

Namibia

Atmospheric Pollution Prevention Ordinance, 1976

Ordinance 11 of 1976

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Atmospheric Pollution Prevention Ordinance, 1976

Ordinance 11 of 1976

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ORDINANCE

To provide for the prevention of the pollution of the atmosphere, and for matters incidental thereto.

(Afrikaans text signed by the Administrator)

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Assembly by message from the Administrator, as follows:-

1. Definitions

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

“**Administration**” means the Administration of the Territory;

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

“**controlled area**” means any area which has under section 4 been declared to be a controlled area;

“**dark smoke**” means smoke which, if compared in the prescribed manner with a chart of the kind shown in Schedule 1, appears to be of a shade not lighter than shade 2 on that chart;

“**Director**” means the Director of Health Services of the Administration, and, where applicable, includes any person who, in terms or any authority granted to him under section 2(2) or (3) -

[The word “or” in the phrase “in terms or any authority” should be “of”.]

- (a) assists the Director in the exercise of his powers and the performance of his duties and functions; or
- (b) exercises or performs any power, duty or function of the Director;

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

“**dwelling-house**” means any building or other structure -

- (a) intended for use as a dwelling for a single family, whether it is used as such or not; or
- (b) used as a dwelling for a single family, whether it is intended for use as such or not, and any outbuildings appurtenant thereto;

“**Executive Committee**” means the Administrator-in-Executive-Committee referred to in section 6 of the South West Africa Constitution Act, 1968 (Act [39 of 1968](#));

[The South-West Africa Constitution Act [39 of 1968](#) was repealed by Article 147 of the Namibian Constitution.]

“**explosives factory**” means an explosives factory within the meaning of section 1 of the Explosives Act, 1956 (Act [26 of 1956](#));

“**fixed date**”, in relation to any area in respect of which a declaration has been made under section 10(1), means the date contemplated in that section, but in relation to any area which has under section 16(1) been declared a smoke control zone, means the date determined in terms of section 16(7);

“**fuel burning appliance**” means any furnace, boiler or other appliance designed to burn or capable of burning fuel, or used to dispose of any material by burning, or to subject fuel to any process whereby the application of heat is involved;

“**inspector**” means an inspector appointed under section 2, and, where applicable, includes any person who, in terms of any authority granted to him under subsection (2) or (3) of that section, exercises or performs any power, duty or function of an inspector;

“**local authority**” means a municipality or village management board or the Peri-Urban Development Board established under section 2 of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

[The Peri-Urban Development Board Ordinance [19 of 1970](#) was repealed by the Local Authorities Act [23 of 1992](#).]

“**mine**” means a mine within the meaning of section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968);

[The Mines, Works and Minerals Ordinance [20 of 1968](#) was repealed by the Minerals (Prospecting and Mining) Act [33 of 1992](#).]

“**noxious**” or offensive gas” means any of the following groups of compounds when in the form of gas, namely, hydrocarbons; alcohols; aldehydes; ketones; ethers; esters; phenols; organic acids and their derivatives; halogens; organic nitrogen, sulphur and halogens; organic nitrogen, sulphur and halogen compounds; cyanides; cyanogens; ammonia and its compounds; inorganic acids; fumes containing antimony, arsenic, beryllium, chromium, cobalt, uranium, radon, cadmium, copper, lead, manganese, mercury, vanadium or zinc, or their derivatives; cement works fumes and odours from purification plants, glue factories, cement works and meat, fish or whale processing factories; fumes containing iron, nickel, aluminium, magnesium, molybdenum, titanium, tungsten, selenium,

potassium, sodium, silicon and calcium; phosphorous and its compounds; carbon monoxide, acetylene and benzene; amines; pyridine and its derivatives; polycyclic hydrocarbons; smoke, grit and dust; and any other gas, fumes or particulate matter which the Executive Committee may declare to be a noxious or offensive gas for the purpose of this Ordinance, which declaration shall be promulgated by notice in the Official Gazette; and includes dust from asbestos treatment or mining in any controlled area which has not been declared a dust control area in terms of section 23;

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

“**premises**” means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in such building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which is operated or is present within the area of an urban local authority or the precincts of any harbour;

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

“**provisional registration certificate**” means a provisional registration certificate issued under section 6(2)(b)(i) or (3);

“**registration certificate**” means a registration certificate issued under section 6(2)(a)(i) or (3) or section 7(3);

“**scheduled process**” means any works or process specified in Schedule 2;

“**Secretary**” means the Secretary for South West Africa;

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

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

“**Territory**” means the Territory of South West Africa;

“**Territory Revenue Fund**” means the Territory Revenue Fund referred to in section 31 of the South West Africa Constitution Act, 1968 (Act [39 of 1968](#));

[The South-West Africa Constitution Act [39 of 1968](#) was repealed by Article 147 of the Namibian Constitution.]

“**this Ordinance**” includes any regulation made thereunder;

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

“**urban local authority**” means any local authority specified in Schedule 3;

“**works**” means works within the meaning of section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968).

[The Mines, Works and Minerals Ordinance 20 of 1968 was repealed by the Minerals (Prospecting and Mining) Act [33 of 1992](#).]

- (2) (a) The Executive Committee may -
- (i) amend Schedule 2 by including therein or excluding therefrom any process or works, or in any other manner as it may deem fit;
 - (ii) amend Schedule 3 by including therein or excluding therefrom the name of any local authority.
- (b) Any such amendment of Schedule 2 or 3 shall be promulgated by notice in the Official Gazette.

Part I – Appointment and powers of officers

2. Appointment of inspectors and other persons

- (1) (a) The Executive Committee may, having regard to the provisions of the Public Service Act, 1957 (Act [54 of 1957](#)), and the Administration Employees Ordinance, 1957 (Ordinance 17 of 1957), appoint the persons whom it may deem necessary and suitable to be inspectors in terms of this Ordinance.
- [The “Administration of South West Africa” and the “Secretary for South West Africa” were removed from the coverage of the Public Service Act [54 of 1957](#) by RSA Proc. R 112/1980 (RSA GG 7097). The public service in South West Africa was then governed by the Government Service Act [2 of 1980](#) (OG 4116), which was re-named the Public Service Act [2 of 1980](#) and replaced by the Public Service Act [13 of 1995](#). The Administration Employees Ordinance 17 of 1957 (OG 2087), which covered only certain categories of employees, was apparently repealed by Ord. 6/1982 (Whites) (Official Gazette 20 of the Representative Authority of the Whites, dated 1 July 1982); this Gazette has not been located in any of Namibia’s libraries.]**
- (b) Every inspector shall be furnished with a certificate signed by the Director, which shall state that he has been appointed to act as an inspector in terms of this Ordinance.
- (2) (a) The Secretary may on the recommendation of the Director authorise a person, subject to the directions of the Director, to -
- (i) assist the Director in the exercise of his power and the performance of his duties and functions;
- (ii) exercise or perform all powers, duties and functions of the Director or an inspector in terms of this Ordinance, or so much thereof as the Secretary may, on the recommendation of the Director, determine.
- (b) Any person so authorised shall be furnished with a certificate signed by the Director, in which the powers, duties and functions which such person may exercise and perform shall be set out.
- (3) (a) The Director may with the approval of the Executive Committee and the urban local authority concerned, authorise any competent person in the service of an urban local authority to exercise and perform in the area of jurisdiction of that urban local authority, and subject to the directions of the Director, such of the powers, duties and functions of the Director or an inspector as the Director may determine.
- (b) Any person so authorised shall be furnished with a certificate, signed by the Director in which the powers, duties and functions which such person may exercise and perform and the area in respect of which such powers, duties and functions may be so exercised and performed shall be set out.

3. Powers of Director and inspectors

- (1) The Director and an inspector shall, subject to the conditions which the Executive Committee may in its discretion impose, exercise the powers and perform the duties and functions assigned to the Director or an inspector, as the case may be, by this Ordinance.
- (2) The Director or any inspector may in the exercise of his powers or the performance of his duties or functions in terms of Part II or in terms of any regulation made under section 35 or 40 and

subject to the production, in the case of an inspector, to the person in charge of the premises, of the certificate furnished to him under section 2(1)(b) -

- (a) without previous notice at any time enter any premises where a scheduled process is or is suspected to be carried on, and examine any process in which any noxious or offensive gas is used or produced and any apparatus for condensing or otherwise preventing the discharge into the atmosphere of any such gas or for rendering it harmless or inoffensive when discharged;
 - (b) require from the person in charge of any premises where a scheduled process is carried on, the production of the registration certificate or provisional registration certificate issued in respect of such premises;
 - (c) apply such tests and take such samples and make such enquiries and investigations as appear to him to be necessary for the due performance of his functions in terms of this Ordinance.
- (3) Any person who -
- (a) falsely holds himself out to be the Director or an inspector; or
 - (b) refuses or fails to answer to the best of his ability any question lawfully put to him by the Director or an inspector in the exercise of his powers or the performance of his duties or functions in terms of this section; or
 - (c) refuses or fails to comply to the best of his ability with any lawful requirement of the Director or an inspector in the exercise of such powers or the performance of such duties or functions; or
 - (d) hinders or obstructs the Director or an inspector in the exercise of such powers or the performance of such duties or functions, shall be guilty of an offence.
- (4) Whenever the Director or an inspector or an urban local authority or any person in the service of an urban local authority is alleged to have caused damage to any person or to have damaged any property or in any other manner to have detrimentally affected the rights of any person, whether in respect of property or otherwise, in the exercise of any power or the performance of any duty or function in terms of this Ordinance, it shall be a defence in any legal proceedings founded on such allegation and brought against the Administration, the Director or any such inspector or urban local authority or person that the Director or such inspector, urban local authority or person has used the best known or the only or most practicable available methods and has not acted in a negligent manner in the exercise or performance of the power, duty or function aforesaid, and a certificate signed by the Secretary to the effect that, having regard to all the circumstances, the defendant or respondent has used the best known or the only or the most practicable available methods, shall be accepted by the court as prima facie proof of that fact.

Part II – Control of noxious or offensive gases

4. Controlled areas

- (1) The Executive Committee may -
 - (a) declare any area to be a controlled area for the purposes of this Ordinance;
 - (b) include any area in or exclude any area from a controlled area.
- (2) Any such -
 - (a) declaration of an area to be a controlled area;

- (b) inclusion of an area in or exclusion of an area from a controlled area shall be promulgated by notice in the Official Gazette.

[There is no punctuation mark at the end of paragraph (b).]

