

Chapter 20:27 Environment Management Act (Atmospheric Pollution Control) Regulations, 2009

1 These regulations may be cited as the Environment Management (Atmospheric Pollution Control) Regulations 2009.

2 In these regulations—

"act" means the Environmental Management Act [*Chapter 20:27*];

"active operation" means any activity capable of generating fugitive dust, and includes earth-moving activities, construction or demolition activities and the movement of vehicles;

"air-polluting appliance" means an appliance whose emissions cause or are likely to cause pollution of the atmosphere;

"appropriate environmental fee" means the appropriate fee set in the *First Schedule*;

"appliance" means any stationary fuel- burning appliance or apparatus which is capable of consuming more than 5 kilograms per hour of fuel or other combustible matter, whether such fuel or combustible matter is in a solid, liquid or gaseous state;

"applicant" means a person who applies for the issue, renewal or amendment of a licence;

"blue licence" means a licence referred to in paragraph (a) of section *six*;

"chimney" includes any flue, duct, pipe or other structure through which emissions are conveyed into the atmosphere from any appliance;

"coarse grit" means any solid mutter emitted in smoke which has a particle size greater than 76 microns;

"construction or demolition activities" means any on-site mechanical activities preparatory to or related to the building, alteration, rehabilitation or improvement of property, including, but not limited to the following activities: grading, excavation, loading, crushing, cutting, planing, shaping or ground breaking ;

"disturbed surface area" means a portion of ground which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition, thereby increasing the potential for emission of fugitive dust;

"dust suppressants" means water, hygroscopic materials, or non-toxic chemical stabilisers used to reduce fugitive dust emissions;

"earth-moving activities" includes grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing from open storage piles of bulk materials, landfill operations or soil mulching;

"Form" means the appropriate form prescribed in the *Second Schedule*;

"fine grit" means any solid matter emitted in smoke which has particle size between 1 micron and 76 microns;

"fugitive dust" means any solid particulate matter that becomes airborne, other than that emitted from an exhaust stack, directly or indirectly as a result of the activities of man;

"green licence" means a licence referred to in paragraph (b) of section *six*;

"landfill" means a site where waste is disposed of by burying it or by placing it upon land or other waste;

"licence" means an emission licence referred to in section 64 of the Act ;

"motor vehicle" has the meaning given to it in the Road Traffic Act [*Chapter 13:11*];

"oil" means petroleum in any form other than gas, and includes crude oil, fuel oil sludge, oil refuse and refined oil products such as diesel fuel, paraffin and petrol;

"particulate matter" means any material, except uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions;

"PM₁₀" means particulate matter with an aerodynamic diameter smaller than or equal to 10 microns;

"red licence" means a licence referred to in paragraph (d) of section *six*;

"solid fuel" means a solid substance or object that releases useable energy when burnt;

"waste" means substances or objects that are disposed of or intended to be disposed of;

"yellow licence" means a licence referred to in paragraph (c) of section *six*.

3 (1) Subject to subsection (4), for the purpose of section 63 of the Act, no person who engages in any of the following activities —

- (a) the burning of waste at a landfill; or
- (b) the burning of vehicle tyres; or
- (c) the burning of bitumen; or
- (d) the burning of metallic wire coated with any material ; or
- (e) the burning of oil in the open air; or
- (f) the operation of an incinerator; or
- (g) any activity that causes the emission of a pollutant into the atmosphere;

shall, in the course of that activity, emit any substance into the atmosphere in excess of the amount prescribed in the *Third Schedule* for the activity concerned

(2) Subject to subsection (4), for the purpose of section 63 of the Act no—

- (a) person who carries on any active operation: or
- (b) owner or occupier of land or premises on which there is a disturbed surface area;

shall cause or permit fugitive dust to be emitted into the atmosphere as a result of the active operation or from the disturbed surface area, as the case may be, in excess of the amount prescribed in the *Third Schedule*.

(3) Subject to subsection (4), for the purpose of section 63 of the Act, no owner or occupier of premises shall cause or permit any substance to be emitted, in excess of the amount prescribed in the *Third Schedule*, from any appliance situated on the premises.

