may instruct in writing that such music be discontinued until such conditions as the municipality may deem necessary have been complied with.
- (c) Subject to the provisions of paragraph (b) and applicable provisions of the any other law, the municipality may attach any instrument and/or equipment used to generate music if no permission has been obtained as required by paragraph (a).
- (d) An instrument and/or equipment attached under paragraph (c) shall be kept in safe custody by the municipality.

- (e) The municipality may lift the attachment contemplated in paragraph (c) if the owner or person in control of the instrument and/or equipment has applied for permission in terms of paragraph (a).
- (f) This subsection is not applicable to:
 - (i) churches;
 - (ii) schools;
 - (iii) other education facilities; or
 - (iv) any other defined area or activity to which the Council has declared this subsection not to apply.

General prohibitions

- (14) Any person who:
 - (a) fails to comply with the provisions of this section;
 - (b) fails to comply with a written condition, instruction or notice issued by the municipality in terms of this section;
 - (c) tampers with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice placed in a position by or on behalf of the municipality;
 - (d) in respect of a duly authorised person of the municipality:
 - (i) fails or refuses to grant admission to such official to enter and to inspect the premises;
 - (ii) fails or refuse to give information which may lawfully be required of him or her to such official;
 - (iii) hinders or obstruct such official in the execution of his or her duties; or
 - (iv) gives false or misleading information to such official knowing that it is false or misleading,
- is guilty of an offence.

General powers of the municipality

- (15) An authorised person may:

- (a) for the purposes of applying this section, at any reasonable time enter premises upon reasonable notice to conduct any appropriate examination, inquiry or inspection thereon as it may deem expedient and to take any steps it may deem necessary;
- (b) if a noise emanating from a premises, vehicle, recreational vehicle or private area is a noise nuisance or disturbing noise, instruct in writing:
 - (i) the person causing such noise or who is responsible for the infringement;
 - (ii) the owner, tenant or occupant of such building, premises, vehicle, recreational vehicle or private area from which or from where such noise emanates or may emanate; or
 - (iii) all such persons,to discontinue or cause to be discontinued such noise or to take steps to or apply appropriate remedies to lower the level of such noise to a level conforming to the requirements of this by-law within the period stipulated in the instruction: Provided that the provisions of this paragraph shall not apply in respect of a disturbing noise or noise nuisance caused by rail vehicles or air traffic or on a public road by vehicles that are not used as recreational vehicles;
- (c) if the noise is caused by an animal, and the owner or person in charge of that animal fails to comply with an instruction referred to in subsection (16)(b), subject to the applicable provisions of any other law, impound or cause to be impounded such animal;
- (d) impose such appropriate conditions as it deems fit when granting any permission or exemption, including the specification of times and days when activities that may cause noise are permitted or prohibited;
- (e) subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices at any place within the municipality's jurisdiction for the enforcement of the provisions of this by-law: Provided that road traffic signs and notices shall be placed on private property only with the permission of the owner.

15. Emissions that Cause a Nuisance

Prohibition

- (1) Any occupier or owner of premises from which a nuisance emanates, or where a nuisance exists must take measures to contain emissions that cause a nuisance.

- (2) Any occupier or owner of premises that fails to comply with subsection (1) commits an offence.

Abatement notice

- (3) An authorised person may serve an abatement notice on any person, whom he or she reasonably believes is likely to commit or has committed an offence under subsection (2), calling upon that person:
- (a) to abate the nuisance within a period specified in the notice;
 - (b) to take all necessary steps to prevent a recurrence of the nuisance; or
 - (c) to comply with any other conditions contained in the notice.
- (4) For the purposes of subsection (3), an authorised person 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 abatement notice is to be served.
- (5) An abatement notice under subsection (3) may be served:
- (a) upon the owner or any person, by:
 - (i) delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;
 - (ii) transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
 - (iii) delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;
 - (b) upon the occupier of the premises, by:
 - (i) delivering it to the occupier;
 - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.
- (6) Any person who fails to comply with an abatement notice served on that person in terms of subsection (5) commits an offence.
- (7) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (6) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

Steps to abate nuisance

- (8) The municipality may at any time and at its own cost take reasonable and lawful steps to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

CHAPTER 3**GENERAL MATTERS****16. Appeals**

Any person may appeal against any decision taken under this by-law by giving written notice of the appeal in accordance with the provisions of section 62 of the Municipal Systems Act, 2000, as amended.