5. Premises on which scheduled process carried on to be registered

- (1) Save as provided in section 7(4) no person shall within a controlled area -
- (a) carry on a scheduled process in or on any premises, unless -
 - (i) he is the holder of a current registration certificate authorising him to carry on that process in or on those premises; or
 - (ii) in the case of a person who was carrying on that process in or on any premises immediately prior to the date of publication of the notice by which the fact that the area concerned is a controlled area is promulgated, he has within three months after that date applied for the issue to him of a registration certificate authorising the carrying on of that process in or on those premises, and his application has been granted or a notice in terms of section 6(2)(a)(ii) has been issued in pursuance thereof and is still in force; or
 - (b) erect or cause to be erected any building or plant, or alter or extend or cause to be altered or extended any existing building or plant, which is intended to be used for the purpose of carrying on any scheduled process in or on any premises, unless he is the holder of a provisional registration certificate authorising the erection, alteration or extension of that building or plant for the said purpose; or
 - (c) alter or extend or cause to be altered or extended any existing building or plant in respect of which a current registration certificate has been issued unless he has, before taking any steps to bring about the proposed alteration or extension, applied to the Director for a provisional registration certificate in respect of the proposed alteration or extension, and his application had been granted or a notice in terms of section 6(2)(b)(ii) had been issued in pursuance thereof and is still in force or unless such alteration or extension is not likely to cause or increase the escape into the atmosphere of noxious or offensive gases produced by the scheduled process in question.
- (2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence.

6. Application for and issue of registration certificates and provisional registration certificates

- (1) An application for a registration certificate or a provisional registration certificate in terms of section 5 shall be lodged with the Director in the prescribed form and shall be accompanied by the prescribed information.
- (2) The Director shall after consideration of any such application -
- (a) in the case of an application in terms of section 5(1)(a)(ii) -
 - (i) if he is satisfied that the best practicable means are being adopted for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases produced or likely to be produced by the scheduled process concerned, grant the application and issue to the applicant a registration certificate in the prescribed form; or
 - (ii) if he is not so satisfied, by notice in writing require the applicant to take the necessary steps within a period specified in the notice for preventing or reducing to a minimum

the escape into the atmosphere of noxious or offensive gases produced or likely to be produced by the said scheduled process;

[The word “escape” is misspelt in the Official Gazette, as reproduced above.]

- (b) in the case of an application in terms of section 5(1)(b) or (c), and subject to the provisions of subsection (4) -
 - (i) if he is satisfied in regard to the matters referred to in paragraph (a)(i) of this subsection, grant the application and issue to the applicant a provisional registration certificate in the prescribed form; or
 - (ii) if he is not so satisfied, by notice in writing require the applicant to take the necessary steps of the nature contemplated in paragraph (a)(ii) within a period specified in the notice, in order that he may be so satisfied.
- (3) An applicant who has complied with the requirements of any notice in terms of subsection 2(a) (ii) or (b) (ii) within the period specified in that notice, or within such further period as the Director may allow, shall be entitled to the issue to him of a registration certificate, or, subject to the provisions of subsection (4), to the issue to him of a provisional registration certificate, as the case may be.
- (4) No provisional registration certificate shall be issued in terms of this section, unless the Director is satisfied that the carrying on of the scheduled process concerned may reasonably be permitted in the locality concerned, having regard to the nature of that process, the character of the locality concerned, the purposes for which other premises in that locality are used and any other considerations which in his opinion have a bearing on the matter, and that the carrying on of that process in or on the premises concerned would not be in conflict with any town planning scheme which is in operation in that locality or is in the course of preparation in respect thereof.
- (5) In the case of an application in terms of section 5(1)(b) the Director shall consult the urban local authority, if any, in whose area of jurisdiction the proposed scheduled process will be in operation and any urban local authority in whose area of jurisdiction there are residents who may in the opinion of the Director be affected by the carrying on of the scheduled process to which the application relates, and the opinion and recommendation of such urban local authority or authorities shall be recorded and considered by the Director.

7. Period of validity and conditions of provisional registration certificate

- (1) A provisional registration certificate shall, subject to the provisions of subsection (3), be valid for such period as may be determined by the Director and specified in that certificate, and the Director may, if he is satisfied that good reasons exist for doing so, from time to time extend the period of validity of any such certificate.
- (2) Every provisional registration certificate shall specify -
 - (a) the situation and extent of the proposed building or plant or alteration or extension to which the certificate relates;
 - (b) the nature of the scheduled process intended to be carried on;
 - (c) the raw materials intended to be used, the nature of the operations intended to be carried out and the products intended to be produced;
 - (d) the appliances intended to be installed and any other proposed measures for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases likely to be produced by the operations intended to be carried out; and
 - (e) the proposed measures for the purification of the effluents discharged from appliances installed for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases from the processes that will be in operation, and for preventing the release

of noxious or offensive constituents from such effluents when they come into contact with other effluents in drains or drainage canals.

- (3) If any building or plant in respect of which a provisional registration certificate has been issued, is, within the period specified in subsection (1), or within such further period as the Director may allow, completed, altered or extended to the satisfaction of the Director in accordance with the particulars specified in that certificate, the Director shall, on application by the holder of that certificate, issue to him a registration certificate in the prescribed form authorising the carrying on of the scheduled process to which that provisional registration certificate relates in or on the premises in respect of which that provisional registration certificate was issued, and thereupon such provisional registration certificate shall lapse.
- (4) The holder of a provisional registration certificate may carry on in or on the premises to which that certificate relates any process specified in that certificate, and the provisions of section 8 shall mutatis mutandis apply with reference to the carrying on of that process in or on such premises.

8. Conditions of registration certificate

- (1) A registration certificate shall be subject to the condition that all plant and apparatus used for the purpose of carrying on the scheduled process concerned and all appliances for preventing or reducing to a minimum the escape into the atmosphere of noxious or offensive gases, shall at all times be properly maintained and operated and that the holder of the certificate shall ensure that all other necessary measures are taken to prevent the escape into the atmosphere of noxious or offensive gases: Provided that in applying the provisions of this subsection due allowance shall be made for the unavoidable escape into the atmosphere of noxious or offensive gases when any plant or apparatus in respect of which the registration certificate was issued is being started up or during any period of any breakdown or shutting down or disturbance of such plant or apparatus.
- (2) The Director may at any time by notice in writing require the holder of any such certificate to take steps to ensure the more effective operation of the apparatus provided for in such certificate for the prevention of the escape into the atmosphere of the noxious or offensive gases produced by the scheduled process to which the certificate relates.
- (3)
 - (a) The Director may at any time by notice in writing require the holder of any such certificate to take such steps as may be reasonable, having regard to the cost involved, to ensure the more effective prevention of the escape into the atmosphere of noxious or offensive gases, produced by the scheduled process to which the certificate relates, by means of some other or improved process or equipment specified in such notice.
 - (b) Any such holder shall be allowed a reasonable period within which to take the steps specified in the relevant notice.
- (4) If the holder of a registration certificate fails to comply with the conditions referred to in subsection (1) or any requirement in terms of subsection (2) or (3), the Director may by notice in writing call upon such holder to comply with such conditions or requirements within a reasonable period specified in the notice and if such holder fails to comply with the said conditions or requirements within the period so specified, the Director may cancel the registration certificate or suspend the operation thereof for such period as he may deem fit.

9. Objections to decisions of Director

- (1)
 - (a)
 - (i) Any person who feels aggrieved by a decision of the Director, whereby an application for a registration certificate or a provisional registration certificate is refused or a registration certificate or provisional registration certificate is cancelled or suspended or a requirement under section 8(2) or (3) is imposed, may, within thirty days after the date on which such decision was given, lodge an objection to it with the Executive Committee in writing.
 - (ii) Any person who so objects may, pending a decision in terms of this section in regard to such objection continue to carry on the scheduled process to which such objection

relates, if such scheduled process was carried on prior to the decision of the Director which is the subject of the objection and if the Director has been satisfied that the escape into the atmosphere of gases produced by the said process is not or is not likely to give rise to a danger to the health of man, and has granted permission that such process may be carried on.

- (b) If a provisional registration certificate referred to in section 5(1)(b) is granted notwithstanding any objection by an urban local authority referred to in section 6(5), such urban local authority may, within thirty days after the date on which such decision was given, lodge an objection to it with the Executive Committee in writing.
- (2) Any person who lodges an objection in terms of subsection (1)(a)(i) or (b), shall submit with his objection written arguments or explanations of the grounds of his objection.
- (3) Upon receipt of an objection in terms of subsection (1) the Executive Committee shall refer such objection and the written arguments and explanations referred to in subsection (2) to the person against whose decision the objection was lodged for his comments, if any, which shall be submitted to the Executive Committee within thirty days after the date on which the objection was referred to him.
- (4)
 - (a) Upon receipt of the comments referred to in subsection (3) or the expiry of the period of thirty days referred to in the said subsection, whichever may happen first, the Executive Committee shall refer the objection and all the documents relating to it to a commission of enquiry, who shall enquire into the objection as soon as possible thereafter.
 - (b) A commission of enquiry referred to in paragraph (a) shall consist of five members appointed by the Executive Committee, of whom -
 - (i) one, who shall also be the chairman, shall be -
 - (aa) a judge or retired judge; or
 - (bb) an advocate having at least five years practical experience in his profession; or
 - (cc) a magistrate or retired magistrate having reached the rank of at least senior magistrate; and
 - (ii) four shall be persons who in the opinion of the Executive Committee have expert knowledge of any matter to which the objection relates, of whom the Executive Committee shall appoint -
 - (aa) two in its discretion;
 - (bb) one on the recommendation of the person against whose decision the objection was lodged;
 - (cc) one on the recommendation of the person who lodged the objection.
 - (c) At the enquiry into the objection the person who lodged the objection and the person against whose decision the objection was lodged may appear before the commission of enquiry in person or through a representative (who shall be an attorney or an advocate) and tender evidence or cause evidence to be tendered to the commission of enquiry in elaboration of the written arguments or explanations of the grounds of his objection or of his comments, as the case may be, may cross-examine witnesses called to give evidence for the other party and may submit such arguments and explanations in regard to the objection as he may deem necessary or desirable.
- (5) After having enquired into the objection and having considered all arguments, explanations, comments and evidence in regard to the objection submitted and tendered to it, the commission of enquiry shall forthwith prepare a report thereon and shall submit such report, which shall also contain the commission of enquiry's recommendation to the Executive Committee and any remarks which the commission of enquiry may desire to make and any explanations which the commission of enquiry may desire to furnish in regard to its recommendation or anything else relating to the

objection or the enquiry, to the Executive Committee, which will be competent to make such order in regard to the objection as it may deem fit, and the decision of which shall be final.

