ENFORCEMENT MANUAL FOR THE INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

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environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

DISCLAIMER

This document does not in any way have legal authority or take precedence over the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("ICM Act"), nor does it purport or stand in the place of or substitute any of the wording of the ICM Act, but rather serves as a manual for the interpretation and enforcement of the ICM Act. It should at all times be read in conjunction with the ICM Act, which remains the final and legal authority on integrated coastal management in South Africa. The manual reflects the law as on 31 May 2010, and the user is advised to consult the latest version of the ICM Act, as amendments might have been made since this publication.

FOREWORD

Coastal management in South Africa has experienced a number of paradigm shifts since the 1970s, each with different policies and management practices. Integrated Coastal Management (ICM) promotes the use of defensible scientific information in conjunction with the principles of co-operative governance. This is in order to achieve sustainable coastal development. The first step that signalled a fundamental shift in thinking about our coast came in the form of the White Paper for Sustainable Coastal Development in South Africa (2000). This was founded on a national vision for the coast that included the socially justified sharing of benefits derived from a resource-rich coastal area without compromising the ability of future generations to access those benefits

These tenets, which were driven by the need to transform our economy and society by realising the opportunities that our coast provides to build our nation and improve the quality of life for each South African citizen, has evolved and culminated in an Act of Parliament which is the first legal tool of its kind that recognises the ecological, social and economic interactions within the ocean and land interface: the Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICM Act). The ICM Act is a Specific Environmental Management Act (SEMA) under the umbrella National Environmental Management Act, 2008 (Act No. 107 of 1998) (NEMA Act). The Act acknowledges that the coastal zone functions as an interconnected system and calls for co-ordinated, integrated and systematic management whilst simultaneously promoting sustainable development.

Prior to the commencement of the ICM Act, the protection of the coastal zone was not addressed in a holistic manner and provided very little authoritative power to implement the various and necessary functions of enforcement that were spread over several Acts and sets of regulations. The integrated legislative power of the ICM Act has addressed these shortfalls and is now able to provide a more effective vehicle for coastal management.

The intention of this Enforcement Manual is to provide a tool within this legislative framework that assists government officials in carrying out compliance-monitoring and enforcement duties. This ensures that the coastal environment is protected by officials with the necessary authority and also facilitates the cornerstone of co-operative governance by promoting communication, adherence and alignment to standards and norms for all spheres of government.

I would like to thank the various stakeholders who have contributed to the production of this Manual as well as those who have participated in the various stages of its deliberation and refinement. The vision of effective ICM in South Africa can only be achieved by upholding the objectives of the ICM Act in every aspect of its implementation as partners: both as South African citizens as well as officials charged with the management and care of the national heritage that is our coast for the benefit of current and future generations of all South Africans. This Enforcement Manual will play a key role in achieving this vision.

Dr Razeena Omar
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Department of Environmental Affairs

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LIST OF ACRONYMS

CAS	Criminal Administration System of the SAPS
CPA	Criminal Procedure Act, 1977 (Act No. 51 of 1977)
DEA	Department of Environmental Affairs
DEAT	Former Department of Environmental Affairs & Tourism
DPP	Director of Public Prosecutions
DWA	Department of Water Affairs
DWAF	Former Department of Water Affairs & Forestry
EA	Environmental Authorisation
ECA	Environment Conservation Act, 1989 (Act No. 73 of 1989)
EIA	Environmental Impact Assessment
EIR	Environmental Impact Report
EMI	Environmental Management Inspector
EMP	Environmental Management Plan
EMS	Environmental Management System
I&APs	Interested and Affected Parties
ICM (Act)	National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)
MCM	Marine & Coastal Management branch of the former DEAT, now falling under the Department of Agriculture, Forestry and Fisheries
MEC	The Member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of the ICM Act
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)
NEMBA	National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)
NEMAQA	National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)
NEMPAA	National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)
NEMWA	National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)
NPA	National Prosecuting Authority
NWA	National Water Act, 1998 (Act No. 36 of 1998)
ROD	Record of Decision (in terms of ECA)
SALGA	South African Local Government Association
SAPS	South African Police Services
SEMA	Specific environmental management Act
SOP	Standard Operating Procedure

And the following definitions:

Environmental authorisation is any authorisation by a competent authority of a listed activity in terms of NEMA, ECA or a SEMA.

Environmental approvals refers generically to environmental authorisations, licences and RODs

Minister means the Minister of Water and Environmental Affairs

Relevant environmental legislation refers to APPA, ECA, NEMA, NEMBA, NEMPA, NEMAQA, NEMWA, NWA and ICM Act and all the regulations and notices promulgated thereunder.

