

Environment - South Africa

Maximum emissions limits and licensing requirements introduced

Contributed by [Bowman Gilfillan Inc](#)

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Recent developments in South African air quality legislation have heralded substantial changes in air quality management by introducing maximum emissions limits and amendments to activities requiring licences.

These developments resulted from the entry into force on April 1 2010 of various sections of the National Environmental Management: Air Quality Act 2004. The act's predecessor, the Atmospheric Pollution Prevention Act 1965, is now wholly repealed.

A new list of activities which are deemed to result in atmospheric emissions that have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions and cultural heritage, is also now effective.

For the first time, specific emissions limits and standards are set for listed activities, which differentiate between existing and new activities. The standards specify permissible amounts, volumes, emission rates and concentrations of particular substances that may be emitted. New plants must comply immediately with the new plant minimum emission standards, while existing plants must comply with existing plant minimum emission standards by March 31 2015. Additional reporting requirements, compliance monitoring and licensing authority reviews must be observed. The authorities may also require emitters to designate an emissions control officer.

Under the Air Quality Act, no one may conduct a listed activity without an atmospheric emissions licence. The application procedure for these licences and the factors that licensing authorities must consider in deciding whether to grant a licence are set out in the act. However, registration certificates issued under the Atmospheric Pollution Prevention Act which were valid on April 1 2010 remain in force. The Air Quality Act's provisions now apply to Atmospheric Pollution Prevention Act certificate holders; provisional registration certificates and registration certificates are respectively treated as provisional atmospheric emissions licences or atmospheric emissions licences issued under the Air Quality Act. Atmospheric Pollution Prevention Act provisional registration certificates and registration certificates will remain valid for two and four years, respectively. However, an Atmospheric Pollution Prevention Act registration certificate will expire on the third year if not lodged for renewal within this period.

Under the Air Quality Act, licence applicants are first entitled to provincial atmospheric emissions licences, which must be renewed prior to the expiry of the period specified in the licence. Such licences can be renewed twice only. If commissioned facilities are in full compliance with the licence conditions for at least six months, an atmospheric emissions licence application may be submitted. The Air Quality Act does not specify a period for the validity of an atmospheric emissions licence; it will remain valid for such time as is specified in the licence.

Offences for, among other things, carrying out a listed activity without a licence, exceeding the emissions limits or contravening licence conditions have also entered into force. The penalties for such offences are a fine of up to R5 million rand or imprisonment for up to five years. In the case of a second or subsequent conviction, the penalties are a fine of up to R10 million or imprisonment for up to 10 years, or both.

While the list of activities set out in the Air Quality Act generally includes similar activities to those requiring licences under the Atmospheric Pollution Prevention Act, these activities are now listed with greater particularity, in order to cater for the different emissions standards specified for each activity. The precise substances, compounds and processes in some instances vary in the Air Quality Act for each activity from those

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specified in the Atmospheric Pollution Prevention Act. New activities have also been included under the Air Quality Act.

Emitters should therefore carefully consider the list of activities to establish whether their emissions constitute a new activity for which a licence is required, or alternatively whether a licence is no longer needed. However, under the Air Quality Act, all combustion installations constitute a listed activity. Therefore, thermal treatment by fuel of any substance or compound that has not been specifically listed under an activity will still require a licence.

Previously, the licensing of several Atmospheric Pollution Prevention Act listed activities depended on whether the emissions resulted in "offensive or noxious gases". This limitation has been excluded under the Air Quality Act; now all listed activities require licences, regardless of the nature of the gases emitted.

The Air Quality Act does not provide for a transition period during which licences required for new activities may be obtained. Therefore, industries need to assess carefully their emissions activities and emissions volumes against the list of activities, and apply as soon as possible if a licence is required.

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