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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 480

31 MAY 2017

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)**

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

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make Regulations relating to qualification criteria, training and identification of, and forms to be used by, Environmental Management Inspectors and Environmental Mineral Resource Inspectors, under section 44(1)(a) read with section 31E of the National Environmental Management Act, 1998 (Act No. 107 of 1998) set out in the Schedule hereto.



**BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

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

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1. Definitions

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) the Minister;
- (b) the Minister responsible for water and sanitation;
- (c) the Minister responsible for mineral resources;
- (d) a MEC; or
- (e) a person to whom the Minister, Minister responsible for mineral resources, Minister responsible for water and sanitation or MEC's power under sections 31B, 31BA, 31BB and 31C, respectively, has been delegated in terms of the Act.

"inspector" means an official designated in terms of section 31B, 31BA, 31BB of 31C of the Act;

"the Act" means the National Environmental Management Act 1998 (Act No.107 of 1998).

2. Qualification criteria and training for inspectors

Designating authorities may designate persons referred to in section 31B, 31BA, 31BB or 31C of the Act as inspectors only if such persons have successfully completed a relevant training course approved by the Director-General.

3. Mandates

- (1) When specifying the powers of an inspector in terms of section 31D(3) of the Act, a designating authority must select only the powers for an inspector as are -
 - (a) necessary for the inspector's mandate; and
 - (b) set out in respect of the inspector's grade in Annexure 1.

4. Issue of identity cards

- (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;
 - (ii) the Director-General of the department responsible for mineral resources or an official of that department designated by that Director-General;
 - (iii) the Director-General of the department responsible for water and sanitation or an official of that department designated by that Director-General; or
 - (iv) another organ of state authorised to do so in writing by the Director-General, Director-General of the department responsible for mineral resources or the Director-General of the department responsible for water and sanitation, as the case may be; 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)(iv) to issue identity cards must issue such cards only to its own employees designated as inspectors by a designating authority.
- (3) Notwithstanding subsection (2), the Director-General may authorise the head of a provincial department responsible for environmental affairs to issue identity cards to employees of provincial public entities and municipalities within its geographic area of jurisdiction.

5. Contents and period of validity of identity cards

- (1) An identity card must display -
 - (a) the full names and identity number of the person designated as an 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), (2) or (2A) of the Act and must indicate for which legislation that person is designated as an inspector;
 - (e) the full names and post description of the designating authority who designated the person as an inspector;
 - (f) the signature of the designating authority;
 - (g) the date on which the person was designated as an inspector;
 - (h) the grade of the inspector; and
 - (i) where applicable, that the inspector is a peace officer *ex officio*.
- (2) An identity card lapses when the designation of the cardholder as an inspector is withdrawn in terms of section 31B(1)(b), 31BA(1)(b), 31BB(1)(b) or 31C(1)(b) of the Act, where the designation otherwise lapses or where the inspector otherwise ceases to be a member of staff.
- (3) Upon the lapsing of the designation, the cardholder must forthwith return the identity card to the Department, Department responsible for mineral resources, Department responsible for water and sanitation; or organ of state authorised in terms of regulation 4(1)(b)(iv) that issued that identity card.
- (4) Where a member of staff who has been designated as inspector is suspended in terms of the employer institution's labour practices, that inspector shall forthwith upon suspension, surrender his or her identity card, which card shall remain surrendered unless or until the suspension has been lifted and the official's employment has been reinstated.

6. Duties of the designating authority

- (1) The department of the designating authority must, upon designation, issue an identity card to an inspector within the relevant department and on receipt of the information detailed in regulation 5(1)(a), (b), (c), (d), (e), (f), (g), (h) and (i).
- (2) The department of the designating authority 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 an inspector have been withdrawn, suspended or lapsed and the reasons therefor.

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

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

8. **Section 31L compliance notices**

- (1) A compliance notice issued in terms of section 31L of the Act must correspond substantially with the form set out in Annexure 3.
- (2) Before issuing a compliance notice in terms of section 31L of the Act, an 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 inspector why he or she should not issue the compliance notice as intended.
- (3) (a) If an inspector has reason to believe that giving written notice of the intention to issue a compliance notice in accordance with sub-regulation (2), will cause a delay resulting in significant and sudden harm to the environment, the inspector may issue a compliance notice without complying with sub-regulation (2).
 - (b) A compliance notice issued in terms of paragraph (a) must include the inspector's reasons for not complying with sub-regulation (2).

9. **Transitional Arrangements**

All inspectors who were issued with identity cards prior to the promulgation of these regulations, may continue to utilise their current identity cards, notwithstanding that they do not comply with the requirements set out in regulation 5, for a period of three years from the date of promulgation of these regulations, after which all inspectors' identity cards must comply with the requirements set out in regulation 5.

10. **Repeal**

These regulations hereby repeal and replace the Regulations relating to qualification criteria, training and identification of, and forms to be used by, Environmental Management Inspectors published in GNR 494 dated 2 June 2006.

