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GENERAL NOTICE

NOTICE 1424 OF 2005

PROPOSED REGULATIONS UNDER SECTION 47(1) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT No. 107 OF 1998) AS AMENDED

The Minister of Environmental Affairs and Tourism intends to make regulations in terms of section 47(1) of the National Environmental Management Act 1998 (Act 107 of 1998) relating to qualification criteria, training and identification of, and forms to be used by, environmental management inspectors, set out in the Schedule hereto.

Interested parties are requested to submit comments in connection with the proposed regulations within 30 days from the date of publication of this notice.

Comments must be submitted to the Director-General: Environmental Affairs and Tourism, Private Bag X447, Pretoria, 0001.



Mr Alf Wills

Acting Director-General: Environmental Affairs and Tourism

DRAFT**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 47(1) of the National Environmental Management Act 1998 (Act 107 of 1998), made the regulations set out in the Schedule hereto.

SCHEDULE

Definitions

1. In these Regulations a word or expression to which a meaning has been assigned in the Act has the same meaning, and –

“**Act**” means the National Environmental Management Act 1998 (Act 107 of 1998);

“**Department**” means the Department of Environmental Affairs and Tourism;

“**Director-General**” means the Director-General of the Department;

“**designating authority**” means –

- (a) a person to whom the Minister’s power contained in 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.

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 they have completed such training course or courses as approved by the Director-General.

(2) Until such time as the approved training course or courses referred to in subregulation (1) are 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 if they have -

- (a) completed at least one year's practical experience in monitoring compliance with and enforcing legislation;
- (b) completed the training requirements for designation as peace officers in terms of section 334(1) of the Criminal Procedure Act, 1955 (Act No.56 of 1955); 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.

(3) Paragraphs (a), (b) and (c) of subregulation (2) do not apply to the designation of employees of South African National Parks as environmental management inspectors in terms of that subregulation.

(4) When the training course or courses referred to in subregulation (1) become available, persons designated as environmental management inspectors in terms of subregulation (2), including those referred to in subregulation (3), must complete the training course or courses 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 only select such powers for an environmental management inspector as are –

- (a) necessary for the inspector's mandate; and
- (b) set out in Annexure 1 to these regulations.

(2) Subregulation (1) does not bind an MEC, but an MEC must take Annexure 1 to these regulations 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 that must in terms of section 31F of the Act be issued to each person designated as an environmental management inspector –

- (a) must comply with regulation 6; and
- (b) may only be issued by –
 - (i) the Department; or

- (ii) another organ of state authorised to do so 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 of identity cards

5. 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.

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(a) to (g).

(2) The Department must keep a detailed record of all persons in respect of whom an identity card was issued.

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

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

Section 31L compliance notices

8. (1) A compliance notice issued in terms of section 31L of the Act must be in the form as set out in Annexure 3 to these regulations.

(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) If an environmental management inspector has reason to believe that the delay caused by giving written notice in accordance with subregulation (2) of the intention to issue a compliance notice, will cause significant and irreversible harm to the environment, the inspector may issue a compliance notice without 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 S31D(3)	Powers in terms of Section S31H(5) (Chapters 2 and 5 of the Criminal Procedure Act, 55 of 1977), S31I and S31J	Powers in terms of Section 31K(1) to (4)	Powers in terms of Section 31H(1) to (4) and Section 31K	Powers in terms of Section 31H, Section 31J, and Section 31K	Powers in terms of Section 31H, Section 31J, Section 31K, Section 31L and Section 31N

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 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 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 107 of 1998 (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 107 OF 1998**

To:

Address:

.....

.....

**Compliance notice in terms of the National Environmental Management Act
107 of 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 107 of 1998
(NEMA).

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

1. Details of conduct constituting non-compliance

.....

.....

[THE DETAILS INSERTED MUST PROVIDE PARTICULARS OF

- The specific obligations imposed by the law/permit, authorisation or other instrument which are relevant to the notice.
- The conduct constituting non-compliance.
- The date or period and place of such non-compliance.

2. Steps to be taken

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

[THE DETAILS INSERTED MUST PROVIDE PARTICULARS OF

- The steps to be taken by the party accused of non-compliance.
- The period in which these steps must be taken.

3. Prohibited Conduct

.....
.....

[THE DETAILS INSERTED MUST PROVIDE PARTICULARS OF

- Any acts which may not be performed by the party accused of non-compliance.
- 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) within 30 days of receipt of this notice.

4.3. You may also make representations to the Minister 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, you must comply with this compliance notice within the time period stated in the notice unless the Minister agrees to suspend the operation of the compliance notice.

5. Failure to comply with this compliance notice (section 31N of NEMA)

5.1. If you fail to comply with this compliance notice, you will have committed an offence.

5.2. Any non-compliance will be reported to the Minister, 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/or
- (c) on your behalf, take any steps 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.

Signed on this day of at

Environmental Management Inspector

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

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