

LEGAL NOTICE NO # OF 2010

THE ENVIRONMENT MANAGEMENT ACT, 2002

(Act No 5 of 2002)

THE AIR POLLUTION CONTROL REGULATIONS, 2010

(Under section 37)

In exercise of the powers conferred by section 37 of the Environmental Management Act, 2002, and having consulted with the Authority, the Minister for Tourism, Environment and Communications makes the following Regulations -

Citation and Commencement

1. These Regulations may be cited as the Air Pollution Control Regulations, 2008 and come into operation on the date of publication in the Gazette.

Definitions

2. In these Regulations:

“air quality objectives” means the air quality objectives contained in Schedule One;

"Authority" means the Swaziland Environment Authority established under section 9 of the Environmental Management Act, 2002;

“controlled air pollutant” means a pollutant listed in Schedule Two;

“dark smoke” means smoke which, if compared in the appropriate manner with a Ringelmann Chart, would appear to be as dark as or darker than shade 2 on the chart;

"operator" means a person who owns or manages an undertaking, or who controls an operation or process, which emits pollutants into the atmosphere;

"pollutant" means any substance likely to cause pollution; and

"Ringelmann Chart" means a chart that conforms to the chart contained in British Standards publication BS2742C.

"Minister" means the Minister responsible for environmental affairs

Air Quality Objectives

3. (1) The Meteorological Service must monitor air quality in a range of areas which are representative of typical population exposure in order to assess compliance with the air quality objectives on a national basis.

(2) The Meteorological Service must advise the Authority by notice in writing at the end of every month if any air quality objective is not met in any area monitored and of the most probable reasons for the failure to meet the air quality objective.

(3) The Meteorological Service must submit to the Authority an annual report concerning air quality in Swaziland which must include the results of the air quality monitoring undertaken pursuant to paragraph (1) and must summarise cases of non-compliance with any air quality objective.

(4) The Authority must consider the reports submitted under sub-regulation (3) and must review the air quality objectives at least once in every five years in order to ensure that they are appropriate and adequate to ensure a high level of protection for the environment and for human health, and must publish the results of the review.

(5) If on the basis of the review carried out under paragraph (1) the Authority concludes that the existing air quality objectives are not appropriate and adequate to ensure a high level of protection for the environment and for human health, the Authority must propose new air quality objectives to the Minister, which may apply to pollutants already listed in Schedule One or to any other pollutants not yet listed, or to both.

(6) Before the Minister sets new air quality objectives the Authority must submit the new air quality objectives to public review in accordance with procedure specified in regulation 11 of the Environmental Audit, Assessment and Review Regulations, 2000.

Prohibition of emission of dark smoke

4. (1) If any dark smoke is emitted from any commercial or industrial premises, the occupier of the premises and any person who caused or permitted the emission commits an offence and is liable on conviction to a fine not exceeding E 250,000.00 or to imprisonment for not more than 5 years or to both.

(2) If dark smoke is emitted as a result of the burning of waste or material from any commercial or industrial enterprise at a place which is not a licensed waste disposal site or commercial or industrial premises, the owner of the commercial or industrial enterprise from which the waste or material originated, and any person who caused or permitted the burning of the waste or material, commits an offence and is liable on conviction to a fine not exceeding E 150,000.00 or to imprisonment for not more than 3 years, or to both.

(3) A court may order any person convicted of an offence under sub-regulations (1) or (2) to pay a fine of [E5000.00] for every day on which dark smoke was emitted, in addition to any other fine imposed under those sub-regulations.

(4) In any prosecution for an offence under this regulation, it shall be a defence to prove that the alleged emission:

- a) did not exceed the permitted period for such an emission as defined in Part A of Schedule Three;
- b) resulted from the burning of exempted matter in accordance with the conditions specified in Part B of Schedule Three;
- c) did not persist for more than [30 minutes] and was solely due to the lighting of a furnace which was cold and that all practicable steps were

taken to prevent or minimise the emission of dark smoke; or

- d) was solely due to some failure of a furnace or other equipment and that the failure was not reasonably foreseeable, or, if reasonably foreseeable, could not reasonably have been provided against, and that the alleged emission could not reasonably have been prevented by taking action after the failure occurred.

(2) In any prosecution for an offence under this regulation:

- a) dark smoke shall be presumed to have been emitted from commercial or industrial premises or any other place, if it is shown that material was burned on the premises or at that place under circumstances which are likely to give rise to the emission of dark smoke, unless the accused proves that no dark smoke was emitted; and
- b) the court may determine whether or not any smoke emitted was dark smoke even if there was no actual comparison of the smoke with a Ringelmann chart.

Sampling, Testing and Monitoring

5. (1) Every operator who routinely emits into the atmosphere, or permits the emission into the atmosphere of, any controlled air pollutants must notify the Authority of the nature of the process being operated which gives rise to the emissions and of the actual or estimated quantity of controlled air pollutants emitted per annum and during peak periods.

(2) If the Authority has reason to believe that emissions of controlled air pollutants are or may be emitted from any premises, the Authority may, by notice in writing to the occupier of the premises, require the occupier :

- a) to keep clear and accurate written records of the type and quantity of any fuel or raw material used which is likely to affect the emission of air pollutants from the premises;

- b) to undertake testing and record keeping in the manner specified in the notice and so as to enable a reasonably accurate estimate to be made of the total concentration and mass of the controlled pollutants emitted into the atmosphere per annum and during peak emission periods; and
- c) to make available to the Authority, upon request, copies of any records and results referred to in paragraphs (a) or (b).

(3) Every operator must at all times give an officer or agent of the Authority access to the premises at which the operation is conducted, and to the records referred to in sub-regulation (2), and to any place where controlled air pollutants are emitted into the atmosphere to enable the officer or agent to sample and test the emissions.

