Bergrivier, South Africa

Air Pollution Control By-law, 2013

Legislation as at 6 December 2013

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Repealed

Bergrivier
South Africa

Air Pollution Control By-law, 2013

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Under Section 156 of the Constitution of the Republic of South Africa, 1996, the Bergrivier Municipality, enacts as follows:-

Part I – Interpretation and objectives

1. Definitions

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

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

"**air pollutant**" means any substance (including but not limited to dust, smoke, fumes and gas) that causes or may cause air pollution;

"**air pollution**" means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

"**air pollution control zone**" means the geographical area to which Part III of the By-law is declared to apply;

"**atmosphere**" means air that is not enclosed by a building, machine, chimney or other such structure;

"**atmospheric emission**" or "emission" means energy or substance or combination of substances emanating from a point, non-point or mobile source that results in air pollution;

"**authorised person**" means any person authorised by the municipality to implement any provision of this By-law;

"**best practicable means**" means the most effective measures that can reasonably be taken to prevent, reduce or minimise air pollution, having regard to all relevant factors including, among others, local conditions and circumstances, the likelihood of adverse effects, the current state of technical knowledge and the financial implications relative to the degree of environmental protection expected to be achieved by application or adoption of the measures;

"**chimney**" means any structure or opening of any kind from or through which air pollutants may be emitted;

"**compressed ignition powered vehicle**" means a vehicle powered by an internal combustion, compression ignition, diesel or petrol driven engine;

"**dark smoke**" means in respect of Part VII of this By-law:-

(a) smoke which has a density of 60 Hartridge smoke units or more, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a density of 66 Hartridge smoke units or more; or

(b) smoke which has a light absorption co-efficient of more than 2.125 m, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a light absorption coefficient of more than 2.51 m;

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

"**dwelling**" means any building or other structure, or part of a building or structure, used as a dwelling, and any outbuildings ancillary to it, but excludes shacks and informal settlements;

"**environment**" means the surroundings within which humans exist and that are made up of:-

(a) the land, water and atmosphere of the earth;

(b) micro-organisms, plant and animal life;

(c) any part or combination of (a) and (b) and the interrelationships among and between them; and

(d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"**free acceleration test**" means the method described in Section 18(2) employed to determine whether vehicles are being driven or used in contravention of Section 15(1);

"**fuel-burning equipment**" means any furnace, boiler, incinerator, or other equipment, including a chimney;

(a) designed to burn or capable of burning liquid, gas or solid fuel;

(b) used to dispose of any material or waste by burning; or

(c) used to subject liquid, gas or solid fuel to any process involving the application of heat;

"**fumes**" means any pungent or toxic vapour, gas, or smoke including but not limited to diesel fumes, spray painting fumes and exhaust fumes;

"**light absorption meter**" means a measuring device that uses a light-sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

"**living organism**" means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

"**mobile source**" means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

"**municipality**" means the Bergrivier Municipality and includes any political structure, political office bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this By-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, or any employee thereof acting in connection with this By-law by virtue of a power vested in the municipality and delegated, to such political structure, political office bearer, agent or employee;

"**municipal manager**" means a person appointed as such by the municipality in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

"**non-point source**" means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

"**nuisance**" means an unreasonable interference or likely interference caused by air pollution with:-

(a) the health or well-being of any person or living organism; or

(b) the use or enjoyment by an owner or occupier of his or her property;

(c) the ordinary comfort, convenience, peace or quiet of another person; and

(d) the natural state of the environment;

"**offensive odours**" means any smell which is considered to be malodorous or a nuisance to a reasonable person;

"**open burning**" means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and "burning in the open" has a corresponding meaning;

"**operator**" means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants;

"**point source**" means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

"**proclaimed township**" means any land unit zoned and utilised for residential purposes;

"**person**" means a natural person or a juristic person;

"**premises**" means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in that building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality or the precincts of any harbour;

"**public road**" means a road which the public has the right to use;

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

"**vehicle**" means any motor, car, motor carriage, motor cycle, bus motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power.

2. Application, principles and objectives

(1) The purpose and objectives of this By-law is:-

(a) to give effect to the right contained in Section 24 of the Constitution of the Republic of South Africa, 1996 by controlling air pollution within the area of the municipality's jurisdiction; and

(b) to ensure that air pollution is avoided, or where it cannot be altogether avoided, is minimised and remedied.