ANNEXURE 1

	Grade 5 Inspector	Grade 4 Inspector	Grade 3 Inspector	Grade 2 Inspector	Grade 1 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.	Powers in terms of <ul style="list-style-type: none"> - sections 31H, except for the powers under section 31H(1)(b), section 31H(1)(f) and section 31H(5); - section 31K, except for powers under section 31K(5) and (6) 	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 Management Act, 1998 (Act No. 107 of 1998)

1. I, _____ in my capacity as an environmental management inspector / environmental mineral resource 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" in that you have refused to answer questions in terms of section 31H(1)(a) of 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 / environmental mineral resources) on _____
(date) at _____ (address); or

 - (b) in writing to _____ (name and address of environmental management inspector / environmental mineral resources 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 Mineral Resource Inspector

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 [INDICATE THE SPECIFIC ACTIVITY /PROPERTY]**1. DECISION**

I, _____, in my capacity as an a Grade 1 Environmental Management Inspector / Environmental Mineral Resource Inspector, having considered the matter, am of the view that [Company Name / Natural Person's Name] and its directors [if a corporate entity] have failed to adhere to the provisions of the law in respect of activities conducted by [Company Name / Natural Person's Name] at [Facility / Premises Name].

Accordingly, I hereby issue you, [Company Name / Natural Person's Name] and its directors [where a corporate entity] 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" read with Regulation 8 of the Regulations Relating To Qualification Criteria, Training and Identification of, and Forms to be used by, Environmental Management Inspectors

(GNR ___ dated _____).

2. INTRODUCTION

I refer to the following:

[Refer to any inspections conducted and the observations made, the notice of intention to issue a compliance notice, any representations received and any other relevant correspondence.]

[Refer broadly to the pieces of legislation that have not been complied with]

[Statement to the effect that either no representations were received or where representations were received these were considered but no compelling reason was found as to why this compliance notice should not be issued.]

3. REASON OR REASONS WHY ADVANCE NOTICE IN WRITING OF MY INTENTION TO ISSUE THIS COMPLIANCE NOTICE WAS NOT GIVEN [Numbering on the notice must be amended where this provision is not used.]

[INCLUDE ONLY IN CASES WHERE A PRE-COMPLIANCE NOTICE WAS NOT ISSUED DUE TO SUB-REGULATION 8 (2)]

[Provide particulars of reason/s why the environmental management inspector / environmental mineral resource inspector believes that the delay caused by giving written notice of the intention to issue a compliance notice will cause significant and sudden harm to the environment.]

4. DETAILS OF NON-COMPLIANCE

[The failure to comply with the provisions of the law and the conditions of any licence permit/authorisation that may be relevant [delete what is not relevant], your representations and the Department's response thereto is set out in tabular form below.]

Act / Regulation name	Section / Regulation number	Legal Provision (i.e. wording of the section)	Finding	Representations Received	Rebuttal
			[the conduct constituting non-compliance including the date or period of non-compliance]	[where no representations were received this should be indicated here]	[column can be omitted where no representations were received]

[Conclude with reasonable belief in respect of non-compliance.]

5. INSTRUCTIONS

In terms of this compliance notice I require you to do the following:

[Steps to be taken: Insert details in respect of the steps to be taken by the person accused of non-compliance and the period in which these steps must be taken.]

[Prohibited conduct: List any acts which may not be performed by the person accused of non-compliance and the period in which the prohibition will remain in force.]

6. PROCEDURAL ARRANGEMENTS

If you would like me to vary this compliance notice, including by extending the period to which it relates, you may make representations to me to do so.

If you wish to lodge an objection to this compliance notice, you may do so by making representations, in writing, to the Minister responsible for Environmental Affairs, Minister responsible for mineral resources, Minister responsible for water and sanitation (the Minister), Member of the Executive Council (the MEC), or municipal council [delete what is not applicable] within 30 days of receipt of this notice. [Check if there are delegations in place, if so this should be indicated here.]

You may also make representations to the Minister, MEC or municipal council [delete what is not applicable] to suspend the operation of the compliance notice pending finalisation of the objection. [Provide details on where to send the objection / request for a suspension to.]

Irrespective of any representations you may make to me or to the Minister, the MEC or municipal council [delete what is not applicable], you must comply with this compliance notice within the time period stated in the notice unless the Minister, MEC or municipal council [delete what is not applicable] agrees to suspend the operation of the compliance notice.

7. FAILURE TO COMPLY

Should you fail to comply with this compliance notice:

- (a) you will have committed an additional offence in terms of section 49A(1)(k) of NEMA. Kindly take note that environmental management inspectors / environmental mineral resource inspectors from this Department are given wide powers in terms of NEMA to investigate whether or not you have complied or are complying with this compliance notice, and to exercise certain powers in order to enforce any contravention thereof, including but not limited to the power to seize items used in the commission of an offence as well as the power of arrest; and
- (b) the Department will be entitled to take the required steps on your behalf and to claim from you any costs incurred in so doing.

[ONLY USE WHERE THE PARTICULAR PERMIT/LICENCE/AUTHORISATION MAY BE SUSPENDED OR REVOKED

Apart from the instructions contained in this notice, the Department is considering suspending and/or revoking your (insert licence that may be suspended/revoked e.g. Waste Management Licence) in terms of (insert relevant provision that provides for this e.g. section 56 of NEM:WA), as the Department is of the opinion that the licence holder has contravened provisions of (insert relevant Act e.g. NEM:WA) as well as certain of the conditions contained in that licence and that such contravention may have or is having a

significant impact on health or the environment. In this regard you are hereby granted (insert reasonable period) in which to make representations as to why the Department should not do so.]

8. CONCLUSION

If you are unclear about any aspect of this compliance notice, kindly contact the person indicated for enquires in writing as soon as possible; or if no such person is indicated then the EMI who has signed this notice.

Signed on this _____ day of _____

Grade 1 Environmental Management Inspector / Environmental Mineral Resource Inspector

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