Part III – Atmospheric pollution by smoke

10. Application of this Part

- (1) (a) The provisions of this Part shall apply only in areas in which the Executive Committee has declared them to be applicable, and with effect from such date as the Executive Committee may in the case of any such area determine.
- (b) Any declaration made and date determined under paragraph (a) shall be promulgated by notice in the Official Gazette.
- (2) Any such notice and the determination of any such date shall, save as provided in subsection (6) be made in respect of any area or part of an area under the jurisdiction of an urban local authority only after consultation with that urban local authority.
- (3) Subject to the provisions of subsections (4) and (6) the powers conferred upon urban local authorities by this Part shall in respect of any area under the jurisdiction of an urban local authority which is the subject of a declaration under subsection (1), be exercised by that urban local authority, unless the Executive Committee has after consultation with the said urban local authority, directed that the said powers shall be exercised by the Director, and such direction had been promulgated by notice in the Official Gazette.
- (4) (a) The Executive Committee may at the request of an urban local authority direct that the powers which may in terms of subsection (3) be exercised by that urban local authority, shall be exercised by the Director, and may in that event recover from that urban local authority such costs incurred by the Director in the exercise of the said powers as may be determined by agreement between the Executive Committee and such urban local authority.
- (4) Any direction under paragraph (a) shall be promulgated by notice in the Official Gazette.

[The paragraph above is incorrectly labelled in the Official Gazette; it should be paragraph (b) of subsection (4).]

- (5) (a) Where any declaration under subsection (1) is made in respect of any area which is not under the jurisdiction of an urban local authority, the Executive Committee may together with that declaration or at any time thereafter -
 - (i) direct that the powers conferred upon urban local authorities by this Part be exercised in respect of such area by the Director; or
 - (ii) if such area adjoins the area of jurisdiction of an urban local authority, authorise that urban local authority to exercise the said powers in respect of such area.
- (b) Any direction or authorisation under paragraph (a) shall be promulgated by notice in the Official Gazette.
- (6) If the Executive Committee is satisfied that smoke emanating from premises is causing a nuisance the Executive Committee may -
 - (a) if the premises from which the smoke emanates are situated within an area in which the provisions of this Part have under subsection (1) been declared to be applicable and within the area of jurisdiction of an urban local authority, and in the opinion of the Executive Committee, that the urban local authority has not taken or is not taking reasonable steps with a view to preventing the continuation of the nuisance, direct that the powers conferred upon urban local authorities by this Part shall in respect of the said area be exercised wholly, or to the extent determined by it, by the Director, which direction shall, together with the extent so determined, be promulgated by notice in the Official Gazette;

- (b) if the said premises are not situated within an area in which the said provisions have so been declared to be applicable, declare the provisions of this Part to be applicable in such area as it may consider necessary to permit of effective action being taken in accordance with the said provisions in order to prevent the continuation of the nuisance, which declaration shall be promulgated by notice in the Official Gazette;
 - (c) together with any declaration under paragraph (b) or at any time thereafter direct that the powers conferred upon urban local authorities by this Part shall in respect of the area which is the subject of such declaration, be exercised wholly, or to the extent determined by it, by the Director, which direction shall, together with the extent so determined, be promulgated by notice in the Official Gazette;
 - (d) where any powers are in terms of a direction under this subsection exercised by the Director in the area of jurisdiction of an urban local authority, recover the costs incurred in connection with the exercise of such powers from such urban local authority.
- (7) The Executive Committee may at any time withdraw or amend any direction, determination or declaration made under subsection (6), which withdrawal or amendment shall be promulgated by notice in the Official Gazette.
- (8) The Executive Committee may at any time -
- (a) withdraw any declaration under subsection (1) or include any area within the area to which that notice relates or exclude therefrom any area which is included therein, which withdrawal, inclusion or exclusion shall be promulgated by notice in the Official Gazette;
 - (b) withdraw any direction or authorisation under subsection (3), (4) or (5) and issue any other direction or authorisation under subsection (5) in respect of the area or any part of the area to which any direction or authorisation under that subsection relates, which other direction or authorisation shall be promulgated by notice in the Official Gazette: Provided that no direction or authorisation under subsection (3), (4) or (5)(a)(ii) shall be withdrawn except after consultation with the urban local authority concerned.
- (9) Any reference in this Part to an urban local authority shall -
- (a) in relation to any area in respect of which any powers are in terms of a direction under subsection (3), (4) or (5)(a)(i) required to be exercised by the Director, be construed as a reference to the Director; and
 - (b) in relation to an area in respect of which an urban local authority has under subsection (5)(a)(ii) been authorised to exercise the powers conferred upon urban local authorities by this Part, be construed as a reference to that urban local authority.
- (10) Whenever any direction or authorisation issued under this section has the effect of vesting -
- (a) in the Director any powers which prior to the date on which the direction or authorisation came into operation were vested in an urban local authority; or
 - (b) in an urban local authority any powers which prior to that date were vested in the Director, any order duly issued or other action duly taken prior to that date by the authority which was then competent to issue such order or take such action shall be deemed to have been duly issued or taken by the authority which has become competent to issue such order or to take such action in terms of the direction or authorisation.

11. Installation of fuel burning appliances

- (1) No person shall install or cause or permit to be installed in or on any premises -
- (a) any fuel burning appliance, unless such appliance is so far as is reasonably practicable, capable of operating continuously without emitting dark smoke or smoke of a colour darker than may be prescribed by regulation: Provided that in applying the provisions of this

paragraph due allowance shall be made for the unavoidable emission of dark smoke or smoke of a colour darker than may be so prescribed during the starting up of the said appliance or during the period of any breakdown or disturbance of such appliance; or

[The word “sofar” should be either the word
“insofar”, or else written as two words (“so far”).]

- (b) any fuel burning appliance designed -
 - (i) to burn pulverised solid fuel; or
 - (ii) to burn solid fuel in any form at a rate of one hundred kilograms or more per hour; or
 - (iii) to subject solid fuel to any process involving the application of heat,
 unless such appliance is provided with effective appliances for arresting grit and dust to the satisfaction of the urban local authority or the Director, as the case may be.
- (2) No person shall install any fuel burning appliance in respect of which subsection (1) applies, in or on any premises unless prior notice in writing has been given to the urban local authority or the Director, as the case may be, of the proposed installation of such appliance.
- (3) The provisions of subsections (1) and (2) shall not apply -
 - (a) in respect of the installation of any fuel burning appliance in any dwelling-house; or
 - (b) in respect of any fuel burning appliance if the installation thereof was commenced or any agreement for the acquisition thereof was entered into prior to the fixed date.
- (4) In this section and in sections 12 and 14 -
 - (a) “appliance” means any one stoker or any one burner on which there may be more than one stoker, but does not include a single chimney through which the products of several burners or furnaces may be discharged; and
 - (b) “stoker” means any mechanism or other means intended for feeding fuel into any place for the purpose of burning it in such place; and
 - (c) “burner” means any furnace, combustion chamber, grate or other place into which fuel is fed by one or more stokers or manually for the purpose of burning such fuel in such furnace, combustion chamber, grate or other place.
- (5) A fuel burning appliance which has been installed in accordance with plans and specifications approved by the urban local authority concerned, shall not for the purposes of subsection (1) be deemed to have been installed in contravention of the provisions of that subsection, but nothing in this subsection shall be construed as precluding any action under section 13 or 15 in respect of any such fuel burning appliance.
- (6) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence.

12. Position of fuel burning appliances and construction of chimneys

- (1) No urban local authority shall approve of any plan which provides for the construction of any chimney or other opening for carrying smoke, gases, vapours, fumes, grit, dust or other final escapes from any building or for the installation of any fuel burning appliance, unless it is satisfied -
 - (a) in the case of any such chimney or other opening, that the height thereof will as far as practicable be sufficient to prevent smoke or any other product of combustion from becoming injurious to health or a nuisance to occupiers of premises in the surrounding areas; or
 - (b) in the case of any such fuel burning appliance, that it is installed in a suitable place in relation to other premises in the surrounding areas.

- (2) For the purposes of subsection (1)(a), an urban local authority may have regard to -
 - (a) the purpose for which any chimney or other opening concerned is intended;
 - (b) the provisions contained in any approved draft town planning scheme or other requirement having the force of law relating to the use of land where any chimney is to be constructed;
 - (c) the position and nature of other buildings in the surrounding areas;
 - (d) the levels of land in the surrounding areas; and
 - (e) any other matter which in the opinion of the local authority should be considered.

13. Procedure where smoke or other products of combustion cause nuisance

- (1) If as a result of representations made to it by any occupier of premises (hereinafter referred to as the affected premises), an urban local authority is satisfied that smoke or any other product of combustion emanating from any premises is a nuisance to the occupier of the affected premises, that urban local authority shall cause to be served on the person responsible for such nuisance a notice calling upon him to abate the nuisance within a period determined by the urban local authority after consultation with the Director and specified in the notice and to take all such steps as may be necessary to prevent a recurrence of the nuisance.
- (2) For the purposes of subsection (1) smoke which is injurious to health or which adversely affects the reasonable comfort of the occupier or occupiers of adjoining or nearby premises or which affects the use of such premises for the purposes for which they are normally permitted to be used, shall be deemed to be a nuisance and the person responsible for any nuisance referred to in that subsection shall be -
 - (a) if the nuisance is due to defects in any building erected or adapted by the owner, or any previous owner, of the premises concerned for the carrying on of the activities giving rise to the nuisance, or to any plant or appliance installed by the owner or any such previous owner or for the maintenance of which the owner is responsible, the owner of such premises; and
 - (b) in any other case, the occupier of such premises.
- (3) A notice in terms of subsection (1) may be served -
 - (a) upon the owner of any premises, by delivering it to him or his representative or transmitting it by post under registered cover to him or his representative at his last known address or the last known address of such representative, as the case may be;
 - (b) upon the occupier of the premises, by delivering it to such occupier or his representative or transmitting it by post under registered cover to such occupier at his last known address.
- (4) Any person who fails to comply with any notice in terms of subsection (1) shall be guilty of an offence, and the court convicting any person of any such offence, shall, apart from any penalty which may be imposed in respect of that offence, order the person convicted within a period determined by the court to take such steps as may be necessary to prevent a recurrence of the nuisance.
- (5) Where it is necessary in order to comply with any notice in terms of subsection (1) for the person upon whom such notice is served to carry out any works or install any appliances, he may apply to any court having jurisdiction for an order directing the owner of the affected premises to contribute towards the cost of carrying out such works or installing such appliances.
- (6) On application under subsection (5) the court may, if, with due observance of any regulations made in that connection under section 40(1)(e), it is satisfied that the relevant building on the affected premises was erected after the process from which the smoke or other products giving rise to the nuisance emanates, was put into operation and that it is equitable to order the owner of the affected premises to pay or contribute to the cost of carrying out the work or installing the appliances concerned, order such owner to pay such cost or contribute such share as it may

determine towards such cost, as the court may in the circumstances consider equitable, but not exceeding the amount by which the value of the affected premises will be enhanced in consequence of the removal of the nuisance.

- (7) If within a period determined by the court which convicted any person of an offence in terms of subsection (4), steps have not been taken to the satisfaction of the urban local authority concerned with a view to the abatement of the nuisance which gave rise to the conviction, the urban local authority may itself execute such works, or cause them to be executed, and install such appliances, or cause them to be installed, and take such other steps, or cause them to be taken, as it may consider necessary to abate such nuisance and recover the cost thereby incurred from the person convicted; Provided that if any person has under subsection (6) been ordered to pay, or contribute towards the cost involved in abating the nuisance, the urban local authority may in its discretion recover from that person so much of the amount, if any, which that person is in terms of the order required to pay, as remains unpaid, and such person shall in that event be discharged from liability in terms of the order to the extent of the amount so recovered.