(4) Subsections (1), (2) and (3) shall not apply to the emission of a substance into the atmosphere—

- (a) in accordance with the terms and conditions of a Licence; or
- (b) in the course of an activity specified in the *Fourth Schedule*, when carried out in accordance with the conditions specified in that Schedule for the activity concerned.

(5) Anyone who contravenes the provisions of subsections (1) to (3) shall be guilty of an offence and is liable to any of the following—

- (a) fine in accordance with the Act;
- (b) temporary closure of the facility for up to **3 weeks** until the level of emissions have been rectified;
- (c) prosecution.

4 For the purpose of section 68 of the Act the emission standards for motor vehicles shall be those set out in the *Fifth Schedule*.

5 (1) An inspector may—

- (a) on any road, require the driver of any motor vehicle to stop the vehicle; and
- (b) test and inspect any motor vehicle, whether on a road or elsewhere;

in order to ascertain whether or not the vehicle complies with the emission standards referred to in section *four*.

(2) In the exercise of his or her functions under subsection (1), an inspector may require a motor vehicle to be driven or taken to a place where it can be tested and inspected as long as the inspection or testing point is at most **20 kilometres**.

(3) If a motor vehicle does not comply with the emission standards referred to in section *three*, an inspector may, by written notice given to the driver or owner of the vehicle, direct that the vehicle —

- (a) shall not be used on any road: or
- (b) shall be used subject to conditions specified in the notice.

(4) Conditions specified in a notice given in terms of subsection (3) may provide that the owner of the motor vehicle shall, within such reasonable time **not exceeding 3 months** as may be specified in the notice —

- (i) cause the vehicle to be repaired or adjusted so that it complies with the emission standards referred to in section *four*: and
- (ii) deliver the vehicle to a place specified in the notice for testing and inspecting to ensure that it complies with the emission standards referred to in section *four*.

(5) Failure to comply with a notice given in terms of subsection (4), the Agency may compulsorily send the vehicle for rectification and the owner pays the cost or reimburses the Agency for costs incurred.

In the event that the owner defaults reimbursement, the Agency shall auction the conveyance to recover its costs.

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6 (1) After such inspection referred to in subsection (4) of section *seven* the Agency may issue anyone of the following licences in **Form AQ2** by reference to the licence classification criteria contained in the *Sixth Schedule* and to the test parameters prescribed in the *Third schedule* for the issue of the relevant licence —

- (a) a **blue** licence in respect of a discharge which is considered to be environmentally safe;
- (b) a **green** licence in respect of a discharge which is considered to present a low environmental hazard;
- (c) a **yellow** licence in respect of a discharge which is considered to present a medium environmental hazard;
- (d) a **red** licence in respect of a discharge which is considered to present high environmental hazard.

(2) Where necessary, for the purposes of determining whether to issue a blue, green, yellow or red licence, the Agency shall employ the appropriate standard test of the Standards Association of Zimbabwe (**SAZ**), or other test prescribed by the Agency.

(3) For the purpose of these regulations the analytical results from the Agency shall be deemed correct and supersede any other results from any other laboratory whenever there are disagreements of any such results.

(4) The Agency may issue a different class of licence to the one sought to be renewed or amended.

7 (1) Subject to this section, an application for a blue, green, yellow, or red licence shall be made to the Agency in **Form AQ1** and shall be accompanied by the appropriate environmental fee.

(2)—

- (a) a separate application **Form AQ1** shall be submitted in respect of each emission point used in the discharge of emissions;
- (b) in the event that the applicant does not know what class of licence to apply for, the appropriate fee for the issue of a yellow permit shall be submitted pending the determination of the application in terms of section *six*:

(c) in the event that the emission discharge facility discharges both ordinary and hazardous emissions, the discharge facility shall be deemed as a hazardous emission point.

(3) The Agency shall consider without delay every application for a licence and, in deciding whether or not to issue a licence to the applicant, may take into account the following matters in addition to those set out in subsection (2) of section 65 of the Act –

- (a) the degree of risk to the environment if the licence is issued;
- (b) any previous failure on the part of the applicant to comply with the terms and conditions of a licence;
- (c) any failure or refusal by the applicant to co-operate with persons conducting an investigation or inspection referred to in subsection (4).

(4) The Agency may conduct such investigation or inspection as it thinks appropriate before deciding whether or not to issue a licence to an applicant.