The Inspectorate is the Environmental Management Inspectorate

INTRODUCTION

This Manual serves to guide officials in the enforcement of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (“the ICM Act”). Although certain sections were excluded from the commencement of the Act on 1 December 2009, this does not affect the enforcement of this Act or the contents of this Manual in any substantial way. It is foreseen that these remaining sections will come into operation in the near future.

In so far as the ICM Act will eventually replace the rather outdated Sea-shore Act, 1935 (Act No. 21 of 1935), it is the first comprehensive piece of legislation dealing with the coastal zone in a holistic and integrated manner. The purpose of this Manual is therefore to ensure that the coastal zone is protected, and in this particular context, through the use of the enforcement tools provided for in NEMA and the ICM Act. These tools include administrative directives and notices, criminal enforcement and civil enforcement tools. The ultimate goal is therefore protecting the right entrenched in section 24 of the Constitution, thereby ensuring a healthy and sustainable coastal environment for all, including future generations.

The Manual incorporates, and where necessary, expands on existing standard operating procedures (“SOPs”) for the Environmental Management Inspectorate. The purpose of such SOPS is to prescribe conduct that all officials must adhere to, to ensure that functions are performed uniformly and effectively. Various SOPs are included: general procedures, monitoring and compliance procedures, and enforcement procedures. The goal of these is to ensure effectiveness and success in achieving the main purpose of the officials tasked with enforcing the Act, namely to ensure compliance with and enforcement of the ICM Act. A new SOP on the enforcement of Chapter 8 of the ICM Act, dealing with marine and coastal pollution control, has been added.

This Manual also contains guidelines for taking the correct enforcement action in any particular circumstances. While not as prescriptive as the SOPs, they are by no means less specific. Illegal conduct or conduct leading to significant environmental harm, pollution or degradation of the coastal zone, must carry consequences. The regulated community must know that they are being monitored and that certain conduct will trigger certain reactions from the officials tasked with the enforcement of the Act, including the Environmental Management Inspectorate (EMI).

The monitoring and compliance procedures as well as the enforcement procedures will ensure that when action is taken, the desired result will be achieved in the correct manner, leading to scientifically accurate, procedurally correct and legally defensible results.

Although the SOPs are binding, they allow for a healthy discretion, and in many cases, also contain useful hints and tips. They do not replace, but rather supplement EMI and other training material. The drafting of this Manual also coincided with the update of both the EMI training material and the guide to the prosecution of environmental crime.

The team responsible for the external drafting of this Enforcement Manual was Envolve Consulting (Pty) Ltd ("Envolve"), with Clarissa Molteno and Phil Snijman (both Directors of Envolve), as the principal drafters.

In time it will become necessary to change, adapt and supplement the manual and SOPs as the law, policies and practices change. In addition, officials applying these in practice will be able to make suggestions on the contents. Any further comments and suggestions must be addressed to the Assistant Director: Institutional and Legal Reform, Mr Sandiso Zide at szide@environment.gov.za or (021) 819 2497, or the Deputy Director of the Coastal Planning and Environmental Section, Dr D.E. (Niel) Malan at dmalan@environment.gov.za or (021)819 2490.

1. OVERVIEW OF THE INTEGRATED COASTAL MANAGEMENT ACT ("THE ICM ACT")

1.1 INTRODUCTION

This Act was published in February 2009 [1], but only came into operation via proclamation [2] on 1 December 2009. The proclamation however, determined that it came into operation with the exclusion of sections 11, 65, 66, 95, 96 and 98. This means that the Sea-shore Act, 1935 (Act No. 21 of 1935) and the Dumping at Sea Control Act, 1980 (Act No. 73 of 1980) have not yet been repealed, as section 98 of the ICM Act is not yet in operation. It is however foreseen that these remaining sections will come into operation in the near future. In so far as this Act will eventually replace the rather outdated Sea-shore Act, it is the first comprehensive piece of legislation dealing with the coastal zone in a holistic and integrated manner.

The preamble gives a good idea of the approach and objective of this Act by referring to the coastal zone as a "unique part of the environment in which the biophysical, economic, social and institutional considerations interconnect in a manner that requires a dedicated and integrated management approach".

The objects of the Act are to determine the coastal zone of the Republic; to provide for the coordinated and integrated management of the coastal zone by all spheres of government; to preserve, protect, extend and enhance the status of coastal public property; to allow equitable access to the opportunities and benefits of coastal public property and to give effect to the Republic's international law obligations regarding coastal management and the marine environment.