(2) The municipality, aware of the Constitutional right of every person to an environment that is not harmful to his or her health or well-being adopts this By-law with the aim of protecting and promoting the health and well-being of all people in the Bergrivier area by providing, in conjunction with applicable laws, a legal and administrative framework within which the municipality can develop and manage its obligations.

(3) In the implementation and enforcement of this By-law, the municipality may take into consideration the realities of the Bergrivier area, the different customs, cultures, circumstances, geographical areas, kinds of property levels of development and conventions and the municipality may use the devices provided for in this By-law, including the application of different norms,

standards and guidelines, the granting of exemptions and the utilisation of liaison forums as contemplated in Section 34 of this By-law.

Part II – Duty of care

3. Duty to take care

(1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures:-

(a) to prevent any potential air pollution from occurring; and

(b) to mitigate and, as far as reasonably possible, to remedy any air pollution that has occurred.

(2) The municipality may monitor the impact and effectiveness of the measures taken in terms of subsection (1) and, if necessary, issue instructions to a person contemplated in subsection (1) with regard to specific measures to be undertaken.

(3) The municipality may direct any person who fails to take the measures required under subsection (1):-

(a) to investigate, evaluate and assess the impact of specific activities and report thereon;

(b) to commence taking effective control measures to abate the air pollution before a given date;

(c) to diligently continue with those measures; and

(d) to complete the measures before a specified reasonable date.

(4) Should a person fail to comply, or inadequately comply, with a directive under subsection (3), the municipality may take reasonable measures to remedy the situation.

(5) If any person fails to take the measures required of him or her under subsection (1) or (2), the municipality may recover all reasonable costs incurred as a result of it acting under subsection (4) from any or all of the following persons:-

(a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;

(b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;

(c) the person in control of the land or any person who has or had a right to use the land at the time when:-

(i) the activity or the process in question is or was performed or undertaken; or

(ii) the situation came about; or

(a) any person who negligently failed to prevent:-

[Numbering as published in PG 7208/2013]

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about.

(6) If more than one person is liable under subsection (5), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsection (1), (2) and (3).

Repealed

Part III – Air pollution control zone

4. Declaration of air pollution control zone

(1) The whale area within the jurisdiction of the municipality is hereby declared an air pollution control zone.

(2) Within an air pollution control zone the municipality may from time to time by notice in the Provincial Gazette:-

(a) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;

(b) prohibit or restrict the combustion of certain types of fuel;

(c) prescribe different requirements in an air pollution control zone relating to air quality in respect of:-

(i) different geographical portions;

(ii) specified premises;

(iii) classes of premises; or

(iv) premises used for specified purposes.

(3) The municipality may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.

(4) Subject to Section 29, the municipality may in writing exempt certain premises, classes of premises or premises used for specified purposes from the operation of measures adopted by the municipality under this Section.

Part IV – Smoke emissions from premises other than dwellings

5. Application

For the purposes of this Part, "premises" does not include dwellings.

6. Prohibition

(1) Subject to subsection (2), smoke must not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes.

(2) This Section does not apply to smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practicable means available.

(3) If smoke is emitted in contravention of subsection (1) the owner, operator and/or the occupier of the premises shall be guilty of an offence.

7. Installation of fuel-burning equipment

(1) No person shall install, alter, extend or replace any fuel-burning equipment on any premises without the prior written authorisation of the municipality, which may only be given after consideration of the relevant plans and specifications.

(2) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved, for the purposes of this Section, by the municipality shall be presumed until the contrary is proved to comply with the provisions of subsection (1).

(3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of subsection (1):-

(a) the owner and occupier of the premises and the installer of the fuel-burning equipment shall be guilty of an offence;

(b) the municipality may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

8. Operation of fuel-burning equipment

(1) No person shall use or operate any fuel-burning equipment on any premises contrary to the authorisation referred to in Section 7.

