

THE ATMOSPHERIC POLLUTION (PREVENTION) ACT, 1971

No. 18



of 1971

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AN ACT TO PROVIDE FOR THE PREVENTION OF THE POLLUTION OF THE ATMOSPHERE BY THE CARRYING ON OF INDUSTRIAL PROCESSES AND FOR MATTERS INCIDENTAL THERETO

Date of Assent : 5.5.1971

Date of Commencement : 14.5.1971

ENACTED by the Parliament of Botswana

PART I

PRELIMINARY

Short Title **1.** This Act may be cited as the Atmospheric Pollution (Prevention) Act, 1971.

Inter-pretation **2.** In this Act, unless the context otherwise requires —
“Air Pollution Control Officer” means the person appointed as Air Pollution Control Officer in terms of section 3;

“best practicable means”, when used with reference to the prevention of the escape into the atmosphere of objectionable matter, includes within its reference the provision and efficient maintenance of the appliances necessary to that end, the effective care and operation of such appliances, the manner in which such appliances are used and the proper supervision, by the owner, of any operation in which noxious and offensive gases are evolved 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 objectionable matter;

“Board” means the Atmospheric Pollution Appeals Board established by section 12;

“controlled area” means any area which has under section 7 been declared to be a controlled area;

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

“industrial process” means any process prescribed by the Minister which is involved in any trade, occupation or manufacture devoted to production by physical, mechanical, electrical, chemical or thermal means, including any process involved in metallurgical operations, operations for the generation of power, and ancillary operations;

“inspector” means a person appointed as inspector in terms of section 3;

“noxious or offensive gases” 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, organic sulphur, sulphur and halogen compounds; cyanides; cyanogens; ammonia and its compounds; inorganic acids; fumes containing antimony, arsenic, beryllium, chromium, cobalt, copper, lead, manganese, mercury, vanadium or zinc or their derivatives; fumes from tar-works; cement-works fumes and odours from purification plants, glue factories, cement-works and meat or fish processing factories; and any other gas, fumes or particulate matter which the Minister may by notice in the Gazette declare to be a noxious or offensive gas for the purpose of this Act; and includes dust from asbestos treatment or mining;

“objectionable matter” means smoke, gases including noxious or offensive gases, vapours, fumes, grit, dust or other matter capable of being dispersed or suspended in the atmosphere which is produced or is likely to be produced by any industrial process;

“owner” includes any owner, lessee or occupier of property on which an industrial process is being carried on or any other person responsible for carrying on any industrial process on any property;

“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;

“regulation” means regulation made under the provisions of section 15;

“smoke” includes soot, ash, grit and gritty particles emitted in smoke.

PART II

ADMINISTRATION

Appointment
of Officers

3. (1) The Minister shall, for the purposes of this Act, appoint –

(a) an Air Pollution Control Officer who shall under the directions of the Minister exercise the powers and perform the functions assigned to him under this Act; and

(b) so many persons as he may consider necessary to be inspectors under this Act.

(2) The Air Pollution Control Officer and inspectors appointed under the provisions of subsection (1) shall be persons who are technically qualified and experienced to exercise control over atmospheric pollution due to industrial processes.

(3) Every inspector shall be furnished with a certificate signed by the Air Pollution Control Officer stating that he has been appointed as an inspector under this Act.

Powers of Air
Pollution
Control
Officer and
Inspectors

4. (1) The Air Pollution Control Officer or any inspector may in the exercise of his powers or the performance of his duties or functions under this Act or any regulation –

(a) without previous notice at any time enter any premises within a controlled area where an industrial process is, or is suspected of being, carried on and examine any process in which any objectionable matter is used or produced and any apparatus for preventing the discharge thereof into the atmosphere;

(b) require from the person in charge of any such premises where an industrial process is carried on the production of the registration certificate issued in respect of such premises under section 9 of this Act;

- (c) apply such tests and take such samples and make such inquiries and investigations as appear to him to be necessary for the due performance of his functions under this Act:

Provided that the powers specified in this subsection, to the extent to which they involve entry on premises or search of property without the consent of the owner or person having charge thereof, shall only be exercised when their exercise is reasonably required in the interests of public order, public health or town and country planning.

- (2) Any person who —

- (a) refuses or fails to answer to the best of his ability any question lawfully put to him by the Air Pollution Control Officer or an inspector in the exercise of his powers or the performance of his duties or functions under this Act; or
- (b) refuses or fails to comply to the best of his ability with any lawful requirement of the Air Pollution Control Officer or an inspector in the exercise of such powers or the performance of such duties or functions; or
- (c) obstructs or interferes with the Air Pollution Control Officer or an inspector in the exercise of such powers or the performance of such duties or functions;

shall be guilty of an offence.

