



AIR POLLUTION RULES, 2014

Legal Perspective from the
Applicant/Registrant

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Main Points to Consider

- Air Pollution Rules, 2014
- Common Law recourse regarding nuisance and other written law
- Legal Recourse

Key Points

- Time Frame
- Efficiency in Application and Approval Process with the Authority
- Business Continuity during Application Process
- Exemptions
- Repercussions for non-compliance
- Legal Recourse

Air Pollution Rules, 2014

- TIME FRAME
- As an applicant, one of the main factors to be considered would be the timeframe and efficiency in the registration process as well as applying for and receiving permits to allow for continued operation of emitter facilities.

Applicable Time Frames

- Source Emitter Registration
- Air Quality Assessment
- Transfer of Registration Certificate
- Modification of Registered Emitter Facilities
- Permit Application
- Renewal of Permit
- Suspension and/or Revocation of Permit
- Confidentiality Claims

TIME FRAME FOR SOURCE EMITTER REGISTRATION

- Source Emitter Registration Phase takes place from December 1, 2015 to May 31, 2016.
- Every Facility which falls under the definition of an “emitter facility” that is a facility
 - From which an air pollutant is emitted; and
 - Which is used for any activity listed in Schedule 3 shall register with the EMA

Source Emitter Facilities

- According the Schedule 3, there are 15 Designated Activities, ranging from the Food and Agriculture industry, Petroleum Related Industries, Waste Handling and Laboratories to give some examples.

Source Emitter Facilities

- All the relevant information that is required can be found both at the EMA's website as well as is clearly laid out in the Rules.
- The interesting point to note is that once this information is submitted to the EMA, then the Applicant has to await the EMA's determination whether other criteria is required, pursuant to Rule 5 (2).

Source Emitter Registration Certificate

- Pursuant to Rule 6 (1) the Authority shall acknowledge receipt of information within 20 working days of the receipt of the request for registration.
- While the time frame for submission of further information is open ended at Rule 6 (2), once all the requested information is obtained the Authority has 10 working days to issue a Registration Certificate where it is deemed satisfactory to the Authority's rules.

Time Frame for Air Quality Assessment

- Once the Authority notifies and services a notice onto the registrant/applicant, the time frame is highlighted as follows
 - Within 10 working days of service of notice, consultations between the registrant and the Authority must take place on the TOR for the Assessment
 - Within 50 working days of service of notice, final TOR must be prepared
 - The registrant would then be notified, before a “Specified Date” that the TOR is available for collection

Time Frame for Transfer of Registration Certificate

- Pursuant to Rule 7, a registrant shall not assign or transfer his registration certificate without the written consent of the Authority.
- In this instance, the Authority shall within 30 working days of receipt of an application, either approve or refuse the application

Time Frame for Modification of Registered Facilities

- In this instance, the onus lies with the registrant to inform the Authority in writing of any modifications to the registered facility, at least 10 working days before the commencement of any such modification.

Time Frame for Permit Application

- Upon receipt of a Source Emitter Registration Request, the Authority has an unspecified time frame within which to determine whether your facility would require a permit.
- However once the Authority receives an application for a permit under Rule 11, an acknowledgement of receipt shall be issued within 20 working days.

Time Frame for Permit Application Cont'd

- Rule 13 highlights a bit of ambiguity as it relates to the Notice of consideration of Permit Applications, as the discretion lies with the Authority to prioritize the consideration of Permit Applications based on several considerations as laid out.
- However once the Notice to consider the Application is served upon the Applicant, then pursuant to Rule 17, the Authority shall within 90 days issue a decision to either grant or refuse to grant a Permit to the Applicant.

Time Frame for Permit Application Cont'd

- During this time period, the Authority has the prerogative to request further information from the Applicant, other persons who may be likely affected, other Governmental Bodies, as well as direct the applicant to conduct public consultations in a manner specified.

Time Frame for Permit Application

- Important to note that pursuant to Rule 16,
 - ***“Where an operator a registered emitter facility applies for a permit he shall not continue emitting the air pollutants to be governed by the permit pending the grant of a permit unless the Authority is satisfied that the emissions do not create a clear and imminent danger of acute or chronic effects or harm to the environment.”***

Permit Conditions

- Pursuant to Rule 18, a permit shall be valid for a period of time not exceeding 5 years.
- Where there are instances of unanticipated non-compliance with the Permit, the Rules allows the flexibility and reasonable conditions, such as verbal notification to the Authority within 7 working days of the event and written notification within 7 workings days of the verbal notification.

Notice of Change in Operations

- Pursuant to Rule 21, the onus is on the Permit Holder/Operator to inform the Authority of
 - Cessation of Operations within 21 working days of the event.
 - Modification of Operations within 90 working days of the event.

Transfer of Permits

- Rule 24, indicates that the Authority shall either approve or refuse an application for a transfer within 30 working days of the said application.

Time Frame for Permit Renewal

- Where a permit holder wishes to renew, he must indicate this intention at least 90 working days prior to expiration [Rule 25].

EXEMPTIONS

- Pursuant to Rule 37 the Authority may exempt an operator from the requirement to hold a permit, once he has proven to the Authority that he has complied with the terms and conditions of the permit and not exceeded the maximum permissible levels of Schedules 1 and 2, for at least two consecutive years.
- It is important to note however that Rule 37(2) still indicates that the operator comply with the requirements of Rule 10.

Legal Recourse

- Pursuant to the Talisman Case, one of the main points emanating from same was that the Environmental Commission stated that the Authority must give an Applicant an opportunity to be heard and prove that it had the ability to prevent any damage or harm to the environment.

Legal Recourse

In this respect, Rule 29 states that any applicant or operator who is aggrieved by a decision of the Authority may appeal to the Environmental Commission

Legal Recourse

- Breach of the permits or Certificate of Environmental Clearance, will lead to a Breach of the Environmental Requirements and follow with the usual procedure for such a breach in accordance with the Environmental Management Act, Chapter 35:05

Environmental Commission

- The Commission shall be a Superior Court of record and have an official Seal which shall be judicially noticed, and shall have in addition to the jurisdiction and powers conferred on it by this Act, all the powers inherent in such a Court.
- The Commission shall have the power to enforce its own orders and judgments, and the same power to punish contempts as the High Court of Justice.

Environmental Commission

- The Commission shall have jurisdiction to hear and determine—
- appeals from decisions or actions of the Authority
- as specifically authorised under this Act;
applications for deferment of decisions made under section 25 or deferment of designations
- made under section 41 [designation of ESSs and ESAs;

Environmental Commission

- applications by the Authority for the enforcement of any Consent Agreement or any final Administrative Order, as provided in section 67;
- Administrative civil assessments under section 66;
- Appeals from a decision by the Authority under section 36 to refuse to issue a Certificate of environmental clearance or to grant such a Certificate with conditions;

Environmental Commission

- appeals from any determination by the Authority to disclose information or materials claimed as a trade secret or confidential business information under section 23(3);
- complaints brought by persons pursuant to section 69, otherwise known as the direct private party action provision; and
- such other matters as may be prescribed by or arise under this Act or any other written law where jurisdiction in the Commission is specifically provided.

Recap and Questions