1.2 IMPORTANT CONCEPTS

The "coastal zone" is defined in section 1 to mean the area comprising "coastal public property", the "coastal protection zone", "coastal access land" and "coastal protected areas", as well as the "seashore", "coastal waters" and the "exclusive economic zone".

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[1] Government Gazette No. 31884 of 11 February 2009.

[2] Proclamation R.84, 2009 in Government Gazette No.32765 of 1 December 2009.

Coastal public property[3] consists of:

- Coastal waters (defined as the marine waters that form part of internal waters or territorial waters, and include estuaries);
- Land submerged by coastal waters;
- Islands within coastal waters;
- The seashore, defined as the area between the low-water and high water mark, but excluding portions of the seashore below the high-water mark or coastal cliffs that was lawfully alienated under previous legislation;
- Any admiralty reserve owned by the State[4];
- Any natural resources found on or in the above, as well as natural resources in the Exclusive Economic Zone (see the definition below), the continental shelf and harbour or other installation in or on the above categories, that are owned by an organ of state;

Section 11, which is not yet in operation, declares that "[t]he ownership of coastal public property vests in the citizens of the Republic and ...must be held in trust by the State on behalf of the citizens of the Republic". This is therefore wider in application, and is a modern way to express the same concept that is contained in section 2 of the Sea-shore Act that proclaims the State President to be the owner of the seashore and the sea. Section 13 guarantees the right of reasonable and free access to coastal public property for natural persons, subject to some limitations.

The "coastal protection zone"[5] consists of:

- Sensitive coastal areas[6] declared in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), ("the ECA")
- Any part of the littoral active zone that is not coastal public property[7]

[3] See section 1 and 7 of the Act. Section 8 also makes provision that the Minister may declare other state-owned land as coastal public property.

[4] See the definition of "admiralty reserve" in section 1. It refers to strips of land inland of the high-water mark which is still found on some title deeds, and of which the original purpose was to serve as access for performing rescue or salvage operations for stranded ships.

[5] See section 1, which refers to the area as defined in section 17. It is submitted that this should have referred to section 16.

[6] See R879 in GG 17213 of 31 May 1996 and R1526-28 in RG 6353 No. 19493 of 27 November 1998 on the Outeniqua Sensitive Coastal Area and the Outeniqua Sensitive Coastal Area Extension, and R1529-31 No. 19493 on the Pennington and Umtamvuna Sensitive Coastal Area

[7] See the definition of this zone in section 1.

- Any “coastal protection area” (this should read ‘coastal <u>protected</u> area’, and is a typographical error that will be corrected in an amendment bill), or part of such area, which is not coastal public property (see the definition of this area below).
- Any land situated wholly or partially within one kilometre from the high water mark which, at the time the Act came into force, was zoned agricultural or undetermined, or where the land was not zoned and was not part of a lawfully established township, urban area or other human settlement;
- Any other land not referred to directly above, situated wholly or partially within 100 meters from the high-water mark;
- Any coastal wetland, lake, lagoon or dam that is situated wholly or partially within the following land units:
  - Any land situated wholly or partially within one kilometre from the high water mark which, at the time the Act came into force, was zoned for agricultural or undetermined use; and
  - Any other land situated wholly or partially within 100 meters from the high-water mark.
- Any part of the seashore that is not coastal public property, including all privately owned land below the high-water mark;
- Any admiralty reserve which is not coastal public property;
- Any land that would be inundated by a 1:50 year flood or storm event.

The purpose of the coastal protection zone is set out in section 17, and is to enable the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed in such a way as to *inter alia* protect the ecological integrity of coastal public property, and further to provide protection against natural hazards and the risk of sea-level rise. In effect it serves as a kind of buffer zone to protect the integrity of the coastal ecosystem.

“Coastal access land” refers to strips of land to be declared and managed by municipalities in terms of section 18 of the Act, to secure public access to coastal public property.

A “coastal protected area” means a protected area that is situated wholly or partially within the coastal zone and that is managed by, or on behalf of, an organ of state[8]. A protected area in this case refers to the definition of such areas in section 9 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), and therefore includes special nature reserves, national parks, nature reserves (including wilderness areas), protected environments (which include lake areas in terms of the Lake Areas Development Act, 1975 (Act No. 39 of 1975[9]), world heritage sites and marine protected areas (as declared in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998). It also includes specially protected forest areas, forest nature reserves and forest wilderness areas (as declared in terms of the National Forests Act, 1998 (Act No. 84 of 1998) and mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970). Wherever such a protected area is situated wholly or partially within the coastal zone and is managed by, or on behalf of, an organ of state, it will fall into this category of coastal protected areas.

