Chapter 2: Laws and Regulations Development

Chapter Overview

- Introduction to Laws and Regulations
- Statutory Law Development and Content
- South Africa’s Regulatory Framework for Air Pollution Control
- Chapter by Chapter Review of AQA
- AQM Planning Tool Activity

As with other components of the AQM process, stakeholder participation is important in developing laws and regulations.
Laws and Regulations

- Laws:
  - Established by a governing authority
  - Enforced by the courts
  - Contain broad program goals and objectives
  - Define roles and responsibilities for achieving national air quality protection

- Regulations:
  - Developed by a regulatory agency
  - Provide more specific information for how the broad legislative objectives will be met

Environmental Laws

- U.S.: Clean Air Act (CAA)
  - First passed in 1970
  - 1990 Amendments


Implementation of the U.S. CAA

- U.S. States do much of the work to carry out the CAA.
- States have to develop state implementation plans (SIPs) that explain how each state will do its job under the CAA.
- EPA must approve each SIP.
Hazardous Air Pollutants (HAPs)

- Health Based Standards (1970 CAA)
  - NESHAPs
- Technology Based Standards (1990 CAA)
  - MACT
  - Major Sources

South Africa Specific

- Atmospheric Pollution Prevention Act of 1965
- Health Act of 1977
- New Bill of Rights
- National Environmental Management Act of 1998
- Air Quality Act of 2005

APPA

- Non-Binding Guidelines for National Environmental Management
- No National or Regional Standards for Air Quality
- Legislation Left to Discretion of the Municipal Governments
APPA Implementation Issues

- Guidelines put into specific regulated permits controlled by regional Chief Air Pollution Control Officer (CAPCO).
- Controlling emissions from "scheduled processes" within "control areas" using "best practical means."
- In 1997, there were over 2,000 specific permits, making national enforcement very difficult.

Bill of Rights

"...everyone has the right...to an environment that is not harmful to their health and well-being"

"...binds the state in its relations with individuals, but that individuals may assert their rights against the state (Administrative Justice) ..."

National Environmental Management Act

- Addresses air, water, biodiversity, energy and other environmental issues
- Establishes the public's right to access of information
- Emphasizes openness and transparency in decision making
- Protects whistle blowers
National Environmental Management
Air Quality Act (AQA) Overview

- Effective September 11, 2005
- Will supersede the 1965 APPA
- Staged Implementation:
  - National framework for air quality management;
  - National, provincial and local air quality and emission standards;
  - Air quality and emission monitoring;
  - Appointment of air quality officers; and,
  - Identify national priority areas

AQA Overview: Regulatory Approach

- Establishes DEAT as the “lead agency”
- Air Quality Management Plans to be developed as part of the NEMA plans
- National, provincial and local authorities to set standards and develop plans.

AQA Overview: Standards

- Ambient air quality standards for “priority pollutants”
- Specific air quality standards can be set for specific geographical areas “…based on what that particular environment can tolerate without significant deterioration or negative impact on human health and well-being”
- Emissions standards for “controlled emitters”
AQA Overview: Licensing

- Development and implementation of a “licensing system” for “controlled processes” not subject to emission standards
- Mechanism for transition from current APPA regime to the new AQM program. Certificates issued validated only for two (2) years

AQA Overview: Compliance

- Regulatory authority may require independent environmental audit
- License holders may be required to appoint an “Emission Control Officer” with the required skills and the responsibility for ensuring compliance
- The Minister may use pollution charges as part of the regulatory system to encourage compliance
- Public awareness programs are envisioned to promote and secure compliance

The National Environmental Management Air Quality Act

Chapter by Chapter Review
AQA: Preamble

- “…everyone has the constitutional right to an environment that is not harmful to their health or well-being…”
- “…everyone has the constitutional right to have the environment protected…through reasonable legislative and measures that:
  - Prevent pollution and ecological degradation
  - Promote conservation
  - Secure ecologically sustainable development while promoting justifiable economic and social development”

Chapter 1: Interpretation and Fundamental Principles

- Objective of the Act:
  - Protect the environment by providing:
    - Protection and enhancement of the quality of air
    - Prevention of air pollution and ecological degradation
    - Secure ecologically sustainable development
  - Enhance the quality of ambient air

Chapter 2: National Framework

- Part 1: National Framework
- Part 2: Air Quality and Emission Standards
- Part 3: General
Chapter 3: Institutional and Planning Matters

- National Air Quality Advisory Committee
- Air Quality Management Plan (AQMP)
- Annual Report of Progress of Implementation of AQMP

Chapter 4: Air Quality Management Measures

- Part 1: Priority Areas
- Part 2: Listing of Activities
- Part 3: Controlled Emitters
- Part 4: Controlled Fuels
- Part 5: Other Measures
- Part 6: Noise, Dust, Odors

Chapter 5: Licensing of Listed Activities

- Established metropolitan and district municipality authority
- Addresses:
  - Considerations
  - Application and Content
  - Transfer
  - Periodic Review
  - Renewal
- Emission control officers
Chapter 6: International Air Quality Management

- Investigate situations where air pollution crosses South Africa’s borders
- Issue finding to industrial facility which prescribes measures to prevent, control or correct releases

Chapter 7: Offenses and Penalties

- Lists of offenses
- Lists of penalties and considerations for enacting penalties

Chapter 8: General Matters

- Part 1: Regulations
- Part 2: Consultative Process and Public Participation
- Part 3: Delegations and Exemptions
Chapter Summary

- Difference between laws and regulations
- Lessons learned from U.S. laws and regulations
- South Africa Air Quality Act

AQM Planning Tool Activity