(4) Every operator must ensure that all sampling and testing of emissions of controlled pollutants is conducted in accordance with methods approved by the Authority or the Meteorological Service.

(5) For the purposes of sub-regulation (4) above, the Authority must make documents describing the approved methods available for inspection and copying at its offices during office hours.

(6) The Authority must compile an inventory of operators and emissions from the information received pursuant to paragraph (1).

(7) Any person who fails to comply with the provisions of this regulation is guilty of an offence and is liable on conviction to a fine not exceeding E 150,000.00 or to imprisonment for not more than 3 years, or to both.

Reporting air pollution incidents

- 6. (1) If any accidental, sudden, or non-routine emission to the atmosphere occurs which is significant according to sub-regulation (2), the occupier of the premises or place from which the emission occurred and any person who caused or permitted the emission, must:
 - a) within 12 hours report the incident to the Authority, giving details of

the incident including the quantity, quality and cause of the emission and what measures, if any, have been taken to mitigate any adverse environmental impacts of the emission;

- b) Simultaneously notify the Ministry of Health and any other bodies in the locality which may be able to assist in preventing or mitigating harm to human health or to the environment, and
- c) take all reasonable measures to warn potentially affected persons of the danger arising from the emission, including television and radio broadcasts.

(2) For the purpose of sub-regulation (1), an emission is “significant” if:

- a) it is an emission from commercial or industrial premises of controlled pollutants which differs significantly in quantity, quality or composition, or is emitted in a different manner, from the emissions ordinarily emitted from those premises; or
- b) the nature of the emission is such that it creates a potential hazard to human health or the environment.

Obligation to mitigate harm and take remedial action

4. (1) Any person who causes or permits an emission which is potentially hazardous to human health or the environment, and any operator whose business gives rise to such an emission, must immediately take all reasonable measures to avoid and mitigate any damage which may be caused to the environment or to human or health as a result of the emission.

(2) The Authority may by notice in writing served on a person referred to in sub-regulation (1) require that person to take measures to mitigate or repair any damage to the environment or to prevent a recurrence of any incident that caused the damage, within a reasonable period prescribed in the notice.

(3) If a person fails to comply with a notice under sub-regulation (2), the Authority may cause the required measures to be taken and may order the person on whom the notice was served to reimburse the Authority for the costs of taking such measures.

(4) Any person who is aggrieved by a cost order made under sub-regulation (3) may appeal to the Minister in accordance with section 82 of the Act.

(5) A person who fails to take the measures required under sub-regulation (1) or who fails to comply with a notice under sub-regulation (2) or an order under sub-regulation (3) commits an offence and is liable on conviction to a fine not exceeding E 50,000.00 or to imprisonment for not more than 1 year or to both.

SCHEDULE ONE
(regulations 2 and 3)

AIR QUALITY OBJECTIVES

Parameter	Monitoring Period	Objective (maximum)
SO₂	1 hour	average of 350 µg/m ³
	24 hours	average of 125 µg/m ³
	12 months	average of 50 µg/m ³
PM₁₀	24 hours	average of 50 µg/m ³
	12 months	average of 40 µg/m ³
NO₂	1 hour	average 200 µg/m ³
	24 hours	average of 50 µg/m ³
	12 months	average of 40 µg/m ³
Lead	24 hours	average of 20 µg/m ³
	12 months	average of 0.5 µg/m ³
CO	1 hour	average of 30 mg/m ³
	24 hours	average of 10 mg/m ³
O₃	24 hours	average of 100 µg/m ³
Benzene	12 months	average of 5 µg/m ³
PAHs	12 months	average of 0.25 ng/m ³
1,3-Butadiene	12 months	average of 2.25 µg/m ³
NO_x	12 months	average of 30 µg/m ³

For the purposes of this Schedule, PM10 means particulate matter capable of passing through an inlet of defined characteristics with a 50% sampling efficiency at 10um aerodynamic diameter. Measurement of PM10 must be carried out using instruments conforming to CEN standard prEN 12341.

**SCHEDULE TWO
(regulations 2 and 5)**

CONTROLLED AIR POLLUTANTS

SO₂

PM₁₀

NO₂

O₃

CO

Lead

Any other potentially toxic compounds

SCHEDULE THREE
(regulation 4)

PART A : PERMITTED EMISSIONS OF DARK SMOKE

It is permitted to emit dark smoke provided that:

- (a) the emission of dark smoke from a chimney does not exceed 10 minutes in aggregate over any eight-hour period or four minutes of continuous emission; or
- (b) the emission of dark smoke from a chimney is caused by soot blowing and does not exceed 14 minutes in aggregate over any eight-hour period.

PART B: EXEMPTED MATTER

(1) It is permitted to emit dark smoke where this is caused by the burning of matter listed in paragraph (2) below, provided that the following conditions are complied with at all times:

- (a) there is no other reasonably safe and practical method of achieving the purpose for which the matter is being burned;
- (b) the burning of the matter is carried out in such a manner as to minimise the emission of smoke as far as possible;
- (c) the burning of the matter is carried under the direct and continuous supervision of the occupier of the premises or a person authorised to act on behalf of the occupier; and
- (d) the burning of the matter does not pose a serious risk of harm to the environment or to human health.

(2) The following matter is exempted matter for the purposes of paragraph (1):

- (a) timber or other waste matter resulting from the demolition of a building;
- (b) waste explosives;
- (c) matter burned in connection with research or fire training;
- (d) tar, pitch and asphalt burned in connection with road laying or resurfacing;

- (e) carcasses of animals which have died from diseases; and
- (f) containers contaminated with pesticides or toxic substances used for veterinary or agricultural purposes.