14. Smoke control regulations

- (1) An urban local authority may make regulations -
- (a) prohibiting the emission or emanation from any premises of smoke which is of a darker colour or greater density or content than is specified in such regulations after the appliance or appliances from which such smoke emanates have been started but excluding specified periods during which a furnace is being overhauled or the period of any breakdown or disturbance of such appliance;
 - (b) prohibiting the installation in any premises or the alteration or extension of any fuel burning appliance which does not comply with such requirements as may be specified in such regulations or determined by a person authorised thereto by or in accordance with such regulations or otherwise than in accordance with and subject to such conditions as may be so specified or determined;
 - (c) requiring or authorising the removal of any fuel burning appliance which has been installed, extended or altered or is being used in contravention of any such regulation or otherwise than in accordance with any condition imposed by or under any such regulation;
 - (d) prohibiting the use or sale for use of any fuel, or the use in any dwelling-house of any fuel burning appliance which does not comply with such requirements as may be specified in the regulations or determined by a person authorised thereto by or in accordance with such regulations, except in such cases and on such conditions as may be so specified or determined;
 - (e) prescribing the records to be kept and the returns to be rendered to the urban local authority by any person who has in his possession or under his control any fuel burning appliance, as to the quantity, nature and type of fuel consumed by such appliance, and the form in which such records shall be kept and the form in which and the times at which such returns shall be rendered;
 - (f) providing for the inspection of fuel burning appliances, whether or not installed in any premises, and for the powers, duties and functions of persons engaged in such inspection;
 - (g) requiring the owner or occupier of any premises in or on which any fuel burning appliance is used, or in or on which any fuel or any fuel of a particular type is consumed at the rate or above the rate specified in the regulations, to install, maintain and use at his own expense such apparatus as may be specified in such regulations or determined by the urban local authority or a person designated by it or specified in the regulations, for the purpose of indicating or recording the colour, density or content of such smoke as may be emitted by such appliance or as may emanate from the premises in or on which it is used or may be emitted by the fuel so consumed, and for the purpose of facilitating the observance of such smoke with a view to determining its colour, density or content, and requiring such owner or

- occupier to make available to the urban local authority any results recorded by or ascertained by means of such apparatus;
- (h) prescribing such requirements in respect of the provision of heating or cooking facilities in buildings as the urban local authority may consider necessary for reducing to a minimum the emanation of smoke from such buildings, and prohibiting the installation in any building of any appliances other than specified types of appliances or any appliances which do not comply with the requirements so prescribed;
 - (i) providing for the constitution, functions and procedure of any committee established in terms of section 18;
 - (j) prescribing the manner in which objections under section 18(3) shall be submitted, the amount (if any) to be deposited with the urban local authority in respect of any such objection and the procedure for dealing with any such objection and providing for the refund of any amount so deposited if the objection is successful; and
 - (k) generally for the effective control of the emission or emanation of smoke from any premises.
- (2) Different regulations may be made under subsection (1) in respect of different parts of the area under the control of an urban local authority or different classes of premises or premises used for different purposes or in respect of different times or of different periods of the year, and any such regulations may provide for exemption from compliance therewith in such cases and under such circumstances and on such conditions as may be prescribed in such regulations.
- (3) Any such regulations may provide that for the purpose of determining the density of smoke, use shall be made of the chart set out in Schedule 1 or of any other method for the determination thereof specified in such regulations.
- (4) Such regulations may provide for penalties, in respect of any contravention thereof or failure to comply therewith, which shall not exceed -
- (a) a fine of one thousand rand or imprisonment for a period of one year, in the case of a first offence;
 - (b) a fine of two thousand rand or imprisonment for a period of two years, in the case of a second or subsequent offence;
 - (c) a fine of one hundred rand or imprisonment for a period of thirty days in respect of every day the offence continues in the case of a continuous offence: Provided that the total period of imprisonment imposed in respect of any such continuous offence shall not exceed three years.
- [The word “thirty” in the phrase “thirty days” is misspelt in the Official Gazette, as reproduced above.]**
- (5) A regulation made under this section shall have no force or effect unless it has been approved by the Executive Committee and promulgated by notice in the Official Gazette.
- (6) The fact that any regulation made under this section defines the permissible density or colour of smoke by reference to the chart set out in Schedule 1, shall not prevent any court from determining on other evidence submitted to it, the density or colour of smoke for the purposes of any proceedings in terms of such regulations, whether or not there has been any comparison with the said chart.

15. Procedure in event of contravention of regulations

- (1) If smoke is emitted or emanates from any premises in contravention of any regulation made under section 14, the urban local authority concerned may, subject to the provisions of subsection (3), cause to be served on the owner or occupier of such premises, a notice in writing calling upon him to take steps, within a period specified in the notice, to ensure that such smoke shall no longer emanate or be emitted from those premises in contravention of the said regulation.

- (2) Such a notice may be served by delivering it to the owner or occupier concerned personally or to the person in charge of the premises concerned or by transmitting it to the owner or occupier concerned by post under registered cover at the last known address of such owner or occupier, as the case may be, describing him by name or as the owner or occupier of those premises.
- (3) No such notice shall be served in respect of any premises in or on which a scheduled process is being carried on, except after consultation with the Director.
- (4) In determining the period to be specified in any such notice, the urban local authority shall have regard to the nature and magnitude of the steps to be taken in order to comply with the notice.
- (5) Any person who fails to comply with any such notice, shall be guilty of an offence.
- (6)
 - (a) If after the expiration of a period of one month from the date of the conviction of any person of an offence in terms of subsection (5), steps have not been taken to the satisfaction of the urban local authority concerned to comply with the relevant notice, the urban local authority may cause such works to be undertaken and such appliances to be installed and such other steps to be taken as it may consider necessary to ensure that the smoke which was the subject of the notice shall no longer emanate or be emitted from the premises concerned in contravention of the relevant regulation and recover the cost so incurred from the person upon whom the notice was served.
 - (b) Any amount recoverable under paragraph (a), together with interest thereon calculated at the rate of six per cent per annum with effect from the date upon which such amount became due, shall, notwithstanding anything to the contrary contained in any ordinance made by the Legislative Assembly or any proclamation issued by the Administrator or any regulations made under any such ordinance or proclamation, form a first charge against the land upon which the premises concerned are situated, and shall rank in priority to all other debts whatsoever other than expenses, costs, fees and charges referred to in section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936), or any other Act of the Parliament of the Republic of South Africa which applies in the Territory.
- (7) The fact that any regulation made under section 14 defines the permissible density or colour of smoke by reference to the chart set out in Schedule 1, shall not prevent any court from determining on other evidence submitted to it, the density or colour of smoke for the purposes of any proceedings in terms of this section whether or not there has been any comparison with the said chart.

16. Declaration of smoke control zone by urban local authority

- (1) An urban local authority may by order confirmed by the Executive Committee and promulgated by notice in the Official Gazette -
 - (a) declare the area within its jurisdiction or any part of that area to be a smoke control zone; and
 - (b) prohibit the emanation or emission from any premises in that zone of smoke of a darker colour or greater density or content than is specified in the order.
- (2) For the purposes of subsection (1), the area within the jurisdiction of an urban local authority includes any area in respect of which that urban local authority is empowered to exercise any powers in terms of this Ordinance.
- (3) An order in terms of subsection (1) -
 - (a) may apply to all premises or to specified premises or classes of premises or to premises used for specified purposes or for purposes other than specified purposes;
 - (b) may prescribe different requirements in respect of different portions of a smoke control zone or different classes of premises or premises used for specified purposes or for purposes other than specified purposes and premises not so used;

- (c) may provide for exemption, on such conditions as may be set out in the order, from the provisions thereof in respect of specified premises or classes of premises or premises used for specified purposes or for purposes other than specified purposes and premises not so used, or in respect of specified fuel burning appliances or types of such appliances; and
 - (d) may provide for the operation of any regulation made under section 14 to be suspended in respect of any area in respect of which the order applies.
- (4) Before submitting an application to the Executive Committee for confirmation of an order in terms of subsection (1), the urban local authority shall publish a notice of its intention to make such application in Afrikaans in three consecutive issues of all the Afrikaans, in English in three consecutive issues of all the English and in German in three consecutive issues of all the German newspapers published in the Territory and circulating in the area of jurisdiction of that urban local authority, and in such notice -
- (a) state the general effect of the order;
 - (b) describe the area to which the order is to apply; and
 - (c) state that within one month after a date which shall be mentioned in such notice and shall not be earlier than the date of the first publication of such notice any person may object to the confirmation of the order by giving notice in writing to the Executive Committee and sending a copy of the notice so given to the town clerk concerned.
- (5) Subject to the provisions of subsection (4), the Executive Committee may confirm any such order either with or without amendment, or may refuse to confirm such order, and where the order is confirmed, notice of the confirmation, and of the general effect of the order as so confirmed, shall be published by the urban local authority in Afrikaans, English and German, respectively, in an Afrikaans, English and German newspaper published in the Territory and circulating in the area of jurisdiction of that urban local authority.
- (6) Any expenses incurred by the Executive Committee in terms of this section shall be defrayed by the urban local authority.
- (7) An order which has been confirmed by the Executive Committee shall come into operation on a date to be determined by the Executive Committee and specified in the notice by which the order is promulgated, not being a date earlier than nine months from the date on which the order was confirmed.
- (8) An order in terms of this section may contain such provisions as the Executive Committee may consider expedient -
- (a) for enabling the occupier of any premises within the area to which the order relates who has to incur expense in executing works or providing, altering or adapting fixtures, fittings or appliances for the purposes of complying with the order, to enter into and fulfil agreements with the owner or such premises, making such variations of the terms of the lease or tenancy of the premises as may be reasonable having regard to the expense to be incurred and other relevant circumstances; and
 - (b) for enabling any such occupier who is unable to make an agreement with the owner concerned in terms of paragraph (a) of this subsection to apply to any competent court for an order making such variations of the terms of the lease or tenancy of the premises as aforesaid, and for enabling the court to make such an order.
- (9) An order in terms of subsection (1) may be amended or withdrawn by another order made by the urban local authority and confirmed by the Executive Committee, and such order shall be promulgated by notice in the Official Gazette and the provisions of subsections (3) to (6) inclusive shall mutatis mutandis apply with reference to any amendments of such an order.
- (10) Any person who contravenes or fails to comply with the provisions of any order in terms of subsection (1) shall be guilty of an offence.

