AIR QUALITY BY-LAWS, FUNCTIONAL RESPONSIBILITIES AND SERVICE LEVEL AGREEMENTS
CONTENTS

• Air Quality By-laws
• Air Quality Functions
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INTRODUCTION

• Some uncertainties regarding functions between B and C- municipalities.
• What is the legal requirements for A, B and C?
• What should be addressed and distinguish in an Air Quality By-law`s on B level and C-level?
• Can authorities enter into Service Level Agreements between themselves to render air quality services?
BY- LAWS

• First you must look at the function and confirm if it is your function.
• If it is not your function or responsibility, then you cannot promulgate a By-law on that function.

❖ Section 155 of Constitution categorize municipalities between A- Metropolitans, B- Local and C- District municipalities.

❖ Section 156 refers to powers and functions of municipalities and a municipality has the right to administer local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 and any other matter assigned to it by national and provincial legislation.
• **Part B of Schedule 4** of the Constitution list Air Quality as a Local Government matter.

• Which local government?

• Sections 83 and 84 of the Structures Act organize the functions and powers between Districts and Local Municipalities. In terms of this sections, District Municipalities do not have any air quality authority.

• Section 83: refers to the functions stipulated in sections 45, 156, 229 of Constitution and the division of functions between B and C`s.

• Section 84: refers to the division of functions between Districts and local Municipalities. It list all the functions of District Municipalities, e.g. Municipal Health services is one of these functions of Districts.
• **What is the role then of districts i.t.o. Air Quality?**

• Please refer back to the National Environmental Management: Air Quality Act, 39 of 2004: Chapter 5, section 36: “Metropolitan and District municipalities are charged with implementing the Atmospheric Emission Licensing System referred to in Section 22……” Licensing of listed Activities is therefore a District Municipal Function because it is stipulated in national legislation.

• Where air pollution has an impact on human health, the Districts must intervene i.t.o. the Health Act and Health By-laws.
• **Provincial Air Quality Management Plans:**

Institutional functions: Municipalities:

- Appoint AQO at A, B and C (also in NEMAQA)
- Develop AQMP`s to address unique issues
- Designate clear responsibilities and functions for air quality management at Local, District Level, based on the National Framework for AQM in S.A.
- Capacitate all officials involved with Air Quality function.
- Improve governance between District and Local Municipalities
- Explore and implement opportunities for Service level Agreements between the District and Local Municipalities.
- Draft District and Local Municipality By-laws.
- National Framework for Air Quality Management in S.A.
  - Minister developed a National Framework in terms of Section 7(1) of NEMAQA.
  - This Framework binds all organs of state in all spheres of government (Section 3(b)(i & ii). The following functions are deemed to be functions for ALL MUNICIPALITIES: they must:
    - Designate AQ Officers;
    - Develop AQMP and inclusion in IDP
    - Preparation of annual report including progress regarding implementation of AQMP`s.
    - Then they may: Establish municipal standards for emissions from point source, non point source and mobile sources, require the appointment of emissions control officers in a given company.
    - In addition A and C- municipalities must implement the AEL - System
The following table provide division of Principle functions between A, B and C in terms of National Framework:

<table>
<thead>
<tr>
<th>Function</th>
<th>AQA</th>
<th>A</th>
<th>C</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitor ambient air quality and point, non point and mobile sources</td>
<td>8(a)</td>
<td>PR</td>
<td>PR</td>
<td>PR</td>
</tr>
<tr>
<td>The development of AQMP</td>
<td>15(2)</td>
<td>PR</td>
<td>PR</td>
<td>PR</td>
</tr>
<tr>
<td>Setting of municipal standards for emissions from point, non-point and mobile sources</td>
<td>11(1)</td>
<td>PR</td>
<td>PR</td>
<td>PR</td>
</tr>
<tr>
<td>Implement AQA- AEL system</td>
<td>Chapter 5</td>
<td>PR</td>
<td>PR</td>
<td>-</td>
</tr>
<tr>
<td>Monitor illegal listed activities</td>
<td>51(1)(a)</td>
<td>PR</td>
<td>PR</td>
<td>-</td>
</tr>
<tr>
<td>Monitor compliance with emission standards of controlled emitters</td>
<td>51(1)(a)</td>
<td>PR</td>
<td>PR</td>
<td>-</td>
</tr>
<tr>
<td>Function</td>
<td>AQA</td>
<td>A</td>
<td>C</td>
<td>B</td>
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<td>-------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Monitor compliance to prevent offensive odours by any activity</td>
<td>51(1)(a)</td>
<td>PR</td>
<td>PR</td>
<td>PR</td>
</tr>
<tr>
<td>Monitor compliance with directives to submit an atmospheric impact report.</td>
<td>51(1)(c)</td>
<td>PR</td>
<td>PR</td>
<td>PR</td>
</tr>
<tr>
<td>Monitor compliance with conditions of AEL</td>
<td>51(1)(e)</td>
<td>PR</td>
<td>PR</td>
<td>-</td>
</tr>
<tr>
<td>Monitor any application for AEL and or transfer, variation or renewal to ensure that it does not contain false, misleading information.</td>
<td>51(1)(f)</td>
<td>PR</td>
<td>PR</td>
<td>-</td>
</tr>
<tr>
<td>Monitor any information provided to an air quality officer to ensure it does not contain false and or misleading information.</td>
<td>51(1)(g)</td>
<td>PR</td>
<td>PR</td>
<td>-</td>
</tr>
</tbody>
</table>
SERVICE LEVEL AGREEMENTS

• Can authorities enter into service level agreements?