(5) The Agency may refuse in writing to issue a licence to the applicant on the basis of the results of investigations referred to in subsection (3) and any other matter it may specify.

(6) Before issuing a licence, the Agency may require the applicant to pay the appropriate licence fee in terms of the *First Schedule*.

8 (1) A licence shall be in **Form AQ2**.

(2) Every licence shall specify—

- (a) the name and address of the licensee; and
- (b) the point in respect of which it has been issued; and
- (c) whether it is a blue, green, yellow or red licence; and
- (d) the emissions that are authorised by the licence, and the circumstances and any conditions under which they may be discharged into the atmosphere; and
- (e) the conditions to be provided by the licensee to permit the monitoring of emissions from the facility concerned; and
- (f) any other conditions deemed necessary by the Agency.

9 (1) A licence shall not be transferable to another person, except with the written approval of the Agency:

Provided that the Agency has reasonable grounds to be satisfied that—

- (a) there will be no change in the emissions from the trade or establishment; and
- (b) the transferee will abide by the terms and conditions of the licence.

(2) A licence shall be valid from the date of its issue until the **31st December** of the year in which it was issued, unless otherwise specified in the licence.

(3) A licence shall relate only to the particular facility used in discharging emissions in respect of which it was issued and not to any other such facility or to any substantial alteration or modification of the facility or method originally licensed.

(4) Every licensee shall—

- (a) allow inspectors and other persons duly authorised by the Agency access to the facility during normal working hours or any other time that the Agency on reasonable grounds deems fit in respect of which the licence was issued, for the purposes of inspection and the collection of samples; and
- (b) provide inspectors and other persons authorised by the Agency with such reasonable facilities and assistance as may be necessary to carry out any inspection or collection of samples referred to in paragraph (a).

(5) Every licensee shall maintain records of all relevant information pertaining to the emissions in respect of which the licence was issued, including the following information in regard to any sampling, testing, monitoring and measurement required by the licence—

- (a) the date, monitoring site, time and duration of the sampling, testing, monitoring or measurement;
- (b) the dates on which any analyses were performed, the person who performed them and their results;
- (c) the analytical techniques or methods used, including supporting information such as calibration and maintenance records and all original recording charts for continuous monitoring instrumentation, including emissions or equipment monitors;
- (d) the relevant operating conditions that existed at the time of sampling, testing, monitoring or measurement;
- (e) details of all malfunctions which caused any limitation on emissions to be exceeded, including logs documenting the implementation of emergency preparedness plans;
- (f) details of all activities specified in any compliance schedule approved by the Board;
- (g) any other information relating to emissions which may be requested in writing by the Agency.

(6) The Agency may at any time while a licence is in force, review it and amend or cancel it where there has been any material change in the circumstances in respect of which it was originally issued or any failure on the part of the licence holder to comply with any of its terms or conditions.

(7) A licensee shall retain the records referred to in subsection (5) **for a period of 3 years** and shall permit them to be inspected at all reasonable times, on request, by any inspector or other person duly authorised by the Agency.

10 (1) An application for the amendment or renewal of a licence shall be made to the Agency in **Form AQ 1**, and section seven shall apply, with any necessary changes, to such an application.

(2) The Agency may at any time amend a licence if it considers that it is in the interest of the environment or in the public interest to do so.

11 (1) Every licensee shall pay to the Agency the appropriate environmental fee.

(2) In respect of every 3-month period ending on the 31st March., 30th June, 30th September and 31st December in such year, every licensee shall pay to the Agency the appropriate environment fee.

(3) To enable the Agency to assess the environmental fee payable in terms of subsection (2) in respect of any 3-month period, every licensee shall submit to the Agency, **not later than 7 days** after the end of the period concerned, a return showing the nature and total volume of emissions during the period concerned from the facility to which the licence relates.

(4) If a licensee fails for any reason to **submit a return** in terms of subsection (3), the Agency may assess the environmental fee payable on the basis of an estimate by an inspector or an additional **50%** of the previous quarter's fees.

(5) In the case of a holder of a **red licence**, an additional fee of **50%** of the total appropriate fees payable by the holder shall be payable to the Agency for every quarter during which the licence is to be held.