- (11) Where any exemption is granted under subsection (3)(c) on the condition that a particular type of fuel is to be used, it shall, in proceedings for an offence in terms of this section, be a defence to prove that the emission of smoke was not caused by the use of any fuel other than that authorised.
- (12)
 - (a) An urban local authority may whether alone or together with one or more other urban local authorities, appoint as many fulltime smoke control officers as may be approved by the Executive Committee to uphold the discharge of an order in terms of subsection (1)(b) within the area of its jurisdiction.
 - (b) The Executive Committee may, out of moneys voted for this purpose by the Legislative Assembly, refund to an urban local authority such portion as may be prescribed by regulation under section 40(1)(g) of the salary, approved by the Executive Committee and paid by the urban local authority, or such a full-time smoke control officer.
 - (c) The refund or a portion of a salary in terms of paragraph (b) shall cease with effect from the date on which no order in terms of subsection (1)(a) is any longer applicable in respect of the urban local authority concerned.

17. Contracts for the supply of fuel

An urban local authority may, notwithstanding the provisions of any law, with the consent of the Executive Committee -

- (a) in such a manner and subject to such conditions as the Executive Committee may deem fit, enter into a contract with any natural person or any body corporate for the supply, by such person or body, to users of any fuel which will facilitate or render possible the application of or compliance with the regulations made by such urban local authority under this Part;
- (b) without prejudice to its general powers in terms of paragraph (a) -
 - (i) indemnify or guarantee any producer or supplier of fuel against any loss in respect of the supply of such fuel;
 - (ii) itself act as wholesale or retail dealer in such fuel;
 - (iii) make a contribution towards the cost of producing such fuel or the cost of establishing an industry for the production of such fuel.

18. Delegation of powers by urban local authority

- (1) An urban local authority may in such manner and subject to such conditions as it may deem fit, delegate to any of its officers or servants, or to any committee constituted as provided in subsection (2), any of the powers conferred on it by this Part, except the powers conferred by section 14 or 16.
- (2) Any such committee may consist -
 - (a) wholly of members of the governing body of the urban local authority; or
 - (b) partly of such members and partly of officers of such urban local authority; or
 - (c) wholly of such officers; or
 - (d) wholly of persons who are not such members or officers; or
 - (e) partly of persons who are not such members or officers and partly of persons who are such members or officers, or both.
- (3) Any person upon whom any notice is served under section 13 or 15 by an officer or servant of an urban local authority by virtue of a delegation under subsection (1) of this section, may within fourteen days after receipt of such notice, object to the urban local authority which shall have power to confirm or withdraw the notice.

19. Power to enter upon premises

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

20. Information to be supplied to urban local authorities

- (1) An urban local authority may by notice in writing served on -
 - (a) the owner or occupier of any premises from which smoke is emitted or emanates, require such owner or occupier to furnish within the time and to the officer of such urban local authority specified in the notice, such information as to the fuel burning appliances in such premises and the fuel or waste burned in such appliances as the urban local authority may require and specify in such notice;
 - (b) any person selling fuel within the area of jurisdiction of such urban local authority, require such person to furnish within the time and to the officer specified in the notice -
 - (i) such information as to the quantity, type and source of the fuel sold by such person as may be specified in the notice; and
 - (ii) information as to the quantity, type and source of every quantity of not less than five metric tons of fuel sold by him to any single buyer on any one occasion, and the address at which the fuel sold was delivered.
- (2) Any person who fails to comply with any such notice or who in reply to such a notice knowingly furnishes any information which is false or misleading in any material respect, shall be guilty of an offence.

21. Objections

- (1) Any person on whom a notice in terms of section 13 or 15 is served by an urban local authority or who feels aggrieved by a decision of an urban local authority in regard to an objection to it in terms of section 18(3) may, within thirty days after the date on which the notice is served or the decision is, given, lodge an objection to such notice or decision with the Executive Committee in writing.

[The comma after the words “or the decision is” is superfluous.]

- (2) The application of a notice or the execution of a decision of an urban local authority, which is the subject of an objection in terms of subsection (1), shall be suspended until the Executive Committee has decided on the objection.
- (3) The provisions of section 9(2), (3), (4) and (5) shall mutatis mutandis apply in regard to an objection in terms of subsection (1).

22. Expenditure by urban local authority

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

- (a) with the approval of the Executive Committee incur expenditure out of its revenue and, where any loan has been authorised, out of moneys borrowed by the urban local authority, for the purpose of making loans or grants to persons in connection with the installation or improvement of fuel burning appliances and equipment designed to prevent or minimise the emission of smoke or of electrical or other equipment in stead of such appliances;
- (b) undertake or contribute towards the cost of investigations and research relevant to the problem of atmospheric pollution;
- (c) arrange for the publication of information on the problem of atmospheric pollution and for the delivery of lectures and addresses and the holding of discussions thereon.

Part IV – Dust control

23. Dust control areas

- (1) The Executive Committee may -
 - (a) declare any area to be a dust control area for the purposes of this Ordinance;
 - (b) include any area in or exclude any area from a dust control area,and may at any time withdraw any such declaration of an area as, or any such inclusion of an area in or exclusion of an area from, a dust control area.
- (2) Any -
 - (a) declaration of an area as, or inclusion of an area in or exclusion of an area from, a dust control area;
 - (b) withdrawal of any such declaration, inclusion or exclusionreferred to in subsection (1) shall be promulgated by notice in the Official Gazette.

[There is no punctuation mark at the end of paragraph (b).]

24. Steps to be taken by certain persons for preventing pollution of the atmosphere by dust

- (1) Any person who in a dust control area -
 - (a) carries on any industrial process the operation of which in the opinion of the Director causes or is liable to cause a nuisance to persons residing or present in the vicinity on account of dust originating from such process becoming dispersed in the atmosphere; or
 - (b) has at any time or from time to time, whether before or after the commencement of this Ordinance, deposited or caused or permitted to be deposited on any land a quantity of matter which exceeds, or two or more quantities of matter which together exceed, twenty thousand cubic metres in volume, or such lesser volume as may be prescribed, and which in the opinion of the Director causes or is liable to cause a nuisance to persons residing or present in the vicinity of such land on account of dust originating from such matter becoming dispersed in the atmosphere, shall take the prescribed steps or (where no steps have been prescribed) adopt the best practicable means for preventing such dust from becoming so dispersed or causing such nuisance.

- (2) For the purposes of subsection (1) the expression “best practicable means” includes in any particular case any steps within the meaning of that expression as defined in section 1 which may be determined by the Director and specified in a notice signed by him and delivered or transmitted by post under registered cover to the person who is in terms of the said subsection required to adopt such means.
- (3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

25. Prevention of pollution of the atmosphere by dust by owners or occupiers of land in certain circumstances

- (1) Whenever in the opinion of the Director dust originating on any land in a dust control area and in relation to which the provisions of section 24(1)(b) do not apply, is causing a nuisance to persons residing or present in the vicinity of that land, he may by notice in writing delivered or transmitted by post under registered cover to the owner or occupier of the land require such owner or occupier to take the prescribed steps or (where no steps have been prescribed) adopt the best practicable means for the abatement of such nuisance.
- (2) No requirement shall be imposed in terms of subsection (1) upon an occupier of land who is not the owner thereof, unless the Director is of the opinion that the dust in question is caused by activities carried on by such occupier or that it is equitable, having regard to the duration of the period for which he is entitled to remain in occupation of such land or other relevant circumstances, to require him to take any steps or adopt any means contemplated in that subsection.
- (3) In this section the expression “best practicable means” has the meaning assigned thereto in section 24(2).
- (4) Any person who fails to comply with the requirements of any notice in terms of subsection (1) shall be guilty of an offence.

26. Procedure where special circumstances exist

- (1) If in any case where the provisions of section 24(1)(b) apply, the person liable to take any steps or adopt any means prescribed in that section is deceased or has (in the case of a corporate body) ceased to exist, or the Executive Committee is of the opinion that it would in all the circumstances be impracticable or inequitable to require such person to take such steps or adopt such means, the Executive Committee may after consultation with any urban local authority which in the opinion of the Executive Committee may be concerned, cause such steps to be taken or such means to be adopted by the Director or any such urban local authority which is willing to do so or by any other person designated by the Executive Committee, and direct that the cost involved, except so much (if any) as may be paid from any Dust Control Contributions Account which may be established in terms of section 27, shall be paid by the Administration, such urban local authority and the owner of the land concerned to such extent or in such proportions as may be determined by the Executive Committee after consultation with any such urban local authority: Provided that the Executive Committee may exempt any such urban local authority or owner from payment of any amount in respect of such cost if it is of the opinion that such urban local authority or owner is, from a financial point of view, unable to pay such amount or that it would be impracticable or inequitable to require such urban local authority or owner to pay such amount.
- (2) The Executive Committee shall cause any such urban local authority or owner to be advised in writing of any amount which that urban local authority or owner is required to pay in pursuance of any determination under subsection (1) and of the time at which such amount or (if it is to be paid in instalments) any instalment thereof shall be payable.
- (3) Any amount or instalment payable as aforesaid may be recovered from the urban local authority or owner concerned by the Executive Committee by action in any competent court.
- (4) Any amount payable as aforesaid by the Administration shall be paid out of moneys voted by the Legislative Assembly for the purpose.

- (5) For the purposes of this section “owner”, in relation to land on which any matter from which dust originates has been deposited, includes -
- (a) if the matter was at any time deposited on the land concerned by or on behalf of any person who was at the time of such deposit the holder of rights granted in terms of any law relating to mining or prospecting for minerals to carry on mining or prospecting activities on the said land, the person who so was the holder of such rights;
 - (b) if the matter was at any time processed on or removed from that land by or on behalf of any person who at the time of such processing or removal was the holder of any right to the use of the surface of the land in terms of any such law, the person who so was the holder of such right.