The “seashore” means the area between the low-water and high water mark[10].

“Coastal waters” are defined as marine waters that form part of internal waters or territorial waters, and estuaries[11]. Put simply, these are the waters in the area from the coast to approximately 22 km seawards, as well as estuaries.

The “Exclusive Economic Zone” (“EEZ”) is the area extending 200 nautical miles seaward from the baselines[12]. In a slight simplification, this is the area extending from the coast approximately 370 kilometres seawards.

The Act further provides for “special management areas” to be declared, and for the appointment of a managing authority for such areas. The Minister may, after following a

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[8] Defined in section 1. A part of such an area may be excised from the coastal zone in terms of section 22.

[9] Two such lake areas with development boards have been established, being the Knysna Area Lakes Development Board, and the Wilderness Areas Lake Development Board, and the administration of both of these have been transferred to SANParks by Proclamation 48 of 1983 in GG No. 8633. Also see Proc R.224 of 13 December 1985 declaring the Knysna Lake Area.

[10] Section 1. Also see the definition of low-water mark and high-water mark in section 1.

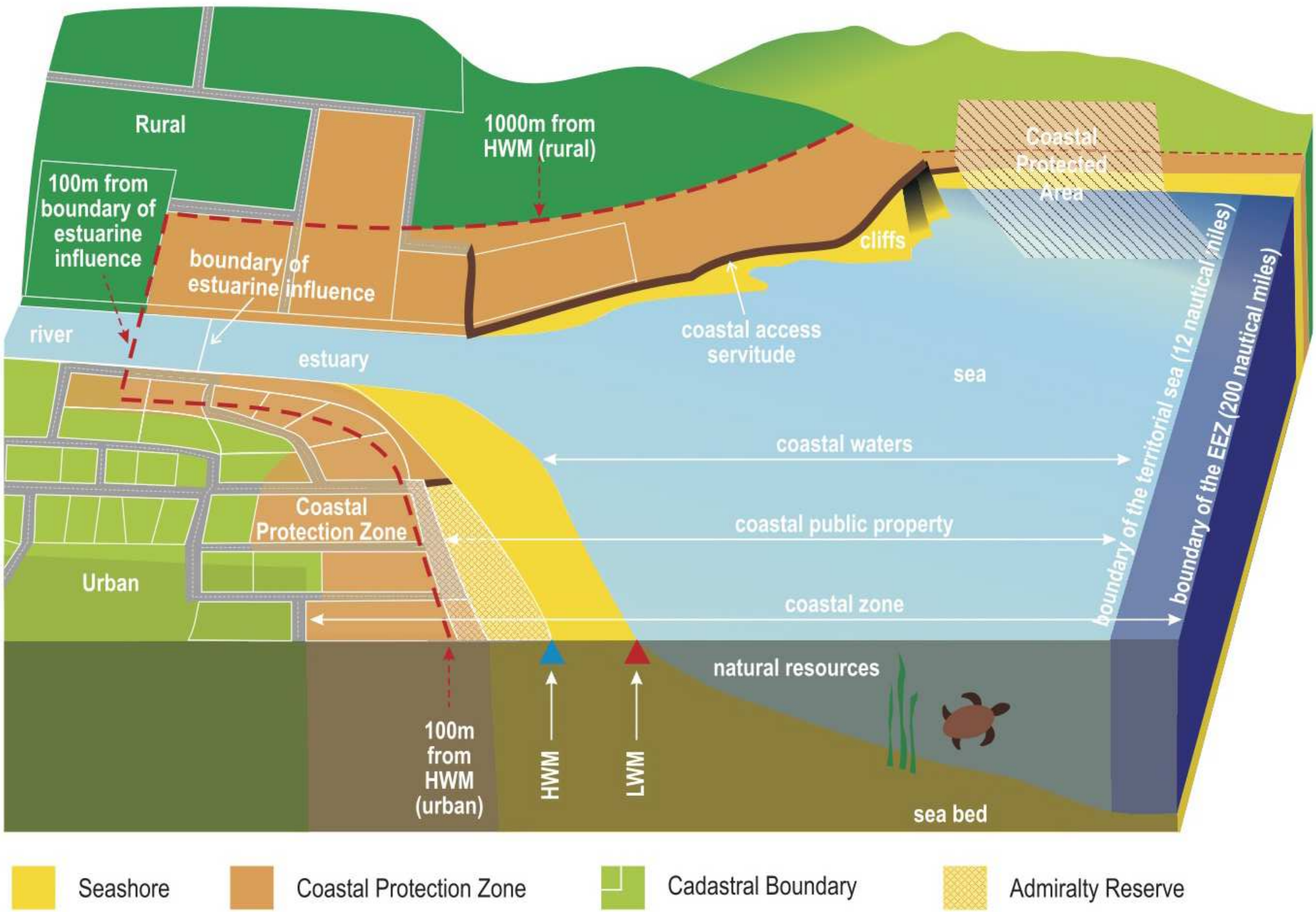
[11] Defined in section 1. Internal waters are the waters landwards of the baselines, and territorial waters extends to 12 nautical miles (approximately 22 km) seaward of the baselines, as set out in the Maritime Zones Act 15 of 1994. The term “estuary” is also defined in section 1.