12 (1) In the register of licences required to be kept by section 67 of the Act, there shall be recorded, in respect of each licence —

- (a) the name and address of the licensee, the location of the facility in respect of which the licence was issued, and the method by which pollutants are emitted; and
- (b) the class of the licence; and
- (c) the date on which the licence was issued, renewed or amended; and
- (d) the period of validity of the licence; and
- (e) particulars of any amendment or cancellation of the Licence; and

(f) such other particulars as the Agency may determine.

(2) Upon payment of the appropriate fee, any member of the public may, inspect the register of licences.

13 (1) The Agency may, by notice in writing, require the owner or occupier of any premises in or on which there is a solid-fuel-burning appliance —

(a) to provide or install, at his or her own expense and **within at most 3 months**, facilities or equipment for the sampling of emissions from the appliance; and

(b) to submit, at such times as the Agency may specify in the notice, such information regarding the quantity and quality of the emissions as may be required by the Agency.

(2) Any person who contravenes or fails to comply with a notice served on him or her in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

14 (1) No owner or occupier of premises shall install, alter or extend an air-polluting appliance in or on those premises except in accordance with plans and specifications which have been submitted to and approved by the Agency.

(2) The plans and specifications referred to in subsection (1) shall set out the following information—

(a) details of any chimneys to be erected, including their height above ground, their discharge diameter, their discharge velocity and their exact position; and

(b) details of the type of fuel to be used and the fuel consumption of the appliance to be installed, altered or extended: and

(c) the height and position of existing buildings on the premises concerned: and

(d) the height, position, and use of existing buildings on the premises immediately adjacent to the premises concerned.

(3) Before approving plans and specifications for the purposes of this section , the Agency may —

(a) require the owner or occupier of the premises concerned to submit such further information as the Agency considers necessary regarding the air-polluting appliance concerned;

(b) carry out such investigation or inspection as it considers necessary on the facility concerned.

(4) If any appliance is installed, altered or extended in contravention of subsection (1) , the Agency may, by written notice require the owner or occupier of the premises concerned, within such period as is specified in the notice and at his or her own expense —

(a) to remove the appliance from the premises: or

(b) to restore the appliance to its original state:

as may be appropriate.

(5) An y person who contravenes subsection (1) or a notice in terms of subsection (4) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Chimneys

15 (1) The chimney of every air-polluting appliance shall be **50 metres in height** or be so designed as to allow adequate dispersion of the pollutants to the satisfaction of the Agency.

(2) The Agency shall not approve plans or specifications in terms of section *fourteen* unless any chimney of the air-polluting appliance that is the subject of the plans or specifications conforms with the requirements of subsection (1).

(3) The Agency may require the owner or occupier of any premises in or on which an air polluting appliance with a chimney which does not conform to the requirements of subsection (1), to install, alter or extend such chimney within a stated period at own cost.

(4) Anyone who contravenes or fails to comply with the provisions of section *fifteen* shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

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16 For the purpose of testing or monitoring emissions in terms of these regulations, sampling methods shall be used that are consistent with—

- (a) standards approved by the Standards Association of Zimbabwe; or
- (b) sampling methods set out in the Agency's operational guidelines that are published from time to time.

17 (1) If, from any premises in respect of which a licence has been issued, there are any accidental emissions materially in excess of the quantities permitted by the licence, the licensee shall immediately for hazardous emissions, and in any event **within 12 hours** after the occurrence of the accident—

- (a) notify the Agency both orally and in writing of the accident: and
- (b) inform all persons who may be affected by the emissions;

and **within 8 hours thereafter** shall supply the Agency, in writing, with—

- (i) all information regarding the circumstances of the accident and the quality and quantity of the emissions; and
- (ii) any information the Agency may need to assess the impact of the accident on the environment.

(2) A licensee who contravenes subsection (1) shall be guilty of an offence and liable to any of the following:—

- (a) review or cancellation of the existing emission licence;
- (b) fine not exceeding level fourteen;
- (c) closure of polluting operation;
- (d) prosecution.

18 (1) In its annual report referred to in section 24 of the Act, the Agency shall—

- (a) state the number of licensees by classification; and
- (b) state the number of applications for licences that have been received, approved and rejected; and
- (c) show the income accruing to the Agency from its administration of these regulations, and the expenditure incurred by the Agency in the course of that administration; and
- (d) give a summary of any comments and recommendations made by persons and organisations consulted by the Agency in formulation and administration of these Regulations.