27. Establishment of Dust Control Contributions Account

- (1) The Executive Committee may, if it is satisfied that special provision is necessary to meet wholly or in part any expenditure required to be incurred for the more effective prevention of the pollution of the atmosphere by dust, establish a separate account to be known as the Dust Control Contributions Account (hereinafter referred to as the account) in the Territory Revenue Fund, to the credit of which shall be paid into the Territory Revenue Fund the contributions made in terms of subsection (3) and any moneys which may be donated to the Territory Revenue Fund for the benefit of the account or may, from any other source, accrue thereto for the benefit of the account.
- (2) Every person to whom any provision of section 24 or 26 applies, shall contribute to the Territory Revenue Fund for the benefit of the account as provided in this section: Provided that the Executive Committee may exempt any person from liability to contribute if it is of the opinion that it would for some reason or another be impracticable or inequitable to require such person to contribute.
- (3)
 - (a) Any such contribution may consist of a single amount or of periodical payments on such a basis as the Executive Committee may in each case consider appropriate, and may vary according to the nature or magnitude of the operations carried on or the quantities of matter deposited or permitted on any land by or on behalf of the person liable for payment, or any other circumstances relating to such operations.
 - (b) Where any such contribution consists of a single amount, the Executive Committee may in its discretion permit the person concerned to pay the amount involved by instalments.
- (4) The Director shall cause to be delivered or transmitted by post under registered cover to every person liable for the payment of any such contribution, a notice signed by the Director setting out the amount payable by that person and the period within which payment thereof shall be effected, or, in the case of contributions payable periodically or of a single amount payable by instalments, the times at which such periodical contributions or instalments shall be paid, and any such notice may require the person to whom it is addressed to furnish with any payment made such particulars in respect of the operations carried on by him as may be specified in the notice.
- (5) All contributions for which any person is liable in terms of this section shall be paid to the Secretary who shall cause any amount so paid to him to be deposited into the Territory Revenue Fund to the credit of the account.
- (6) Any person who fails to pay on or before the due date any contribution for the payment of which he is liable in terms of this section or to furnish any particulars required in terms of any notice under subsection (4) when making payment of any amount in respect of any such contribution, shall be guilty of an offence.
- (7)
 - (a) The account shall be administered by the Secretary, who shall cause proper records to be kept of all moneys received and expended, and any money in the account voted for

the purpose by the Legislative Assembly may, subject to the directions of the Executive Committee, be applied -

- (i) for the payment of any expenditure incurred in connection with any operations undertaken with the approval of the Executive Committee for the purpose of the prevention of the pollution of the atmosphere by dust;
 - (ii) to meet wholly or in part any expenditure incurred in terms of section 26; and
 - (iii) to meet wholly or in part expenditure incurred or to be incurred by any person in order to comply with any provision of section 24 or 25.
- (b) Any moneys in the account which are not required for immediate use may be invested in accordance with the provisions of the Finance and Audit Ordinance, 1926 (Ordinance 1 of 1926).

[Only section 24D of the the Finance and Audit Ordinance 1 of 1926 remains in force in Namibia. The relevant law is now the State Finance Act [31 of 1991](#).]

28. Prohibition in regard to disposal of assets by mines

- (1) Whenever on account of information furnished to it the Executive Committee is of the opinion that having regard to the known and disclosed ore reserves of any mine, that mine is likely to cease mining operations within a period of five years, it shall advise the owner of that mine accordingly.
- (2) Notwithstanding the provisions of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), the owner of any mine who, after the date of receipt of any notification in terms of subsection (1), without the consent of the Executive Committee disposes of any asset of that mine before he has been furnished with a certificate by the Director to the effect that the necessary steps have been taken or that adequate provision has been made to prevent the pollution of the atmosphere by dust arising from any matter emanating from that mine, deposited on any land in respect of which the said owner is the holder of rights granted in terms of any law relating to mining or prospecting for minerals, to carry on mining or prospecting on such land, shall be guilty of an offence.

[The Mines, Works and Minerals Ordinance 20 of 1968 was repealed by the Minerals (Prospecting and Mining) Act [33 of 1992](#).]

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

29. Regulations in regard to dust

- (1) The Executive Committee may make regulations -
 - (a) prescribing the steps that shall be taken to prevent the creation of a nuisance of the nature referred to in section 24 or 25 or to prevent the continuation of such a nuisance or to combat such a nuisance;
 - (b) providing for the inspection by the Director or an inspector or a person authorised in terms of section 30(1) subject to the production in the case of any such inspector or person, to the person in charge of the premises, of the certificate referred to in section 2(1)(b) or 30(2), as the case may be, of any premises within a dust control area where in the opinion of the Director a nuisance of the nature referred to in section 24 or 25 exists or may exist;
 - (c) prescribing any lesser volume than twenty thousand cubic metres of matter in relation to which the provisions of section 24(1)(b) shall apply;
 - (d) providing for the prohibition of damage to contrivances created for the combating of a nuisance caused by dust or a possible nuisance caused by dust, or equipment used in connection with the creation of such contrivances, or for arranging the removal thereof.

- (2) Any steps prescribed in terms of subsection (1)(a) may vary according to the nature of any industrial process carried on or any matter deposited on land in connection with which such steps are prescribed or according to other circumstances as the Executive Committee may consider necessary.
- (3) Regulations under subsection (1)(d) may, in respect of a contravention thereof, impose financial obligations in connection with the repair or replacement of the contrivances or equipment concerned.

30. Inspections

- (1) The Director may, with the approval of the Executive Committee, authorise any person to carry out, subject to the directions of the Director, inspections in terms of regulations made under section 29(1)(b).
- (2) Any person who has been authorised under subsection (1) shall be furnished with a certificate signed by the Director specifying the premises in respect of which he may carry out inspections.
- (3) The Director, an inspector or any person so authorised may without previous notice at any time enter any premises (except the explosives area of an explosives factory) within a dust control area where in his opinion a nuisance of the nature referred to in section 24 or 25 exists or may exist: Provided that no premises under the control of the State shall be so entered without the prior consent of the person in charge of such premises, which consent shall not be withheld except for reasons connected with the security of the State.
- (4) Any person who fails to give or refuses admission to any such premises to the Director, an inspector or any person so authorised or who hinders or obstructs the Director, an inspector or any such person in the performance of his duties or functions in terms of this Part, shall be guilty of an offence.
- (5) The Director may at any time, with the approval of the Executive Committee, withdraw any authority granted under subsection (1) and shall notify the person concerned of such withdrawal and of the date on which it shall take effect.

31. Objections

- (1) Any person who feels aggrieved by a notice served on him under this Part may, within thirty days after the date on which the notice was served, or within such further period as the Executive Committee for good and sufficient reasons allow, lodge an objection to such notice with the Executive Committee in writing.
- (2) The operation of any notice which is the subject of an objection in terms of subsection (1) shall be suspended until the Executive Committee has decided on such objection.
- (3) The provisions of section 9(2), (3), (4) and (5) shall mutatis mutandis apply in regard to an objection in terms of subsection (1).

Part V – Pollution of the atmosphere by gases emitted by vehicles

32. Application of this Part

- (1) (a) The provisions of this Part shall apply only in an area within the jurisdiction of an urban local authority in respect of which they have been declared to be applicable by the Executive Committee and with effect from such date in the case of any such area as may be specified by the Executive Committee.
- (b) Any declaration made and date specified under paragraph (a) shall be promulgated by notice in the Official Gazette.

- (2) No such declaration shall be made and no such date shall be specified in respect of any area except after consultation with the urban local authority having jurisdiction in that area.
- (3) Subject to the provisions of subsection (4), the powers conferred by this Part on urban local authorities shall, in respect of any area within the jurisdiction of an urban local authority which is the subject of a declaration under subsection (1), be exercised by that urban local authority.
- (4)
 - (a) If the Executive Committee is of the opinion that an urban local authority has not satisfactorily exercised the powers which it is in terms of subsection (3) required to exercise, the Executive Committee may, after consultation with that urban local authority, direct that the said powers shall be exercised by the Director and may in that event recover from that urban local authority the costs incurred by the Director in the exercise of the said powers.
 - (b) Any direction in terms of paragraph (a) shall be promulgated by notice in the Official Gazette.
- (5) The Executive Committee may at any time withdraw any declaration or direction under this section, which withdrawal shall be promulgated by notice in the Official Gazette.
- (6) Any reference in this Part to an urban local authority shall in relation to any area in respect of which any powers are in terms of a direction under subsection (4) required to be exercised by the Director, be construed as a reference to the Director.

33. Procedure in event of contravention of regulations

- (1) A person authorised thereto by an urban local authority may demand from a driver of a vehicle on a public road situate in any area within the area of jurisdiction of that urban local authority, which is the subject of a declaration under section 32(1), that he brings the vehicle to a stop, and may carry out the prescribed examination of any vehicle on such a road, or may serve or cause to be served on the person registered in terms of any law as the owner of the vehicle a notice in writing, calling upon him to make that vehicle available, within a period and at a place specified in the notice, for the prescribed examination by the person so authorised or a person designated by him.
- (2) If after examination of any vehicle under subsection (1), the person who carried out the examination is satisfied that noxious or offensive gases are being emitted from such vehicle contrary to the provisions of a regulation under section 35, such person shall serve or cause to be served on the person registered in terms of any law as the owner of that vehicle a notice in writing calling upon him -
 - (a) to take the necessary steps for preventing the emission of the said noxious or offensive gases from that vehicle; and
 - (b) to make that vehicle available, within a period and at a place specified in the notice, for the prescribed examination by a person authorised as contemplated in subsection (1), or a person designated by him.
- (3) A notice under this section shall be served on the owner of the vehicle referred to in the notice by delivering it to him or by transmitting it to him by post under registered cover at his last known address.
- (4) Any person who fails to comply with any requirement or the provisions of any notice under this section shall be guilty of an offence.

34. Objections

- (1) Any person who feels aggrieved by a notice served on him under section 33(2) may, within fourteen days after the date on which the notice was served, or within such further period as the Executive Committee may allow for good and sufficient reasons, lodge an objection to such notice with the Executive Committee in writing.

- (2) The provisions of section 9(2), (3), (4) and (5) shall mutatis mutandis apply in regard to an objection in terms of subsection (1).

35. Regulations in connection with gases emitted by vehicles

- (1) The Executive Committee may make regulations -
 - (a) prohibiting the use on any public road within any area which is the subject of a declaration under section 32(1) of any vehicle from which noxious or offensive gases specified in such regulations or noxious or offensive gases which are of a darker colour or greater density or content than is so specified are emitted;
 - (b) prescribing the steps that shall be taken to prevent the emission from any vehicle of noxious or offensive gases contrary to any regulation made under paragraph (a); and
 - (c) prescribing the methods that shall be applied in order to determine whether any vehicle emits noxious or offensive gases contrary to any regulation made under paragraph (a).
- (2) Different regulations may be made under subsection (1) in respect of different classes or categories of vehicles.

36. Inspection of vehicles

- (1) Any urban local authority in respect of whose area of jurisdiction a declaration under section 32(1) is in operation may authorise any person in its employ -
 - (a) to demand from the driver of any vehicle on a public road within that area that he brings the vehicle to a stop and to detain and inspect such vehicle;
 - (b) to inspect any vehicle which is the subject of a notice under section 33(2).
- (2) Any person who has been authorised under subsection (1) shall be furnished with a certificate signed by an officer designated by the urban local authority and indicating that such person has been so authorised.
- (3) Any person authorised under subsection (1) may upon production by him, to the person in charge of the vehicle, of the certificate referred to in subsection (2) -
 - (a) at any time demand from the driver of any vehicle on any public road within an area which -
 - (i) is situate within the area of jurisdiction of the urban local authority by which he is employed; and
 - (ii) is the subject of a declaration under section 32(1),
that he brings the vehicle to a stop and detain, enter and examine such vehicle if he is of the opinion that noxious or offensive gases are emitted from that vehicle contrary to any regulation made under section 35(1)(a);
 - (b) enter and examine any vehicle which is the subject of a notice under section 33(2).
- (4) Any person who fails to bring a vehicle to a stop on a public road as aforesaid whenever that is demanded by any person authorised under subsection (1) or who fails to give or refuses admission to such vehicle to any person so authorised or who hinders or obstructs any person so authorised in the performance of his functions in terms of this section, shall be guilty of an offence.

