
GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

No. R. 494

2 June 2006

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998)

I, Marthinus Christoffel Johannes van Schalkwyk, Minister of Environmental Affairs and Tourism, in terms of section 44(1) of the National Environmental Management Act 1998 (Act No. 107 of 1998), hereby publish the following:

REGULATIONS RELATING TO QUALIFICATION CRITERIA, TRAINING AND IDENTIFICATION OF, AND FORMS TO BE USED BY, ENVIRONMENTAL MANAGEMENT INSPECTORS

The abovementioned Regulations shall come into effect on the date of publication thereof in the Government Gazette.



MARTHINUS VAN SCHALKWYK, MP

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

GOVERNMENT NOTICE**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM****NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998****REGULATIONS RELATING TO QUALIFICATION CRITERIA, TRAINING AND IDENTIFICATION OF, AND FORMS TO BE USED BY, ENVIRONMENTAL MANAGEMENT INSPECTORS**

The Minister of Environmental Affairs and Tourism has in terms of section **44(1)** of the National Environmental Management Act **1998** (Act No. 107 of 1998), made the regulations in the Schedule.

SCHEDULE

Definitions

- 1.** In these Regulations a word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates: –

“designating authority” means –

- (a) a person to whom the Minister’s power under section **31B** of the Act to designate persons as environmental management inspectors has been delegated in terms of section **42** of the Act;
- (b) an MEC acting in terms of section **31C** of the Act; or

- (c) a person to whom the MEC's power contained in section 31C of the Act to designate persons as environmental management inspectors has been delegated in terms of section 42A of the Act.

“the Act” means the National Environmental Management Act 1988 (Act No. 107 of 1998);

Qualification **criteria and training for** environmental management inspectors

2. (1) Designating authorities may designate persons referred to in section 31B or 31C of the Act as environmental management inspectors only if such persons have completed any relevant training course approved by the Director-General.
- (2) Until any relevant approved training course referred to in subregulation (1) is available, designating authorities may despite that subregulation designate persons referred to in section 31B or 31C of the Act as environmental management inspectors, but only subject thereto that they have -
- (a) completed at least one year's practical experience in monitoring compliance with and enforcing legislation;
 - (b) completed any relevant training requirements for designation as peace officers in terms of section 334(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
 - (c) completed an orientation course recognised by the Director-General in the application of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); in the case of officials on whom the power to issue compliance notices in terms of section 31L is to be conferred,

Provided that paragraphs (a), (b) and (c) do not apply to the designation of employees of South African National Parks as environmental management inspectors.

- (3) When any relevant training course referred to in subregulation (1) becomes available, all persons designated as environmental management inspectors in terms of subregulation (2), including those referred to in the proviso to that subregulation, must commence with and complete the training course as soon as is reasonably possible.

Mandates

3. (1) When specifying the powers of an environmental management inspector in terms of section 31D (3) of the Act, a designating authority acting under a delegation in terms of section 42 of the Act may select only the powers for an environmental management inspector as are –
- (a) necessary for the inspector's mandate; and
 - (b) set out in respect of the inspector's grade in Annexure 1
- (2) Subregulation (1) does not bind an MEC, but an MEC must take Annexure 1 into account when –
- (a) specifying the powers of an environmental management inspector in terms of section 31D (3) of the Act; or
 - (b) delegating to another person the power contained in section 31D (3) to specify the powers of an environmental management inspector.

Issue of identity cards

4. (1) The identity card contemplated in section 31F of the Act –
- (a) must comply with regulation 5; and
 - (b) may be issued only by –
 - (i) the Director-General or an official of the Department designated by the Director-General; or
 - (ii) another organ of state authorised to do so in writing by the Director-General; and
 - (c) must be in the standard format and layout approved by the Director-General.
- (2) An organ of state authorised in terms of subregulation (1) (b) (ii) to issue identity cards may issue such cards only to its ~~own~~ employees designated as environmental management inspectors by the Minister or a designating authority.