[12] Defined in section 1. This refers back to the determination in section 7 of the Maritime Zones Act 15 of 1994.

prescribed procedure, establish special management areas in the coastal zone. Such areas may only be declared if environmental, cultural or socio-economic conditions in that area require the introduction of measures which are necessary to more effectively attain the objectives of the coastal management programme for that area, facilitate the management of coastal resources by a local community, promote sustainable livelihoods for a local community or to conserve, protect or enhance coastal ecosystems and biodiversity in the area.

The MEC may by regulation establish or change “coastal set-back lines” in order to demarcate an area within which development will be prohibited or strictly controlled.

Below is a schematic diagram of the coastal zone, taken from *A User-friendly Guide to the Integrated Coastal Management Act of South Africa, the Department of Environmental Affairs and SSI Engineers and Environmental Consultants, Cape Town, South Africa, 2009:*


Rural
100m from boundary of estuarine influence
boundary of estuarine influence
1000m from HWM (rural)
Coastal Protected Area
cliffs
coastal access servitude
river
estuary
sea
boundary of the territorial sea (12 nautical miles)
boundary of the EEZ (200 nautical miles)
coastal waters
Coastal Protection Zone
coastal public property
Urban
coastal zone
natural resources
100m from HWM (urban)
HWM
LWM
sea bed
Seashore
Coastal Protection Zone
Cadastral Boundary
Admiralty Reserve

1.3 GENERAL DISCUSSION OF THE ICM ACT

Determination and Adjustment of Coastal Boundaries

Chapter 3 provides for a mechanism whereby the Minister can determine or adjust coastal public property or special management areas by way of a notice in the Gazette. The MEC can do the same with regard to the coastal protection zone, and municipalities with regard to coastal access land. The Minister, MEC or municipality may, in terms of section 30, authorise persons to enter onto private land where it is necessary to fulfill certain tasks for the purpose of determining or adjusting the coastal boundary.

Management of Estuaries

The management of estuaries is dealt with in Chapter 4 of the Act, which provides for a national estuarine management protocol and estuarine management plans. No additional enforcement tools are created for protection of estuaries, but the administrative, criminal and civil procedures described further below in Chapter 2 of this Manual will apply here.

Institutional Arrangements & Coastal Management

Chapter 5 of the Act contains provisions on institutional arrangements such as the establishment of national, provincial and municipal coastal committees[13]. Of relevance to compliance and enforcement, section 43 provides for the appointment of voluntary coastal officers, who can potentially play a role in enforcement. Chapter 6 prescribes the preparation and contents of national, provincial and municipal coastal management programmes[14].

The Protection of the Coastal Environment

Extensive provision is made for the protection of coastal resources in Chapter 7. Section 58 makes it clear that the Section 28 “duty of care” in NEMA also applies to any impact caused by any person that has an adverse effect on the coastal environment. A directive in terms of section 28 of NEMA can therefore be issued to protect the coastal zone. This is discussed in detail in Part 2.4 below.

Sections 59 and 60 provide for the issuing of three administrative enforcement tools, being:

[13] Chapter 5 of the ICM Act.

[14] Chapter 6 of ICM Act.

- a coastal protection notice prohibiting an activity or instructing a person to take certain steps or stop or postpone an activity if the Minister has reason to believe that a person is carrying out, or intends to carry out such an activity, and it has or is likely to have, an adverse effect on the coastal environment;
- a coastal access notice that can be issued if the Minister has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property;
- a repair and removal notice that can be issued by the Minister or MEC to any person responsible for a structure on or within the coastal zone which is having, or is likely to have, an adverse effect on the coastal environment, or which has been erected, constructed or upgraded in contravention of the ICM Act or "any other law".

Failure to comply with these notices can have the result of the Minister or MEC who issued the notice to instruct appropriate persons to carry out what is required by the notice, and recover from the person to whom the notice was addressed, the costs reasonably incurred in carrying out the required action[15]. In addition, failure to comply with a repair and removal notice is a category two offence in terms of section 79(2)(a), and failure to comply with a coastal protection or access notice is a category three offence in terms of section 79(4) of the Act.