(2) Where fuel-burning equipment has been used or operated on the premises in contravention of subsection (1):-

(a) the owner and occupier of the premises and the operator of the fuel-burning equipment shall each be guilty of an offence;

(b) the municipality may on written notice to the owner and occupier of the premises:-

(i) revoke its authorisation under Section 7; and

(ii) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

9. Presumption

In any prosecution for an offence under Section 6 smoke shall be presumed to have been emitted from premises if it is shown that any fuel or material was burned on the premises and the circumstances were such that the burning would be reasonably likely to give rise to the emission of smoke, unless the owner, occupier or operator, as the case may be, shows that no smoke was emitted.

10. Installation and operation of measuring equipment

An authorised person may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate measuring equipment at his or her own cost; if:-

(a) unauthorised and unlawful emissions of smoke from the relevant premises have occurred consistently or regularly;

(b) fuel-burning equipment has been or is intended to be installed on the relevant premises which is reasonably likely in the opinion of an authorised person to emit smoke;

(c) the person on whom the notice is served has been convicted more than once under this Part IV and has not taken adequate measures to prevent further contravention of the provisions of this Part; or

(d) the authorised person considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard or nuisance to human health or the environment.

Repealed

11. Monitoring and sampling

(1) An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install air pollution measuring equipment in terms of Section 10(1) must:-

(a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;

(b) if requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection;

(c) if requested to do so by an authorised person, provide a written report (in a form and by a date specified by the authorised person) of part or all of the information in the record of the monitoring and sampling results; and

(d) ensure that the air pollution measuring equipment is calibrated at least once per year or at intervals as specified by the manufacturer of the equipment and provide records of such calibration on request by the authorised person.

12. Exemption

(1) Subject to Section 26 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the municipality may grant a temporary exemption in writing from one or all the provisions of this Part.

(2) Any exemption granted under subsection (1) must state at least the following:-

(a) a description of the fuel-burning equipment and the premises on which it is used or operated;

(b) the reasons for granting the exemption;

(c) the condition attached to the exemption, if any;

(d) the period for which the exemption has been granted; and

(e) any other relevant information.

Part V – Smoke emissions from dwellings

13. Smoke emissions from dwellings

(1) Subject to Section 4(2), no person shall emit or permit the emission of smoke from any dwelling that may cause a nuisance.

(2) Any person who emits or permits the emission of smoke in contravention of subsection (1) commits an offence.

(3) Subject to Section 28 and on application in writing by the owner or occupier of any dwelling, the municipality may grant temporary exemption in writing from one or all of the provisions of this Part.

Part VI – Emissions caused by open burning

14. Emissions caused by open burning

(1) Subject to subsection (4), any person who carries out open burning of any material on any land or premises is guilty of an offence, unless the prior written authorisation of the municipality, which

may include the imposition of further conditions with which the person requesting authorisation must comply, has been obtained.

(2) The municipality may not authorise open burning under subsection (1) unless it is satisfied that:-

(a) the applicant in terms of subsection (1) has investigated and assessed every reasonable alternative for reducing, re-using or recycling the material in order to minimise the amount of material to be burnt in the open, to the satisfaction of the municipality;

(b) no warning has been published for the region in terms of Section 10(1)(b) of the National Veld and Forest Fire Act, 1998 (Act 101 of 1998);

(c) the open burning will not pose a nuisance or potential hazard to human health or safety, private property or the environment; and

(d) the prescribed fee has been paid to the municipality.

(3) Any person who undertakes or permits to be undertaken open burning in contravention of subsection (1) commits an offence.

(4) The provisions of this Section shall not apply to:-

(a) recreational outdoor barbecue or braai activities on private premises;

(b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or

(c) any other defined area or defined activity to which the municipality has declared this Section not to apply.

15. Emissions caused by tyre burning and burning of rubber products and cables in open spaces

(1) No person may carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for any purpose, for the purposes of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, of the rubber products or cables as waste.

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

Part VII – Emissions from compressed ignition powered vehicles

16. Prohibition

(1) No person may drive or use, or cause to be driven or used, a compresses ignition powered vehicle that emits dark smoke.

(2) If dark smoke is emitted in contravention of subsection (1) the owner and the driver of the vehicle shall each be guilty of an offence.

(3) For purposes of this Section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

17. Stopping of vehicles for inspection and testing

(1) In order to enable an authorised person to enforce the provisions of this Part, the driver of a vehicle must comply with any reasonable direction given by an authorised person:-

(a) to stop the vehicle; and

(b) to facilitate the inspection or testing of the vehicle.