Contents and period of validity of identity cards

5. (1) An identity card must contain –
- (a) the full names and ID number of the person designated as an environmental management inspector;
 - (b) a recent photograph of that person;
 - (c) the name of the organ of state of which that person ~~is~~ an employee and the employee number of that person;

- (d) particulars of the mandate of that person in terms of section 31D (1) or **(2)** of the Act and must indicate for which legislation that person ~~is~~ designated as an environmental management inspector;
 - (e) the full names and post description of the designating authority who designated the person as an environmental management inspector;
 - (9)** the signature ~~of~~ the designating authority; and
 - (g) the date on which the person was designated as an environmental management inspector.
- (2)** An identity card lapses when the designation of the cardholder as an environmental management inspector is withdrawn in terms of section 31B(1)(b) or 31C(1)(b) ~~of~~ the Act, and the cardholder must promptly return the identity card to the Department.

Duties of Department

- 6.** (1) The Department must issue an identity card on request from the Minister or a designating authority and on receipt of the information detailed in regulation 5(1)(a), (b), (c), (d), (e), **(9)** and (g).
- (2)** The Department must keep a detailed record of –
- (a) all persons in respect of whom an identity card is issued; and
 - (b) all persons whose designation as environmental management inspectors has been withdrawn.

Format of section 31H (1)(b) written notices

7. A written notice referred to in section 31H(1) (b) of the Act must be in the form set out in Annexure 2.

Section 31L compliance notices

8. (1) A compliance notice issued in terms of section 31L of the Act must be in the form set out in Annexure 3.
- (2) Before issuing a compliance notice in terms of section 31L of the Act, an environmental management inspector must give the person to whom the inspector intends to issue the compliance notice –
- (a) advance notice in writing of his or her intention to issue such compliance notice; and
- (b) a reasonable opportunity to make representations in writing to the environmental management inspector **why** he or she should not issue the compliance notice as intended.
- (3) (a) If an environmental management inspector has reason to believe that giving written notice in accordance with subregulation (2) of the intention to issue a compliance notice, will cause a delay resulting in significant and irreversible harm to the environment, the inspector may issue a compliance notice without complying with subregulation (2).
- (b) A compliance notice issued in terms of paragraph (a) **must** explain the environmental management inspector's reasons for not complying with subregulation (2).

ANNEXURE 1

	Grade 5 environmental management inspector	Grade 4 environmental management inspector	Grade 3 environmental management inspector	Grade 2 environmental management inspector	Grade 1 environmental management inspector
Powers that may be conferred in terms of section 31D(3)	Powers in terms of section 31H, section 31I(3) and section 31J of the Act	All the powers given to environmental management inspectors under the Act, except for the power under sections 31H(1)(b), 31H(5), 31I(3), 31J, 31L and 34G(2) of the Act.	All the powers given to environmental management inspectors under the Act, except for the power under sections 31H(5) and 31L of the Act.	All the powers given to environmental management inspectors under the Act, except for the power under section 31L of the Act.	All the powers given to environmental management inspectors under the Act

ANNEXURE 2

**NOTICE TO ANSWER QUESTIONS IN TERMS OF SECTION 31H(1)(b) AS
READ WITH SECTION 31H(2) AND (3) OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)**

To:

Address:

.....

.....

**Notice to answer questions in terms of section 31H(1)(b) as read with
section 31H(2) and (3) of the National Environmental Mananement Act, 1998
(Act No.107 of 1998)**

1. I,, in my capacity as an environmental management inspector, hereby issue with a notice to answer questions in terms of 31H(1)(b) as read with section 31H(2) and (3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), hereinafter referred to as "NEMA"..
2. The questions in paragraph 4 below must be answered either –
 - (a) orally, either alone or in the presence of a witness, before(name of environmental management inspector) on(date) at..... (address); or
 - (b) in writing to(name and address of environmental management inspector) before..(date and time)

3. The questions in paragraph 4 below must be answered under oath or affirmation.
4. The questions are the following:
 - a) [DETAILED QUESTIONS]
5. (Any other information/explanations added by the environmental management inspector)
6. Your attention is drawn to the provisions of section 31H(3) of NEMA, which provides that a person who receives a written notice in terms of section 31H(1)(b) of NEMA must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of NEMA or a **specific** environmental management Act as defined in section 1 of NEMA.