5. Whenever the Air Pollution Control Officer or any inspector is alleged to have caused injury to any person or damage to 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 under this Act, it shall be a defence in any legal proceedings founded on such allegation and brought against the Government, the Air Pollution Control Officer or such inspector that the Air Pollution Control Officer or such inspector has used the best known or the only or most practicable available methods and has acted without negligence in the exercise of the powers or the performance of the duties or functions aforesaid, and a certificate signed by the Minister 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 methods, shall be accepted by the court as *prima facie* evidence of that fact.

Defence in
certain Legal
Proceedings

6. (1) The Air Pollution Control Officer shall before the 1st March in every year or within such longer period as the Minister

Annual
Report

may approve submit to the Minister a comprehensive report on the implementation of this Act during the preceding year.

(2) The Minister shall lay the said report before the National Assembly within thirty days of his receiving such report.

PART III

CONTROL WITHIN CONTROLLED AREAS

Controlled
Areas

- 7.** The Minister may by order in the Gazette —
- (a) declare any area to be a controlled area for the purposes of this Act;
 - (b) include any area in or exclude any area from a controlled area.

Requirements
as to Premises
on which
Industrial
Processes are
carried on

- 8.** (1) No person shall within a controlled area —
- (a) carry on in or on any premises an industrial process capable of causing or involving the emission into the atmosphere of objectionable matter unless —
 - (i) he is the holder of a current registration certificate authorising him to carry on that industrial process in or on those premises; or
 - (ii) in the case of a person who was carrying on any such industrial process in or on such premises immediately prior to the date of publication of the order by which the area in question was declared a controlled area, he has within three months after that date applied for the issue to him of a registration certificate authorising the carrying on of that industrial process in or on those premises, and his application has not been refused; 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 on any premises, which is intended to be used for the purpose of carrying on any industrial process in or on those premises, unless he has, before commencing such erection, alteration or extension, received from the Air Pollution Control Officer authority in writing to do so.
- (2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence.

9. (1) An application for a registration certificate shall be lodged with the Air Pollution Control Officer in the prescribed form and shall be accompanied by such information as may be prescribed.

(2) The Air Pollution Control Officer shall, after consideration of any such application —

- (a) in the case of the application of a person who was carrying on any such industrial process as is referred to in section 8 (1) (a) in or on the premises to which the application relates immediately prior to the date of publication of the order by which the area in question was declared a controlled area; or
- (b) in the case of the application of a person who intends to carry on such a process in premises not used by him therefor immediately prior to the said date, or in altered or extended premises —
 - (i) if he is satisfied that the best practicable means have been installed and will be employed for preventing or reducing to a minimum the escape into the atmosphere of objectionable matter which is produced or is likely to be produced by any such industrial process, and in the case of premises referred to in paragraph (b) has inspected such premises and declared them fit for registration, may grant the application and issue to the applicant a registration certificate in the form prescribed; or
 - (ii) if he is not so satisfied, by notice in writing may 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 any such objectionable matter.

(3) If the Air Pollution Control Officer is satisfied within the period specified in a notice under subparagraph (ii) of subsection (2) or within such further period as he may allow that the requirements of such notice have been complied with he may grant the application and issue to the applicant a registration certificate in the form prescribed.

(4) No registration certificate shall be issued under the provisions of this section unless the Air Pollution Control Officer is satisfied that the industrial process in question may reasonably be permitted

to be carried on in the locality concerned, having regard to the nature of that process, the character of the locality in question, the purposes for which other premises in such locality are used and any other considerations which in his opinion have a bearing on the matter, and that the carrying on of that industrial process in or on the premises in question would not be in conflict with any town planning scheme in operation or in course of preparation in respect of such locality.

Conditions of
Registration
Certificates

10. (1) A registration certificate shall specify —

- (a) the situation and extent of the building or plant, or proposed building or plant, to which it relates;
- (b) the nature of the industrial process intended to be carried on;
- (c) the raw materials intended to be used, the nature of the operations to be carried on, and the products to be produced;
- (d) the appliances to be installed and any other measures intended to be taken with a view to preventing or reducing to a minimum the escape into the atmosphere of any objectionable matter; and
- (e) the proposed measures for the disposal of the effluents discharged from appliances installed with the view referred to in paragraph (d).

(2) A registration certificate shall be subject to the condition that all plant and apparatus used for the purpose of carrying on the industrial process in question and all appliances for preventing or reducing the escape into the atmosphere of objectionable matter 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 objectionable matter:

Provided that in applying the provisions of this subsection due allowance shall be made for the unavoidable escape into the atmosphere of objectionable matter during the starting up of any plant or apparatus in respect of which the registration certificate was issued or during the period of any breakdown or shutting down or disturbance of such apparatus or plant.

(3) The Air Pollution Control Officer 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 appliances provided for in such certificate for the prevention of the escape into

the atmosphere of objectionable matter produced by the industrial process to which the certificate relates.