(2) Failure to comply with a direction given under subsection (1) is an offence.

(3) When a vehicle has stopped in compliance with a direction given under subsection (1), the authorised person may:-

(a) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:-

(i) at or as near as practicable to the place where the direction to stop the vehicle is given; and

(ii) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or

(b) conduct a visual inspection of the vehicle and. if the authorised person reasonably believes that an offence has been committed under Section 15(2), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with Section 17.

18. Testing procedure

(1) An authorised person must use the free acceleration test method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of Section 15(1).

(2) The following procedure must be adhered to in order to conduct a free acceleration test:-

(a) when instructed to do so by the authorised person, the driver must start the vehicle, place it in neutral gear, engage the clutch and disengage the exhaust brake;

(b) the authorised person or the driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle;

(c) while the throttle pedal is depressed, the authorised person must measure the smoke emitted from the vehicle's emission system with a Hartridge Smoke meter in order to determine whether or not it is dark smoke; and

(d) the authorised person or the driver of the vehicle may only release the throttle pedal of the vehicle, when directed to do so by the authorised person.

(3) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle:-

(a) is not emitting dark smoke, then the authorised person must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of Section 15(1); or

(b) is emitting dark smoke, the authorised person must issue the driver of the vehicle with:-

(i) a notice to pay a fine in terms of Section 341 of the Criminal Procedure Act, Act 51 of 1977; or

(ii) a repair notice in accordance with Section 18.

19. Repair notice

(1) A repair notice must direct the owner of the vehicle to take the vehicle to a place identified in the notice for re-testing.

(2) The repair notice must contain the following information:-

(a) the make, model and registration number of the vehicle;

(b) the name, address and identity number of the driver of the vehicle; and, if the driver is not the owner, the name and address of the vehicle owner;

(d) the measures required to remedy the situation; and

(d) the time period within which the owner of the vehicle must comply with the repair notice.

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(3) A person who fails to comply with the requirements and conditions of the notice in terms of subsection (1) commits an offence.

(4) It shall not be a defence in proceedings under subsection (3) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

Part VIII – Emissions that cause a nuisance

20. Prohibition

(1) No person may create or permit emissions that cause a nuisance.

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

21. Compliance notice

(1) An authorised person may serve a notice on any person whom he or she reasonably believes is likely to commit or has committed an offence under Section 19, calling upon that person:-

(a) to abate the nuisance within a period specified in the notice;

(b) to take all necessary steps to prevent a recurrence of the nuisance; and

(c) to comply with any other conditions contained in the notice.

(2) For the purposes of subsection (1), an authorised person may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the compliance notice is to be served

(3) A compliance notice under subsection (1) may be served:-

(a) upon the owner of any premises, by:-

(i) delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;

(ii) transmitting it by registered post to the owner's last known address, or the last known address of the agent; or

(iii) delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;

(b) upon the occupier of the premises, by:-

(i) delivering it to the occupier;

(ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

(4) Any person who fails to comply with a compliance notice served on that person in terms of subsection (1) commits an offence.

(5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (4) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

Repealed

22. Steps to abate nuisance

At any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

Part IX – Offensive odours

23. Control of offensive odours

(1) The occupier or owner of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.

(2) Any person who emits or permits the emission of any offensive odour in contravention of subsection (1) commits an offence.

Part X – Dust nuisance

24. Control of dust

(1) The occupier or owner of any premises must take all reasonable steps to prevent the creation of nuisance by dust caused by any activity on such premises.

(2) Any person who emits or permits the emission of dust in contravention of subsection (1) commits an offence.

25. Sand blasting emissions

(1) Any person conducting sand blasting activities which customarily produce emissions of dust that may be harmful to public health, well-being or cause a nuisance shall take control measures to prevent emissions into the atmosphere.

(2) Any person who undertakes any sand blasting activity that causes dust emissions must implement the following control measure:-

(a) dust extraction control measure; or

(b) any alternative dust control measure approved in writing by the air quality officer.

(3) A person that contravenes subsections (1) and (2) commits an offence.

Part XI – Fume nuisance

26. Control of fumes

(1) The occupier or owner of any premises must take all reasonable steps to prevent the nuisance by fumes caused by any activity on such premises.