Signed on this day of at (place)

Environmental Management Inspector

(Environmental management inspector to provide his or her name, address and other contact details)

ANNEXURE 3**COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (Act No. 107 OF 1998)**

To:

Address:

.....

.....

Compliance notice in terms of the National Environmental Management Act, 1998

I,, in my capacity as an environmental management inspector, hereby issue with a compliance notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No. 107 of 1998), hereinafter referred to as "NEMA".

This compliance notice relates to the non-compliance with the provisions of [PROVIDE DETAIL OF THE LAW / PERMIT, AUTHORISATION OR OTHER INSTRUMENT TO WHICH THE NOTICE RELATES]

1. Details of conduct constituting non-compliance

.....

.....

[THE DETAIL INSERTED MUST PROVIDE PARTICULARS OF

- (a) The specific obligations imposed by the law/permit, authorisation or other instrument which are relevant to the notice;
- (b) the conduct constituting non-compliance; and

(c) the date or period and place of such non-compliance.

2 Steps to be taken

.....
.....
.....

[THE DETAIL INSERTED MUST PROVIDE PARTICULARS OF

- (a) The steps to be taken by the party accused of non-compliance; and
- (b) the period in which those steps must be taken.

3. Prohibited Conduct

.....
.....

[THE DETAIL INSERTED MUST PROVIDE PARTICULARS OF

- (a) Any acts which may-not be performed by the party accused of non-compliance; and
- (b)the period in which this prohibition will remain in force.

4. Procedure for lodging an objection to this compliance notice (sections 31L and 31M of NEMA)

4.1. If you would like me to vary this compliance notice or to extend the period to which it relates, you may make representations to me to do so.

4.2. If you wish to lodge an objection to this compliance notice, you may do so by making representations, in writing, 'to the Minister of Environmental Affairs and Tourism (the Minister) or the Member of the Executive Council (the MEC) within 30 days of receipt of this notice.

-
- 4.3. You may also make representations to the Minister or ~~the~~ MEC to suspend the operation of the compliance notice pending finalisation of the objection.
- 4.4. Irrespective of any representations you may make to me or to the Minister or the MEC, you must comply with this compliance notice within the time period stated in the notice unless the Minister or the MEC agrees to suspend the operation of the compliance notice.
5. Failure to comply **with this** compliance notice (section 31N of NEMA)
- 5.1. It is an offence to fail to comply with this notice.
- 5.2. Any non-compliance with this notice will be reported to the Minister or the MEC, who may then -
- (a) report the matter to a Director of Public Prosecutions;
 - (b) revoke any permit or authorization to which this notice relates; and
 - (c) on your behalf, take any step necessary to ensure compliance with the provisions of the law, permit or authorization to which this notice relates and recover from you the cost of doing so.
6. Reason or reasons why advance notice in writing of my intention to **issue** this compliance notice **should not be** given

.....
.....

[PROVIDE PARTICULARS OF REASON/S WHY INSPECTOR BELIEVES THAT THE DELAY CAUSED BY GIVING WRITTEN NOTICE OF THE INTENTION TO ISSUE A COMPLIANCE NOTICE WILL CAUSE SIGNIFICANT AND IRREVERSIBLE HARM TO THE ENVIRONMENT.]

[INCLUDE ONLY IN CASES OF NON-COMPLIANCE WITH SUBREGULATION 8(2)]

Signed on this day of at

Environmental Management Inspector

(Environmental **management** inspector to provide his or her name, address and other contact details)

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

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