17. Offences and Penalties

- (1) Any person who contravenes section 4(9), 8(2), 9(1), 14(6)(d), 14(10), 14(14) or 15(2) shall be liable on conviction to imprisonment for a period not exceeding 6 months or to a fine or to both a fine and such imprisonment.
- (2) Any person who contravenes section 6(2), 8(5), 8(13), 12(5), 13(3) or 15(6) shall be liable on conviction to imprisonment for a period not exceeding 2 years or to a fine or to both a fine and such imprisonment.
- (3) Any person who contravenes section 10 or 11(2) shall be liable on conviction to imprisonment for a period not exceeding 1 year or to a fine or to both a fine and such imprisonment.
- (4) It is an offence to:
- (a) supply false or misleading information to an authorised person in respect of any matter pertaining to this by-law, or;

- (b) refuse to co-operate with the request of an air quality officer or authorised person made in terms of this by-law and any person convicted of such offence shall be liable to imprisonment not exceeding 30 days or a fine or both a fine and imprisonment.
- (5) Where no specific penalty is provided, any person committing an offence in terms of this by-law is liable on conviction to imprisonment for a period not exceeding 1 year or to a fine or to both imprisonment and a fine.
- (6) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.
- (7) Any person who commits continuing offences shall be guilty of a separate offence each day during which that person fails to comply with a notice, direction or instruction referred to in this by-law.

18. Enforcement

- (1) The Council may appoint so many authorised persons as it may consider necessary to be responsible for compliance and enforcement monitoring of this by-law.
- (2) The authorised persons shall take all lawful, necessary and practicable measures to enforce the provisions of this by-law.

19. Exemptions

- (1) Any person may, in writing, apply for exemption from the provisions of this by-law to the Council.
- (2) An application referred to in subsection (1) above must be accompanied by written reasons.
- (3) The Council may grant a provisional exemption in writing from one or all of the provisions of the by-law, provided that the Council:
 - (a) is satisfied that granting the exemption will not prejudice the objectives referred to in section 2; and
 - (b) grants any exemption subject to conditions that promote the attainment of the objectives referred to in section 2.
- (4) The Council must not grant an exemption under subsection (1) until it has satisfied itself has:

- (a) taken measures to ensure that all persons whose rights may be significantly
 - (b) detrimentally affected by the granting of the exemption, including but not limited to adjacent land owners or occupiers (including surrounding communities), are aware of the application for exemption and how to obtain a copy of it;
 - (b) provided such persons with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.
- (5) The Council may:
- (a) from time to time review any exemptions granted in terms of this section; and
 - (b) on good grounds withdraw any exemption.

20. State and Council Bound

This by-law is binding on the State and the Council except in so far as any criminal liability is concerned.

21. Short Title

This by-law is called the Air Quality Management By-Law, 2018

22. Commencement

- (1) This by-law will come into operation on a date or dates to be determined by the Council by publication in the *Provincial Gazette*.
- (2) Different dates may be determined in terms of subsection (1) above for different provisions of the by-law

SCHEDULES**Schedule 1****List of Substances and its Associated Local Emission Standards
(section 5(1))**

Victor Khanye Local Municipality will adopt the attached list of substances and associated standards as identified by the Nkangala District Municipality in its Air Quality Management by-law of 2015, promulgated on June 2016. This is provided for in the National Environmental Management: Air Quality Act (Act No 39 Of 2004), Section 11(1)(a)(b) and (11)(2)

Schedule 2**Application Form to Operate Small Boiler****Name of Enterprise:** _____

Declaration of accuracy of information provided:

I, _____, declare that the information provided in this application is in all respect factually true and correct.

Signed at _____ on this _____ day of _____

SIGNATURE_____
CAPACITY OF SIGNATORY

I, _____ owner/occupier of the land/property known as _____ (registered name) within the municipality's jurisdiction hereby apply for permission to operate a small boiler on the said property.

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail address	

2. Serial number, product name and model of the small boiler

Serial Number	Product Name	Product Model

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3. Raw materials used

Raw materials used	Maximum permitted consumption rate (volume)	Design consumption rate (volume)	Actual consumption rate (volume)	Units (quantity/period)

4. Energy used

Energy source	Sulphur content of fuel (%) (if applicable)	Ash content of fuel (%) (if applicable)	Maximum permitted consumption rate (volume)	Design consumption rate (volume)	Actual consumption rate (volume)	Units (quantity/period)

5. Point source parameters

Unique stack ID	Point source name	Height of release above ground	Height above nearby building [m]	Diameter at stack tip / vent exit [m]	Actual gas exit temperature	Actual gas volumetric flow	Actual gas exit velocity [m/s]

6. Point source emissions

Unique stack ID	Pollutant name	Average annual release rate			Emission hours [e.g. 07H00 – 17H00]	Type of emission [continuous/intermittent]

7. Signature

Signature of the Applicant

Date of Application

8. Office Use Only**8.1. Authorised Person: Site Inspection Observations**

8.2. Authorised Person: Recommendations

8.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Air Quality Officer Signature

Date:

Schedule 3**Application Form for Open Burning (Section 11(1))**

I, _____ owner / occupier of the land / property known as _____ (registered name) within the municipality's jurisdiction hereby apply for permission to burn the following materials on the said property.

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail address	

2. Description of the extent of the areas to be burned

3. Types of materials to be burned

(a)	
(b)	
(c)	
(d)	
(e)	

4. Reasons for burning materials

5. Air quality impacts in the local area

6. Approximate date and time to burn materials

Date	Time

7. Notification of adjacent owners and occupiers (including surrounding communities)

The applicant must attach proof that the adjacent owners and occupiers have been notified of the open burning, and their rights to lodge any written objections to the municipality.