(2) Any person who emits or permits the emission of fumes in contravention of subsection (1) commits an offence.

Repealed

Part XII – Pesticide spraying emissions

27. Pesticide spraying emissions

(1) No person may carry out or permit the spraying of pesticides, except as permitted by Section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

(2) Any person who contravenes subsection (1) of this By-law is guilty of an offence, as set out in Section 18(1)(c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

(3) A person who carries out or permits the spraying of pesticides, within the municipal jurisdiction, must also comply with the following controlled measures:-

(a) the prior written authorisation of the Council must be obtained, which authorisation may be granted by the Council with conditions, including:-

(i) the area of land on which the pesticide may be applied; and

(ii) the period of time in which the pesticide may be applied;

(b) the applicant must notify in writing the owners and occupiers of all adjacent properties within 150 m of the treatment area of:-

(i) the details of the proposed treatment area;

(ii) the reason for the pesticide use;

(iii) the active ingredient;

(iv) the date and approximate time of the pesticide use;

(v) in the event of inclement weather conditions, an alternative date or dates on which the pesticide use may occur;

(vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;

(vii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Council within seven days of being notified; and

(viii) the prescribed fee has been paid to the Council.

(4) Any person who contravenes subsection (3) is guilty of an offence.

(5) A person may apply to the Council for an exemption if the spraying of the pesticide is for:-

(a) the management of pests that transmit human diseases or adversely impact agriculture or forestry;

(b) the management of pests that threaten the integrity of sensitive ecosystems; or

(c) the need for the use of the pesticide is urgent.

(6) The provisions of this Section are not applicable to:-

(a) residential areas of farms;

(b) buildings or inside buildings;

(c) domestic use of pesticides; or

(d) any other defined area or defined activity to which the Council has declared this Section not to apply.

Part XIII – General provisions

28. Appeal

(1) A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of Section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

(2) Pending confirmation, variation or revocation of the decision against which the appeal is lodged, any person appealing the said decision, unless the municipality provides otherwise:-

(a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and

(b) may not exercise any rights that may have accrued as a result of the decision that is the subject of the appeal application, provided that no other person may exercise any right that may accrue either.

29. Severability

If a Section, subsection, sentence, clause or phrase of this By-law is declared invalid by a competent court, the invalid portion shall be severed and shall not affect the validity of the remaining portions of the By-law.

30. Municipality and State bound

This By-law is binding on the State and the municipality.

31. Conflict

(1) In the event of a conflict within any other By-law which directly or indirectly regulates air pollution, the provisions of this By-law shall prevail.

(2) In the event of a conflict with the Atmospheric Pollution Prevention Act, 1955 (Act 45 of 1965) and the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) the provisions of these Acts will prevail within the area of jurisdiction of the Municipality.

32. Offences and penalties

(1) Any person who contravenes any provision of this By-law commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

(2) It is an offence to:-

(a) supply false information to an authorised person in respect of any issue pertaining to the By-law; or

(b) to refuse to co-operate with the request of an authorised person made in terms of this By-law.

(3) Failure to comply with a notice, direction or instruction referred to in this By-law constitutes a continuing offence.

(4) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law:-

(a) to remedy the harm caused;

(b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and

(c) to install and operate at the person's own expense air pollution measuring equipment in accordance with the provisions of Section 11.

33. Exemptions

(1) The municipality may grant temporary exemption in writing from one or all of the provisions of Parts III, IV and V, provided that the municipality:-

(a) is satisfied that granting the exemption will not significantly prejudice the purpose referred to in Section 2(1); and

(b) grants any exemption subject to conditions that promote the attainment of the purpose referred to in Section 2(1).

(2) The municipality may not grant an exemption under subsection (1) until the municipality has:-

(a) taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally effected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;

(b) provided such person with a reasonable opportunity to object to the application; and

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

34. Savings

Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this By-law or until anything done under this By-law overrides it.

35. Conflict with other legislation

In the event of any conflict between any provision of this By-law and national and provincial legislation, standards, policies or guidelines, the national and provincial legislation, standards, policies or guidelines shall prevail.

36. Repeal of By-laws

The provisions of any By-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this By-law.

37. Short title and commencement

This By-law shall be known as the Air Pollution Control By-law of the Bergrivier Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.