Part VI – General provisions

37. Disclosure of information

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

38. Court may authorise works and order payments

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

- (a) if by reason of a restriction affecting his interest in the building he is unable to carry out the works without the consent of the owner of the building or some other person having an interest therein, and is unable to obtain such consent, apply to any competent court for an order authorising him to carry out such works; and
- (b) if he considers that the whole or any portion of the cost of carrying out the works should be borne by the owner of the building or some other person having an interest therein, apply to such court for an order directing such owner or other person to pay such cost or such portion thereof, and such court may on any such application make such order as may with due observance of the provisions of any regulations made in that connection under section 40(1)(e), appear to it to be just and equitable in the circumstances.

39. Right of entry upon land

- (1) The Director or any urban local authority or any person empowered thereto by the Director or an urban local authority or an inspector or any person authorised under section 30(1) may enter upon any land (except land which constitutes the explosives area of any explosives factory) and take with him such assistants, workmen, vehicles, appliances, instruments and materials as he may consider necessary for the purpose of exercising or performing any powers, duties or functions, or undertaking any work contemplated by this Ordinance.
- (2) Any person authorised under section 30(1) or any inspector who so enters upon any land shall on demand by the person in charge of the land, produce the certificate with which he has been furnished under section 30(2) or 2(1)(b), as the case may be.
- (3) Any person to whom any powers have been granted under subsection (1) shall be furnished with a certificate signed by the Director, or an officer designated by the urban local authority, as the case may be, and indicating that such person has been so empowered and any such person entering upon land shall on demand by the person in charge of the land produce the certificate with which he has been so furnished.

[The word “certificate” is misspelt in its second use in subsection (3), as reproduced above.]

40. Regulations

- (1) The Executive Committee may make regulations for the more effective administration of this Ordinance, including regulations -

[The subsection number (1) is omitted in the Official Gazette.]

- (a) as to the procedure at enquiries into objections by a commission of enquiry referred to in section 9 and the remuneration and allowances and conditions of service of members of any such commission of enquiry who are not in the full-time employment of the State;
 - (b) as to the remuneration and allowances conditions of service, tenure of office and matters incidental thereto in relation to any person referred to in section 2(2) who is not in the full-time employment of the State;
 - (c) as to the form of any application for any registration certificate or provisional registration certificate and the plans, documents and other information to be submitted together and in connection with any such application, the fees to be paid in connection with any such application or any objection in terms of this Ordinance and the circumstances under which the fees paid in connection with any such objection shall be refunded;
 - (d) as to the form of any registration certificate or provisional registration certificate;
 - (e) as to the matters which the court shall take into consideration in determining what portion of the costs of alterations to a building referred to in section 38 shall be borne by the owner, and how those costs which shall be so borne shall be recovered by means of an increase in rent or otherwise, and the matters which shall be taken into consideration under which an aggrieved person may be ordered under section 13 to pay the cost of execution of works or installation of appliances or to contribute towards the same, as well as the manner in which any such payment or contribution shall be made, whether in cash or otherwise;
 - (f)
 - (i) prescribing the requirements with which any particular kind or type of fuel burning appliances shall comply;
 - (ii) prohibiting the manufacture or import of, or regulating the use or sale for use, in any specified area, of fuel burning appliances which do not comply with any requirement prescribed under subparagraph (i);
 - (g) as to the portion of the salary of a smoke control officer repayable by the Executive Committee in terms of section 16(12)(b); and
 - (h) generally in regard to any matter in respect of which it is necessary to make regulations in terms of this Ordinance, or in respect of which the Executive Committee may consider it necessary to make regulations in order that the objects of this Ordinance may be achieved.
- (2) Regulations under subsection (1)(f) may provide for penalties in respect of any contravention thereof or failure to comply therewith, which shall not exceed -
- (a) a fine of one thousand rand or imprisonment for a period of one year in the case of a first offence;
 - (b) a fine of two thousand rand or imprisonment for a period of two years, in the case of a second or subsequent offence;
 - (c) a fine of one hundred rand or imprisonment for a period of thirty days in respect of every day the offence continues in the case of a continuous offence: Provided that the total period of imprisonment imposed in respect of any such continuous offence shall not exceed three years.

41. Operation of Ordinance in relation to other laws

- (1) The provisions of this Ordinance shall be in addition to and not in substitution for any other law which is not in conflict or inconsistent with this Ordinance.
- (2) Any regulations or by-laws made by any urban local authority in regard to any matter dealt with by this Ordinance and in force at the commencement thereof, shall, in so far as they are not in conflict or inconsistent with this Ordinance, remain in force except in so far as they are repealed by the Executive Committee, such repeal to be promulgated by notice in the Official Gazette.

42. Contributions by Administration towards certain expenditure incurred in connection with combating of pollution of the atmosphere

The Executive Committee may out of moneys appropriated by the Legislative Assembly for the purpose, and subject to such conditions as the Executive Committee may in each case determine, contribute towards the expenditure -

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

43. Penalties

- (1) Any person convicted of an offence in terms of this Ordinance shall be liable, in the case of a first conviction, to a fine not exceeding one thousand rand or imprisonment for a period not exceeding one year, and in the case of a second or subsequent conviction to a fine not exceeding two thousand rand or imprisonment for a period not exceeding two years.
- (2) Any person convicted of an offence referred to in subsection (1), who after such conviction persists in the conduct or omission constituting such offence, shall be guilty of a continuous offence and liable, on conviction thereof, to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding thirty days in respect of every day he so persists: Provided that the total period or any imprisonment imposed in terms of this subsection shall not exceed three years.

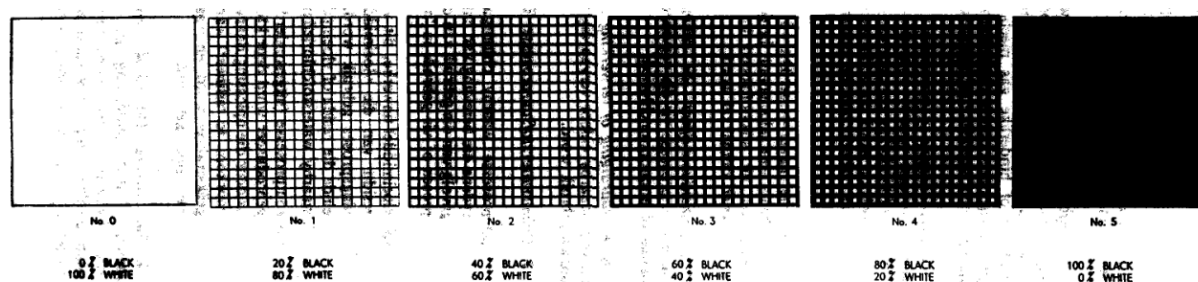
44. Ordinance binds the State

- (1) The provisions of this Ordinance, except sections 10 to 22, inclusive, shall bind the State.
- (2) If at any time any chimney or fuel burning appliance of the nature referred to in section 12 is to be constructed or installed in or on any premises within the area of an urban local authority, which are under the control of the State, notice of the intention to construct such chimney or install such appliance shall be given to that urban local authority.
- (3) If at any time smoke of a darker colour or greater density or content than is prescribed by any order under section 16(1)(b) or by any regulations under this Ordinance is emitted or emanates from any premises as a result of the operation of any fuel burning appliance controlled by the State (excluding the Railway Administration), the urban local authority concerned may give notice to that effect to the Executive Committee which will cause such steps to be taken as it may deem necessary and practicable to prevent or minimise the emission of such smoke.
- (4) Each year a copy of every notice (if any) sent to the Executive Committee in terms of subsection (3) during the previous calendar year, shall be laid on the Table in the Legislative Assembly.

45. Short title

This Ordinance shall be called the Atmospheric Pollution Prevention Ordinance, 1976.

Schedule 1



Schedule 2

SCHEDULED PROCESSES

1. *Sulphuric Acid Manufacture*: That is to say, processes for the manufacture of sulphuric acid.
2. *Phosphate Fertilizer Processes*: That is to say, processes in which any mineral phosphate is subjected to treatment involving chemical change with the evolution of any noxious or offensive gas, and works for the granulating of such fertilizers involving the evolution of any noxious or offensive gas.
3. *Manufacture or Processing of Ammoniacal Liquor*: That is to say, processes in which sulphuretted hydrogen or any other noxious or offensive gas is evolved by the use of ammoniacal liquor, and works in which ammoniacal liquor is desulphurized in any process in connection with the purification of gas.
4. *Nitric Acid Processes*: That is to say, processes connected with the manufacture of nitric acid or in which nitric acid is recovered from oxides of nitrogen or in which nitrogen oxides are evolved.
5. *Ammonium sulphate and Ammonium Chloride Processes*: That is to say, processes for the manufacture of ammonium sulphate or ammonium chloride.
6. *Manufacture or Processing of Chlorine*: That is to say, processes in which chlorine is made or used in any manufacturing process.
7. *Hydrochloric Acid Processes*: That is to say -
 - (a) processes in which chlorine gas is evolved either during the preparation of hydrochloric acid or as the result of the use of chlorides in a chemical process or for use in any manufacturing process;
 - (b) tin plate flux works, that is to say, processes in which any residue of flux from tin plate works is calcined for the utilisation of such residue or flux in which hydrogen chloride gas is evolved; and

[The word "utilisation" is misspelt in the Official Gazette, as reproduced above.]
 - (c) salt processes (not being processes in which salt is produced by refining rock salt, otherwise than by the dissolution thereof at the place of deposit) in which the extraction of salt from brine is carried on and in which hydrogen chloride gas is evolved.
8. *Sulphide Works*: That is to say, processes in which sulphuretted hydrogen is evolved by the decomposition of metallic sulphides, or in which sulphuretted hydrogen is used in the production of such sulphides, or in which sulphuretted hydrogen is evolved as part of a chemical process.
9. *Alkali Waste Works*: That is to say, processes in which alkali waste or the drainage therefrom is subjected to any chemical process for the recovery of sulphur or for the utilisation of any constituent of such waste or drainage.