NOTE
See Part 2 below for a more detailed discussion on tools, roles and responsibilities on the issuing of these notices, and see EMI SOP 6.9 for detailed instructions on the issuing of these notices.

Section 62 deals with the implementation of land-use legislation in the coastal protection zone, and section 63 requires additional factors to be taken into consideration by competent authorities in the exercise of their discretion on the granting of environmental authorisations under NEMA. Other matters dealt with in Chapter 7 are the award of leases and concessions on coastal public property, temporary occupation of land within the coastal zone, and the amendment, revocation, suspension and cancellation of authorisations.

[15] Section 61

Appeals

Chapter 9 deals with the appeal procedure and advisory appeal panel to deal with appeals against the issue of coastal protection, coastal access and repair and removal notices, as well as appeals against the issuing, refusal, amendment, suspension or cancellation of authorisations issued in terms of the Act.

Marine and Coastal Pollution Control

Chapter 8 deals with marine and coastal pollution and, *inter alia*, regulates the discharge of effluent into coastal waters, prohibits incineration or dumping at sea and regulates the issue of dumping permits for certain listed materials. The Standard Operating Procedure for the enforcement of Chapter 8 is contained in Annexure B (SOP 6.10).

NOTE

The Dumping at Sea Control Act, and now also Chapter 8 of the ICM Act, deals with the discharging and dumping of land based waste. Eventually, when section 98 of the ICM Act comes into operation, it will repeal the Dumping at Sea Control Act. These provisions incorporate the 1996 Protocol to the London Dumping Convention (The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters)[16] into our domestic legislation.

Enforcement

Criminal and civil enforcement is dealt with in Chapter 10. Various offences on the matters discussed above are created in section 79 and fall within one of three categories. Section 80 contains various penalty provisions that apply to these different categories of offences. The criminal enforcement of the Act is discussed below in Part 2.3. In terms of section 82, the Minister, an MEC or a municipality concerned may institute legal proceedings or take other appropriate measures to prevent damage, or recover damages for harm suffered to coastal public property or the coastal environment; or to abate nuisances affecting the rights of the public in its use and enjoyment of coastal public property; and accept service of legal processes

[16] The Protocol entered into force on 24 March 2006.

and defend any legal proceedings instituted in connection with coastal public property.[17] The use of interdicts as civil enforcement tools is discussed under Part 2.6 below.

General Powers and Duties

Chapter 11 deals with the following matters:

- The powers of the Minister and MEC to make regulations;
- Powers exercised by the Minister and MEC (which is dealt with in more detail in Part 2.2 below);
- Delegations by the Minister and MEC, which is dealt with below in Part 2.7 in the context of the issuing of notices in terms of the Act;
- Section 92 provides for the Minister to take urgent action in the form of a verbal directive to stay activities that poses an immediate threat to the public, property or the environment. This is discussed under Part 2.2 below as one of the administrative enforcement tools, specifically created to deal with urgent issues.

Other matters

Chapter 12 deals with miscellaneous matters such as transitional provisions and limitation of liability. Transitional provisions deal with existing leases on, or rights to, coastal public property, unlawful structures on coastal public property and existing lawful activities in the coastal zone. It is important to note the provisions of section 96 on unlawful structures on coastal property before issuing a repair and removal notice in terms of section 60 (when it comes into effect – this section is currently not yet in force).

[17] Section 82.

2. ENFORCEMENT TOOLS, ROLES AND RESPONSIBILITIES

2.1 INTRODUCTION TO ENFORCEMENT

Introduction

The taking of enforcement action must be seen within the wider context of compliance. While compliance refers to a particular state of adherence to a set of legal standards or requirements, enforcement refers to the actions taken in response to detected non-compliance, and includes criminal prosecution and administrative or civil measures taken to ensure that the environment is protected. All non-compliance should be met with some form of enforcement action or consequence, which must be firm but fair, proportionate, consistent and transparent.

Purpose and Methods of Enforcement

The purpose of enforcement is therefore to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with a regulatory system. It achieves its goal by providing that non-compliance results in specific consequences, be it punishment in the form of a fine or imprisonment, or directives, notices or court orders to ensure compliance and remediation at the cost of the transgressor. In some instances only the threat of one of these measures is sufficient. Such actions also act as deterrents, and can ultimately change behaviour. Although the protection of the environment is the primary goal, in the field of industry and development it also helps to reduce the competitive advantages of being non-compliant. Enforcement is therefore one of the tools used in achieving compliance and ultimately in protecting the environment, as is guaranteed in section 24 of the Bill of Rights.