(4) (a) The Air Pollution Control Officer 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 objectionable matter produced by the industrial 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 to be specified in the relevant notice within which to take any steps specified therein.

(5) If the holder of a registration certificate fails to comply with the conditions referred to in subsection (2) or any requirement under subsection (3) or (4), the Air Pollution Control Officer may by notice in writing call upon such holder to comply with such conditions or requirement within a reasonable period specified in the notice, and in the event of his failure to comply with the said conditions or requirement within the period so specified the holder shall be guilty of an offence.

(6) If the holder of a registration certificate is convicted of an offence under subsection (5) and notice of appeal against such conviction has not been lodged timeously or such appeal has failed or been abandoned or withdrawn the Air Pollution Control Officer may cancel the registration certificate or suspend the operation thereof for such period as he may deem fit.

(7) For the purpose of ensuring that any conditions or requirements imposed by or under the provisions of this section are complied with or carried out the Air Pollution Control Officer may inspect, or order an inspector to inspect, any building or plant to which a registration certificate relates.

11. (1) On receipt of a complaint that within a controlled area the emission into the atmosphere of objectionable matter is resulting from the carrying on of an industrial process and that such emission is causing or has caused injury or damage to the health of human beings or of livestock or to vegetation or other property, the Air Pollution Control Officer may conduct, or order an inspector to conduct, an investigation into such complaint.

Investigations
by Air
Pollution
Control Of-
ficer or
Inspectors

(2) If he has reason to believe or suspect that on any premises an industrial process is being carried on otherwise than in accordance with the provisions of this Act or any regulation the Air Pollution Control Officer may investigate, or order an inspector to investigate, the matter.

Appeals from
Decisions of
Air Pollution
Control
Officer

12. (1) There is established an Atmospheric Pollution Appeals Board which shall consist of not less than three persons appointed by the Minister by notice in the Gazette, each of whom shall possess technical qualifications deemed appropriate by the Minister.

(2) (a) Any person who is aggrieved by a decision of the Air Pollution Control Officer refusing an application for a registration certificate or cancelling or suspending a registration certificate or imposing any requirement under subsection (3) or (4) of section 10 may within one month appeal against such decision to the Board which shall have power to make such order on the appeal as it may consider equitable and whose decision shall be final.

(b) For the purpose of proceedings before it the Board may administer oaths and affirmations.

(c) Any person who so appeals may continue to carry on the industrial process to which such appeal relates pending the decision of the Board on such appeal if such industrial process was being carried on prior to the decision of the Air Pollution Control Officer or the imposition by him of the requirement which is the subject of the appeal.

(3) Any person who lodges an appeal under subsection (2) shall submit with his appeal written arguments or explanations of the grounds of his appeal and may further appear before the Board in person or through a representative (who shall be an advocate or an attorney) and cause any evidence to be tendered or any argument or explanation to be submitted to the Board in support of the written arguments or explanations of his grounds of appeal.

PART IV

GENERAL

Disclosure of
Information

13. (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 while performing functions under this Act 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 functions under this Act; or
 - (c) for the purpose of legal proceedings arising out of this Act.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

14. The Minister, in order to further the object of preventing, reducing or controlling atmospheric pollution due to industrial processes may — Auxiliary Powers of Minister

- (a) publish and disseminate information, and cause educational programmes to be devised and carried out, relating to the control of atmospheric pollution;
- (b) arrange and promote the undertaking of studies of the quality of the air, and investigations into the levels of concentration of matter polluting the air, anywhere in Botswana.

15. The Minister may make regulations for the better carrying out of the objects and purposes of this Act and for giving effect to its principles and provisions, and without prejudice to the generality of the foregoing may make regulations prescribing or providing for — Regulations

- (a) the processes which shall be industrial processes for the purposes of this Act;
- (b) standards of quality or purity of air to be employed in testing, measuring or controlling the emission into the atmosphere of objectionable matter resulting from the carrying on of industrial processes;
- (c) any matter which in terms of this Act is to be or may be prescribed;
- (d) the form and manner of any application for any registration certificate and the plans, documents and other information to be submitted in connection with any such application;
- (e) the procedure to be followed by the Board;
- (f) the fees to be paid in connection with any application or any appeal under this Act and the circumstances in which the fees paid in connection with any such appeal shall be refunded.

Penalties

16. Any person convicted of an offence under this Act shall be liable, in the case of a first conviction, to a fine of five hundred rand and imprisonment for a period of six months and, in the case of a subsequent conviction, to a fine of one thousand rand and imprisonment for a period of twelve months, with a further fine of fifty rand for every day during which any such subsequent offence has continued.

This Act to
bind the
Republic.

17. The provisions of this Act shall bind the Republic.

Passed by the National Assembly this day, the 1st April, 1971.

G.T. MATENGE,
Clerk of the National Assembly.