(2) The Agency shall, from time to time, publish guidelines on how licences are issued, including the considerations it takes into account when issuing them, and generally on the manner in which it administers these regulations.

(3) Agency shall from time to time publish a report on the quality of the nation's air resources.

(4) The Agency may provide any institution, organisation or member of the public with specialised information regarding air resources for research or consultancy purposes, and may require the person to whom the information is given to pay a reasonable fee to cover the cost of gathering and providing the information.

19 (1) If the Agency has any grounds to believe that emissions from any establishment or premises—

- (a) exceed the appropriate emission standards prescribed in the *Third Schedule* : or

(b) cause an actual or potential danger to the environment or to human health :

the Agency may, by written order to the owner or occupier of the facility, direct that he or she shall cease the emissions for a period **not exceeding 3 weeks**, or take such measures as the Agency may specify in the order to reduce the emissions, over such reasonable period, **not exceeding 3 months**, as the Agency may specify in the order.

(2) An owner or occupier on whom an order has been served in terms of subsection (1) shall comply with the order.

(3) Any person who contravenes or fails to comply with an order served on him or her in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

(4) This section shall not be construed as limiting the powers of inspectors under subsection (4) of section 37 of the Act.

20 The Agency shall provide every inspector and officer who is authorised to exercise any function under these regulations with a document identifying him or her as an inspector or authorised officer, as the case may be, and he or she shall produce it on request by any interested person.

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21 (1) Any person who hinders or obstructs an inspector or an officer of the Agency in the exercise of any function under these regulations shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

(2) Any—

- (a) person who, in an application for the issue, renewal or amendment of a licence; or
- (b) licensee, in any return, report or document submitted to the Agency in terms of these regulations; or
- (c) licensee who wilfully contravenes any term or condition of his licence;

shall be guilty of an offence and liable to any of the following: —

- (i) review or cancellation of existing emission licence;
- (ii) fine not exceeding level fourteen;
- (iii) closure of polluting operations;
- (iv) prosecution.

22 The carbon tax shall be charged per fuel type and payable to the Agency at port of entry for imported fuels or at point of production and distribution for fuels not imported. Carbon tax rates are prescribed in the *Seventh Schedule*.

23 The regulations set out in the *Eighth Schedule* are repealed.

FIRST SCHEDULE (Section 2)

FEES

		US \$
1.	Fee for the appeal to the Minister against the Agency's decision	240
2.	Viewing of air pollution licence registers	free
3.	Issue of a duplicate licence (general emissions)	150
4.	Annual registration fees	30

5. Licence Band	Registration Fees US \$
Blue licence	100
Green licence	145
Yellow licence	280
Red licence	555

6. Quarterly Environmental Fee--

Licence Band	Volume (v) <5 Tonnes <i>per quarter</i>	Volume (v) 5+ <50 Tonnes <i>per quarter</i>	Volume (v) 50+ <100 Tonnes <i>per quarter</i>	Volume (v) 100+ <200 Tonnes <i>per quarter</i>	Volume (v) 200+ Tonnes <i>per quarter</i>
	US \$	US \$	US \$	US \$	US \$
Blue	100	145	280	555	1110
Green	145	280	555	1110	2000
Yellow	280	555	1110	2000	4500
Red	555	1110	2000	4500	9000

Notes:

- (a) The registration fees will be billed annually in advance.
- (b) All invoices will be payable **within 30 days** of issue. Invoices that are unpaid after 60 days may be sent to the Agency's debt collector. Interest will be charged on all unpaid debt in line with the Agency's Financial Policy.

A **penalty** of **50%** of the debt will be charged in addition to the debt collector's fees.

- (c) For the avoidance of doubt, all fees shall be adjusted by inflation factor *i*, which will be the ratio of the current Government Consumer Price Index (CPI) to the CPI at the base year (CPI/CPI₀). The base year is June 2007 and *i* is 1 for the base year.

- (d) The volume of emissions discharged is measured in Tonnes emissions mass flow:

- (e) **5% Administration fee** shall be charged on all fees.