Some minor instances of non-compliance may warrant nothing more than an informal response such as a warning, or a negotiated compliance schedule. Others might trigger the requirements for the use of more than one tool simultaneously and require swift and firm action. Repeat offences or multiple offences will justify an escalation in the enforcement response.

Informal measures:

Informal measures in this context refer to measures either not specifically prescribed by the legislation, or the use of alternative measures which do not have enforcement as their primary objective. This includes oral or written warnings, the issuing of inspection reports with an opportunity to rectify instances of non-compliance, the imposition of conditions in new permits, or withholding the issuing of a permit, or amendment of a permit, until such time as the applicant is in full compliance.

Criminal measures:

The criminalisation of certain acts of non-compliance allows for prosecution as an enforcement tool. The main aims of prosecution are retribution and individual and general deterrence, but in this context also progressively to ensure that the perpetrator carries the cost of prevention and rehabilitation, and to eliminate any advantage gained by the commission of such an offence[18]. Conviction can in some cases also lead to the cancellation of a permit or authorisation and even to an order by the court that the convicted person is disqualified from obtaining a permit or authorisation for a specified period of up to five years[19]. Such previous conduct can also play a role in future applications where the licensing authority will have to determine whether the applicant is a fit and proper person.

Although criminal prosecution can be a relatively inexpensive process, some cases require intensive investigation and case development, making the process quite resource intensive. Criminal cases often take very long to conclude and involve external role players. The high burden of proof means that such cases are not always successful. It can however create the most significant and normative impact, partly due to the social stigma associated with a criminal conviction.

Administrative measures:

Typical administrative enforcement measures include the issuing of directives and notices, and where necessary, civil action is used in the form of an interdict or mandamus. The main aim of these mechanisms is to prevent or mitigate damage to the environment or to ensure rehabilitation. Administrative measures can also be used to amend or withdraw a permit, license or authorisation.

Administrative measures are inexpensive and may be fairly brief. As the necessary expertise, capacity and powers all lie within the issuing department or organ of state, there is no need to involve external role players. It is only where such measures are challenged in court that the costs will increase and may become fairly significant.

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[18] See section 34(1)-(4), read with Schedule 3, of NEMA.

[19] See section 34C of NEMA which also applies to permits or authorisations issued in terms of the SEMAs.

TIP

Most directives and notices make provision for cost recovery where they are not complied with. Enforcement officials should therefore keep an accurate record of all expenses undertaken in containing, preventing or rehabilitating damage to the environment.

Civil measures:

Prohibitive or mandatory interdicts, to either stop a person from doing something or to compel a person to do something, are usually applied for in the High Court and the legal costs are high. These tools are only available in limited circumstances, but may be appropriate in some urgent matters. In urgent matters a temporary interdict, pending the outcome of an action in which the rights of the parties are to be determined, can be applied for, and in highly exceptional circumstances this can even be done without giving the respondent notice.

Principles of Enforcement

Firm but fair regulation is based on the principles of:

- Proportionality: The enforcement action taken must be proportionate to the risks posed to the environment and to the seriousness of any breach of the law.
- Consistency: This means taking a similar approach in similar circumstances to achieve similar ends, but also recognizing that decisions are based on a variety of variables, and that a certain amount of discretion is necessary to function effectively.
- Transparency: The regulated community must clearly understand what is expected from them, and what they can expect of the Inspectorate.
- Targeting: Regulatory effort is directed primarily towards transgressors whose activities lead, or may lead, to serious environmental damage or degradation, where the risks are least well controlled, or against deliberate or organised crime – this however does not exclude a zero tolerance approach towards even minor transgressions where the situation requires such action.

2.2 ADMINISTRATIVE ENFORCEMENT OF THE ICM ACT: TOOLS, ROLES AND RESPONSIBILITIES

There are three administrative enforcement tools in the ICM Act, namely the notices in sections 59 and 60 of the Act, as well as a verbal directive in section 92.

Coastal Protection Notice

Section 59 grants the Minister[20] the power to issue coastal protection notices prohibiting an activity or instructing a person to take certain steps or stop or postpone an activity if the Minister has reason to believe that a person is carrying out, or intends to carry out such an activity, and it has or is likely to have, an adverse effect on the coastal environment. Such a notice may prohibit an activity if it is not already prohibited in terms of the ICM Act, and may instruct a person to:

- take appropriate steps in terms of ICM Act or any other applicable legislation to protect the environment ;
- investigate and evaluate the impact of an activity on an aspect of the coastal environment in accordance with Chapter 5 of NEMA;
- stop or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate the report.