8. Signature

Signature of the Applicant

Date of Application

9. Office Use Only**9.1. Authorised Person: Site Inspection Observations**

9.2. Authorised Person: Recommendations

9.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Air Quality Officer Signature

Date:

Schedule 4**Application Form to Undertake Pesticide Spraying (Section 15(2)(a))**

I, _____ owner(s) / occupier(s) of
the land / properties known as _____ (registered name) within
the municipality's jurisdiction hereby apply for permission to spray pesticides on the said property.

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail address	

2. Description of the extent of the proposed treated area(s)

3. Types of product label to be used

(a)	
(b)	
(c)	
(d)	
(e)	

4. Air quality impacts in the local area

5. Dates or months for pesticide spraying

Dates or Months	

6. Notification of adjacent owners and occupiers (including surrounding communities)

The applicant must attach proof that the adjacent owners and occupiers have been notified of the proposed pesticide spraying, and their rights to lodge any objections to the municipality. The notification must clearly specify (a) the extent of the proposed treatment area; (b) reasons for pesticide use; (c) the active ingredient; (d) dates or months for pesticide spraying; (e) time, if any, indicated on the product label specifying when the area can safely be re-entered after application; (f) adjacent owners and occupiers' right to lodge written objections within 14 days to the municipality.

7. Signature

Signature of the Applicant

Date of Application

8. Office Use Only**8.1. Authorised Person: Site Inspection Observations**

8.2. Authorised Person: Recommendations

8.3. Approved / Not Approved (Complete whichever is applicable)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Air Quality Officer Signature

Date:

Schedule 5

Spray Booth Construction (Section 16(4))

Construction

Such activities must be conducted in a spray booth or spray cabinet specifically designed for the purpose. It must be constructed of none-combustible material.

Ventilation

Spray Booth

Every spray booth shall be provided with a mechanical ventilation system which must be capable of moving the air in the occupied zone at not less than:-

0,5 m/ s where the air is horizontally supplied and extracted.

0,4 m/s where the air is introduced through the roof and extracted through slots along the edge of the walls at floor level.

0,3 m/s where the air is supplied through the roof and extracted through a grill over the whole of the floor area.

Spray Cabinets

Where spray cabinets are used (i.e. where the operator stands in front and sprays through an opening into a cabinet), the following minimum air flow must be maintained through an opening.

1 m/s for opening up to 0,9m²

0,75 m/s for opening between 0,9 and 1,8m²

0,5m/s for opening exceeding 1,8m²

Lighting

A spray booth must be fitted with a non-operable inspection window of strengthen and shatterproof of glass. Every employer shall ensure that his spray booth is lighted in accordance with the illuminance values as specified below. (Only incandescent electric lights which are enclosed in outer flame and vapour- proof fittings may be installed).

Types of Activity**Illuminance
(LUX)**

- | | |
|---|-----|
| • Rubbing, dipping, ordinary painting | 200 |
| • Fine painting, spraying and finishing | 300 |
| • Retouching and matching | 500 |

Fume Extraction System

All extraction systems must be designed and commissioned by competent engineers to ensure that the total extraction from any room is balanced by adequate ingress of fresh air into works room.

All ducts and enclosures in connection with the extraction system through which the fumes have to pass must be constructed of non combustible materials with the interior having a smooth surface.

The fume extraction system must be kept in full operation while spraying done and for any additional time required to clear the fumes from the room.

The blades of any fan used in the spray booth or spray cabinet shall be of non-ferrous metal. Suitable filters must be provided at the point of extraction.

The point of discharge must be positioned so as to ensure that such air does not contaminate any air which is likely to be drawn into ventilate any existing building.

Personal Protection Equipment

Manager shall ensure that workers actively involved in spraying operations are provided with approved respirators or breathing apparatus. When paints containing isocyanate are used a positive pressure air fed face mask should be worn. Chemical absorption canisters should not be relied on because of their limited effective life.

General

In addition to the above, it is also necessary to comply with the requirements as laid down by the Chief Fire Officer.

PROVINCIAL NOTICE 156 OF 2019

**MPUMALANGA DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS****PUBLICATION OF MUNICIPAL BY- LAWS FOR LOCAL MUNICIPALITIES IN TERMS OF THE
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT (ACT NO. 32 OF 2000)**

I, Mandla Jeffrey Msibi, in my capacity as Member of the Executive Council responsible for Co-operative Governance and Traditional Affairs, in the Mpumalanga Province, hereby publish municipal by-laws for Mkhondo, Chief Albert Luthuli and Victor Khanye local municipalities, in terms of Section 13 (a) and (b) of the Local Government: Municipal Systems Act (Act No. 32 of 2000)

The municipal by-laws are concerning the following matters per local municipality, namely:

Mkhondo Local Municipality

1. Municipal Management and Control of Informal Settlements
2. Fire Brigade Services

Chief Albert Luthuli Local Municipality

1. Prevention and Suppression of Nuisance

Victor Khanye Local Municipality

1. Air Quality

Given under my hand at Mbombela, on 2/12/ 2019


_____**MR M J MSIBI (MPL)****MEC: DEPARTMENT OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**