10. *Oxide Pigment Works*: That is to say, processes for the manufacture of venetian red, crosus or polishing powder or some other oxide pigment by heating sulphate or some other salt of iron.
11. *Arsenic Works*: That is to say, processes in which any volatile compound of arsenic is evolved.
12. *Carbon Disulphide Works*: That is to say, processes in which carbon disulphide is manufactured, used or recovered.
13. *Sulphocyanide Works*: That is to say, any process for the manufacture of sulphocyanide or any of its compounds.
14. *Refining of Hydrocarbons*: That is to say, the processing (such as distilling, cracking and refining) of crude shale oil, crude petroleum and similar synthetic products so as to cause the evolution of noxious or offensive gases.
15. *Bisulphite Works*: That is to say, processes in which sulphurous acid is used in the manufacture of acid sulphites of the alkalis or alkaline earths and processes for the manufacture of liquid sulphur dioxide or of sulphurous acid or of any sulphite in which oxides of sulphur are evolved in any chemical manufacturing process.
16. *Tar Works*: That is to say, processes in which tar is distilled or is heated in any manufacturing process and works in which creosote or any other product of the distillation of tar is distilled or is heated in any manufacturing process involving the evolution of any noxious or offensive gas.
17. *Zinc Works*://: That is to say, processes in which by the application of heat, zinc is extracted from the ore or from any residue containing that metal.
18. *Benzene Processes*: That is to say, processes (not being tar works as defined above) in which any wash oil used for the scrubbing of coal gas is distilled.
19. *Pyridine Processes*: That is to say, processes in which pyridine is recovered and used.
20. *Bromine Processes*: That is to say, processes in which bromine is made or is used in any manufacturing process.
21. *Hydrofluoric Acid Works*: That is to say -
 - (a) processes in which hydrofluoric acid is evolved in the manufacture of liquid hydrofluoric acid or its compounds; or

[The word “hydroflorix” should probably be “hydrofluoric” as in the first usage in paragraph (a).]

 - (b) processes in which hydrofluoric acid is used.
22. *Cement production works*: That is to say, works in which argillaceous and calcareous materials are used in the production of cement clinker, and works in which cement clinker is ground or cement is packed and also works in which metallurgical slags are treated for the purpose of making cement or cement additives.
23. *Lead works*: That is to say -
 - (a) works in which, by the application of heat, lead is melted and/or extracted from any material containing lead or its compounds; or
 - (b) works in which compounds of lead are manufactured from metallic lead or its compounds by processes which give rise to noxious or offensive gases; or
 - (c) processes by which lead or any material containing lead or its compounds are used or handled in such a way as to give rise to noxious or offensive gases.
24. *Fluorine Processes*: That is to say, processes in which fluorine or its compounds with other halogens are made, used or evolved in any manufacturing process.

25. *Acid Sludge Works*: That is to say, processes in which acid sludge produced in the refining of coal tar, petroleum or other hydrocarbon derivatives, is treated in such a manner as to cause the evolution of any noxious or offensive gas.

[The word “of” in the phrase “noxious or offensive gas” should be “or”.]

26. *Alkali Processes*: That is to say -
- (a) the manufacture of potassium or sodium sulphate; or
 - (b) the treatment of ores by common salt or other chlorides, whereby any sulphate is formed in which hydrogen chloride gas is evolved.
27. *Roasting Processes*: That is to say, works in which sulphate and sulphide ores, including regulas, are calcined or smelted.
28. *Asbestos works*: That is to say, processes involving the handling, grinding or use of asbestos.
29. *Power stations*: That is to say, processes in which -
- (a) solid or liquid fuels are burned to raise steam for the generation of electricity for distribution to the public or for purposes of public transport;
 - (b) boilers burning solid or liquid fuels at a rate of not less than 150 megajoules per second are used to raise steam for the supply of energy for purposes other than those mentioned in (a) above.
30. *Iron works and steel works*: That is to say, processes in which -
- (a) iron or ferro-alloys are produced in a blast furnace and in which raw materials for use in blast furnaces are handled or prepared; or
 - (b) iron ores for use in blast furnaces are calcined or sintered; or
 - (c) iron or steel is melted in air or rotary furnaces, fired by coal or oil, or in cupolas employing a heated air blast, or in electric arc furnaces; or
 - (d) steel is produced, melted or refined in Bessemer, trochaena, open hearth or electric arc furnaces; or
 - (e) oxygen or air enriched with oxygen is used for the refining of iron or for the production, shaping or finishing of steel; or
 - (f) ferro-alloys are made by processes giving rise to fume; or
 - (g) iron or steel is melted in cupolas employing a cold air blast; or
 - (h) castings are cleaned and casting mould material is handled.
31. *Copper works*: That is to say, processes in which -
- (a) by the application of heat -
 - (i) copper is extracted from any ore or concentrate or from any material containing copper or its compounds; or
 - (ii) copper or copper alloy swarf is degreased; or
 - (iii) molten copper is refined; or
 - (iv) copper alloys are recovered from scrap, fabricated metal, swarf or residues by processes designed to reduce the zinc content; or
 - (b) copper or copper alloy is melted and cast in moulds the internal surfaces of which have been coated with grease-bound or oil-bound dressings: Provided that this paragraph shall not apply to works in which the aggregate casting capacity does not exceed 10 metric tons per day

[There is no full stop at the end of paragraph (b).]

32. *Aluminium works*: That is to say, processes in which -
- (a) aluminium is produced by means of an electrolytic furnace from its oxide; or
[The word “electrolytic” should probably be “electrolytic”.]
 - (b) aluminium swarf is degreased by the application of heat; or
 - (c) aluminium or aluminium alloys are recovered from aluminium or aluminium alloy scrap, fabricated metal, aluminium swarf, aluminium skimmings, aluminium drosses or other aluminium residues by melting; or
 - (d) aluminium is recovered from slag; or
 - (e) molten aluminium or aluminium alloys are treated by any process involving the evolution of chlorine or its compounds.
33. *Producer gas works*: That is to say, processes in which producer gas is made from coal and in which raw producer gas is transmitted or used.
34. *Gas and coke works*: That is to say, processes (not being producer gas works) in which -
- (a) coal, oil or mixtures of coal or oil with other carbonaceous materials or products of petroleum refining or natural gas or methane from coal mines or gas derived from fermentation of carbonaceous materials, are handled or prepared for carbonisation or gasification or reforming and in which these materials are subsequently carbonised or gasified or reformed; or
 - (b) water gas is produced or purified; or
 - (c) coke or semi-coke is produced and quenched, cut, crushed or graded; or
 - (d) gases derived from any process mentioned in paragraph (a) are subjected to purification processes.
35. *Ceramic works*: That is to say, processes in which -
- (a) pottery products (including domestic earthenware and china, sanitary ware, electrical porcelain and glazed tiles) are made in intermittent kilns fired by coal or oil; or
 - (b) heavy clay or refractory goods are fired by solid, liquid or gaseous fuels; or
 - (c) salt glazing of any earthenware or clay material is carried on.
36. *Lime, dolomite and magnesite works*: That is to say, processes in which calcium carbonate, calcium-magnesium carbonate or magnesium carbonate is calcined.
37. *Sulphate reduction works*: That is to say, processes in which metallic sulphates are reduced to the corresponding sulphides by heating with carbonaceous material.
38. *Caustic soda works*: That is to say, processes in which -
- (a) either concentrated solutions of caustic soda or fused caustic soda are produced in heated vessels; or
 - (b) black liquor produced in the manufacture of paper is calcined in the recovery of caustic soda.
39. *Chemical incineration works*: That is to say, processes for the destruction by burning of wastes produced in the course of organic chemical reactions which occur during the manufacture of materials for the fabrication of plastics and fibres and processes for the destruction by burning of chemical wastes containing chemically bonded chlorine, fluorine, nitrogen, phosphorus or sulphur.
40. *Beryllium works*: That is to say, processes in which -
- (a) any ore or concentrate or any material containing beryllium or its compounds is treated for the production of beryllium or its alloys or its compounds; or

- (b) any material containing beryllium or its alloys or its compounds is treated, processed or fabricated in any manner giving rise to dust or fume.
41. *Selenium works*: That is to say, processes in which -
- (a) any ore or concentrate or any material containing selenium or its compounds is treated for the production of selenium or its alloys or its compounds; or
- [The word “compounds” is misspelt in its first use in paragraph (a), as reproduced above.]**
- (b) any material containing selenium or its alloys or its compounds other than as colouring matter, is treated, processed or fabricated in any manner giving rise to dust or fume.
- [The word “of” in the phrase “dust of fume” should be “or”.]**
42. *Phosphorus works*: That is to say, processes in which -
- (a) phosphorus is made; or
- (b) yellow phosphorus is used in any chemical or metallurgical process.
43. *Ammonia works*: That is to say, processes in which ammonia is -
- (a) made; or
- (b) used in the ammonia-soda process; or
- (c) used in the manufacture of carbonate, nitrate or phosphate of ammonia or urea.
44. *Acetylene works*: That is to say, processes in which acetylene is made and used in any chemical manufacturing process.
45. *Hydrogen cyanide works*: That is to say, processes in which hydrogen cyanide is made or is used in any chemical manufacturing process.
46. *Amines works*: That is to say, processes in which methylamine or ethylamine is made.
47. *Calcium carbide works*: That is to say, processes in which calcium carbide is made.
48. *Aldehyde works*: That is to say, processes in which formaldehyde or acetaldehyde or acrolein or the methyl, ethyl or propyl derivatives of acrolein are made.
49. *Anhydride works*: That is to say, processes in which acetic, maleic or phthalic anhydrides or the corresponding acids are made.
50. *Chromium works*: That is to say, processes in which any chrome ore or concentrate is treated for the production thereof of chromium compounds or chromium metal is made by dry processes giving rise to fume.
51. *Magnesium works*: That is to say, processes in which magnesium or any compound of magnesium is made by dry processes giving rise to fume.
52. *Cadmium works*: That is to say, processes in which metallic cadmium is recovered or cadmium alloys are made or any compound of cadmium is made by dry processes giving rise to fume.
53. *Manganese works*: That is to say, processes in which manganese or its alloys or any compound of manganese is made by dry processes giving rise to fume.
- [The word “Manganese” is misspelt in its first use in item 53, as reproduced above.]**
54. *Metal recovery works*: That is to say, processes in which metal is recovered from any form of scrap material containing combustible components.
55. *Galvanising works*: That is to say, processes involving coating with zinc by dipping into molten metal, including pickling and fluxing giving rise to fumes or noxious or offensive gases.

56. *Bagasse Incineration works*: That is to say, processes involving the combustion of bagasse.
57. *Metal spray works*: That is to say, processes in which any metal is deposited on to a surface in the form of a spray through the application of heat in such a way as to give rise to noxious or offensive gases.
58. *The bulk storage and handling of ore*: That is to say, the storage and handling of metallic ore at dumps designed to hold 100 000 metric tons or more, which are not situated on the premises of a mine or works as defined in the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968).
59. *Vanadium works*: That is to say, processes in which vanadium pentoxide or vanadium carbide is manufactured or handled in such a way as to give rise to noxious or offensive gases.
60. *Macadam preparation works*: That is to say, processes in which crushed stone is heated or dried, with or without the addition of tar or bituminous binders, for the purposes of preparing road surfacing or paving material.

Schedule 3

MUNICIPALITY OF WALVIS BAY

MUNICIPALITY OF WINDHOEK