• Constitution: Section 238 “any organ of state in any sphere of government may delegate any power or function to any other organ of state……”

• Section 88 of Structures Act: “a District Municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district has the capacity to provide those services”. 
• National framework, p30: Districts municipalities are also encouraged to liaise with local municipalities with a view to cooperative agreements in respect of air quality functions.

• Important: “All spheres of government must work together and integrate as far as possible their actions in the provision of service”.

• **PROCESS OF SLA`s**
  - B must obtain council decision to ask for support from C.
  - C must obtain council decision to approve such an application.
The following matters should be addressed in a SLA:

• Personnel involved
• Budgets and financial implications
• Duration of agreements
• The defining and nature of functions to be delivered.
• Training needs.
• Correct appointments of officials used to fulfill the functions
• Nature of support that the B will provide towards the function
• Law Enforcement issues (overtime, transport, insurance, injury on duty, etc.)
• Distribution of income from fines.
Air quality By-laws i.t.o. SLA`s:

- The B authority must promulgate its own Air Quality By-laws which deals with the functions delegated to them. The C-authority will then apply this By law in the jurisdiction area of the B.

- The official responsible for the function must be appointed as a law enforcement official/ Peace Officer. If not also an peace officer, then you cannot do law enforcement.

Lastly both authorities must then enter into a formal service agreement, approved by both their councils.
AIR QUALITY By-laws

• The promulgation of By-laws is governed by:
  • The constitution: Section 160(4)- Authorize: Section 162- Promulgation
  • The Systems Act: Section 12- legislative procedures; Section 13: publication

PROSEDURES:
STEP 1
A Concept By Law is prepared for Council by the official responsible for the specific function.
STEP 2:
The concept are proposed before Council where only the principles are discussed. Council can give in principle approval of such a by law. The concept by law is now communicated to the public for public comments.

STEP 3:
The concept By-law and public comment now gets processed and are submitted to Council (or committee) for debate and a final concept is drafted. This final concept are submitted to the full Council for approval.

STEP 4:
Make sure councillors receive a hard copy of the By-law to prepare themselves. Council vote for the final Approval of the By-law

STEP 5
Publication in Government Gazette and is valid from the date of Publication.
<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>LOCAL</th>
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<tbody>
<tr>
<td>Objectives</td>
<td>Objectives</td>
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<tr>
<td><strong>Application</strong></td>
<td><strong>Application</strong></td>
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<tr>
<td>Right of access to premises</td>
<td>Duty of care</td>
</tr>
<tr>
<td><strong>Levying of tariffs</strong></td>
<td>Local emission standards</td>
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<tr>
<td>Duty of care</td>
<td>Motor vehicle emissions</td>
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<tr>
<td>Designation of AQ officers</td>
<td>Small boilers</td>
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<tr>
<td><strong>Local emission standards</strong></td>
<td>Open burning</td>
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<tr>
<td><strong>Controlled Emitters</strong></td>
<td>Dust emissions, sugar cane burning</td>
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<tr>
<td>Dust emissions</td>
<td><strong>Crop spraying</strong></td>
</tr>
<tr>
<td><strong>Offensive odours</strong></td>
<td>Sand blasting, industrial waste burning</td>
</tr>
<tr>
<td><strong>Licensing of Listed Activities</strong></td>
<td>Domestic, garden refuse burning</td>
</tr>
<tr>
<td>Offenses and penalties</td>
<td>Emissions that causes nuisances</td>
</tr>
<tr>
<td>Compliance monitoring</td>
<td>Tire burning</td>
</tr>
<tr>
<td><strong>Cooperation between municipalities</strong></td>
<td>Spray painting</td>
</tr>
<tr>
<td>Appeals</td>
<td>Noise</td>
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</tbody>
</table>
CONCLUSION

• Air Quality Functions are fragmented and as such make it difficult to determine which function belongs to which authority.
• Each AQ- authority on each sphere of government has a role to play.
• Authorities are in a way confused by the Standard Air Quality By Law.
• This By Law address all air quality activities and do not distinguish between functions.
• AQMP`s on various levels addressed issues that are overlapping and also did not distinguish between functions.
• We should go back to the National Framework, AQA and Structures Act and make sure we do the specific tasks pertaining to each authority.
• Air Quality Functions that belong to B`s before transfer of MHS remains at the B- authority.
• By laws must only address functions that are relevant to that authority.
• Make sure that your By- law does not conflicts with National Legislation, Section 156(3) of constitution reads: “A By- law that conflicts with National or provincial legislation is invalid”
THANK YOU!!