

## DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 520

13 MAY 2016

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998  
(ACT NO. 107 OF 1998)AMENDMENTS TO REGULATIONS RELATING TO QUALIFICATION CRITERIA, TRAINING AND  
IDENTIFICATION OF, AND FORMS TO BE USED BY, ENVIRONMENTAL MANAGEMENT  
INSPECTORS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to amend the Regulations relating to qualification criteria, training and identification of, and forms to be used by, Environmental Management Inspectors, published under Government Notice R. 494, in *Government Gazette* No. 288699 of 2 June 2006, in terms of the National Environmental Management Act, 1998 as set out in the Schedule hereto.

Members of the public are invited to submit, within 30 days after the publication of the notice in the Gazette, written comments or inputs to the following addresses:

**By post:** The Director-General: Department of Environmental Affairs  
Attention: Ms. Nicole Limberis  
Private Bag X 447  
**PRETORIA**  
0001

**By hand:** Environment House, 473 Steve Biko Road, Pretoria, 0001.

**By email:** [nlimberis@environment.gov.za](mailto:nlimberis@environment.gov.za) or by fax to 012 320 1781.

**Enquiries:** Ms N Limberis.

**Tel:** 012 399 9502.

**COMMENTS RECEIVED AFTER THE CLOSING DATE MAY NOT BE CONSIDERED.**



**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**

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing regulations;

\_\_\_\_ Words underlined with a solid line indicate insertions in existing regulations.

**SCHEDULE**

1. Definitions
2. Qualification criteria and training for environmental management inspectors and environmental mineral resource inspectors
3. Mandates
4. Issue of identity cards
5. Contents and period of validity of identity cards
6. Duties of **[Department]** the designating authority
7. Format of section 31H(1)(b) written notices
8. Section 31L compliance notices
9. Transitional arrangements

**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) 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.]**

(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 section 42, 42A, 42B and 42C of the Act.

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

**2. Qualification criteria and training for environmental management inspectors and environmental mineral resource inspectors**

- (1) Designating authorities may designate persons referred to in section 31B, 31BA, 31BB or 31C of the Act as environmental management inspectors or environmental mineral resource inspectors only if such persons have completed **[any]** a 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 sub-regulation (1) becomes available, all persons designated as environmental management inspectors in terms of sub-regulation (2), including those referred to in the proviso to that sub-regulation, must commence with and complete the training course as soon as is reasonably possible.]**

**3. Mandates**

- (1) When specifying the powers of an environmental management inspector or an environmental mineral resource 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]** must select only the powers for an environmental management inspector or an environmental mineral resource 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) Sub-regulation (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.]**

**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; or
  - (ii) **[another organ of state authorised to do so in writing by the Director-General; and]** the Director-General or an official of the Department of Mineral Resources designated by the Director-General;
  - (iii) the Director-General or an official of the Department of Water and Sanitation designated by the Director-General;
  - (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)[(ii)](iv) to issue identity cards **[may] must** issue such cards only to its own employees designated as environmental management inspectors by **[the Minister]** a designating authority.**

**5. Contents and period of validity of identity cards**

**(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;
  - (f) the signature of the designating authority; **[and]**
  - (g) the date on which the person was designated as an environmental management 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 environmental management inspector is withdrawn in terms of section 31B(1)(b), 31BA(1)(b), 31BB(1)(b) or 31C(1)(b) of the Act, **[and the cardholder must promptly return the identity card to the Department]** or where the environmental management inspector or environmental mineral resource 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.

## 6. Duties of **[Department]** the designating authority

- (1) The Department of the designating authority must upon designation issue an identity card **[on request from the Minister or a designating authority]** to an environmental management inspector or environmental mineral resource inspector within the relevant department and on receipt of the information detailed in regulation 5(1)(a), (b), (c), (d), (e), (f) **[and]**, (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 environmental management inspector or environmental mineral resource inspector has been withdrawn.

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

A written notice referred to in section 31H(1)(b) of the Act must **[be in]** 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 **[be in]** 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 environmental management inspector or environmental mineral resource 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 or environmental mineral resource 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 or environmental mineral resource inspector's reasons for not complying with subregulation (2).

#### **9. Transitional Arrangements**

All inspectors who were issued with an identity card prior to the promulgation of these Regulations, may continue to utilise their current identity cards for a period of two years after which all inspectors' identity cards must comply with the requirements set out in regulation 5.

## 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
<b>Powers that may be conferred in terms of section 31D (3)</b>	Powers in terms of section 31H, section 31I (3), and section 31J of the Act.	<p>[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.]</p> <p><u>Powers in terms of:</u></p> <ul style="list-style-type: none"> <li>- <u>sections 31H - except for section 31H(1)(b), section 31H(1)(f) and section 31H(5);</u></li> <li>- <u>section 31K – except for section 31K(5) and (6).</u></li> </ul>	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, 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).

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**Environmental Management 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****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

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

I, \_\_\_\_\_, in my capacity as an a Grade 1 Environmental Management 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 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.]

#### **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.]

<b><u>Section</u></b>	<b><u>Legal Provision (i.e. wording of the section)</u></b>	<b><u>Finding</u></b>	<b><u>Representations Received</u></b>	<b><u>Rebuttal</u></b>
		<u>[the conduct constituting non-compliance including the date or period of non-compliance]</u>	<u>[column can be omitted where no representations were received]</u>	<u>[column can be omitted where no representations were received]</u>

[Insert any further details in respect of the above including photographic evidence / graphs / diagrams where relevant.]

[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 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.]

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

## **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.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

**Grade 1 Environmental Management Inspector**

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