Before exercising a power to issue a coastal protection notice, the Minister must first consult with any other organ of state that authorised, or is competent to authorise, the undertaking of the activity or proposed activity concerned; and further also give the person to whom the coastal protection notice is to be addressed, an opportunity to make representations.

A coastal protection notice must contain the following:

- the reasons for the notice;
- the period within which anything required by the notice must be carried out; and
- the fact that the person to whom it is addressed may appeal against the notice in terms of Chapter 9 of the Act.

Coastal Access Notice

A similar provision in section 59 authorises the Minister[21] to issue a coastal access notice if the Minister has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property.

[20] Which power may be delegated to certain other officials, as is provided for in section 59(3). Refer further to 2.7 below.

[21] These powers may be delegated to certain other officials, as is provided for in section 59(3). Refer further to Part 2.7 below.

A coastal access notice may:

- Prohibit an activity not already prohibited in terms of the Act;
- Instruct a person to take appropriate steps in terms of ICM Act or any other applicable legislation to allow natural persons access to the coastal public property.

In the case of both of the above notices, the instructions may include, (but are not limited to), instructions to:

- Build, maintain or demolish any specified works[22;]
- To close a public access or prevent unauthorised access to coastal public property at a specified place;
- To plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place;
- To stop altering the geographical features of land at a specified place;
- To build or maintain any specified works at a specified place to protect land from wind erosion;
- To rehabilitate land at a specified place;
- To remove stock from land; or
- To take measures to protect indigenous fauna.

Repair or Removal Notice

Section 60 provides for the Minister or MEC to issue a repair or removal notice to any person responsible for a structure on or within the coastal zone[23] which is having, or is likely to have, an adverse effect on the coastal environment, or which has been erected, constructed or upgraded in contravention of the ICM Act or "any other law". Such a notice may instruct the person responsible for the structure to:

- Remove the structure from the coastal zone or place where it is situated within a specified period; or
- Rehabilitate the site and as far as is reasonable, to restore it to a natural state; or

[22] Note the provisions of section 96 where a structure is located on coastal public property. See below for further detail.

[23] Note the provisions of section 96 where a structure is located on coastal public property. See below for further detail.

- Repair the structure to the satisfaction of the Minister or the MEC within the timeframe stated in the notice; or
- Take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure

Section 60(5) provides for an alternative procedure where the person responsible for the structure cannot readily be found. In this event, the Minister or the MEC, instead of issuing the notice, may do the following:

- Publish a notice (after consultation with other relevant organs of state as described above),
  - once in the Gazette (Government Gazette if the Minister, and the Provincial Gazette if the MEC or delegated municipality), and
  - once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
- Affix a copy of the notice to the structure in question during the period of advertisement.

NOTE
See EMI SOP 6.9 for detailed instructions on the issuing of these notices.

Failure to Comply with a Notice

If a person fails to comply with any of the above notices where he or she was directed to carry out any specific action, the Minister or MEC who issued the notice may instruct appropriate persons to carry out what is required by the notice, and recover from the person to whom the notice was addressed, the costs reasonably incurred in carrying out the required action[24].

In addition, failure to comply with a repair and removal notice is a category two offence in terms of section 79(2)(a), and failure to comply with a coastal protection or access notice is a category three offence in terms of section 79(4) of the Act.

Unlawful Structures on Coastal Public Property (note that this section is not yet in effect)

In terms of section 96, if a structure was unlawfully constructed on coastal public property before the Act came into effect, or where such a unlawful structure built on coastal public

[24] Section 61

property was occupied at the time of the coming into effect of the Act, and no coastal lease has been applied for within 12 months of the date of commencement of the Act, or such application refused, the structure must be demolished and as far as reasonably possible, the site must be restored to its condition before the building or other structure was built.

If a person who is obliged to demolish the building or structure and to restore the site to its original condition, fails to do so within the period specified by the Minister, the Minister or the MEC may, under section 60, issue a written repair or removal notice to that person. However, bear in mind that this entire section is subject to the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), and does not affect any rights that a person may have in terms of such act.

This section was not yet in effect as at 22 July 2010, and officials must ascertain whether it has since come into operation.

Further Administrative Enforcement Measures by the MEC

Section 88 of the Act provides that where the MEC is "satisfied" that a municipality is not taking adequate measures to:

- prevent or remedy adverse effects on the coastal environment;
- adopt or implement a municipal coastal management programme; or
- give effect to the provincial coastal management programme,

he/she can, after first consulting with the municipality and giving it a reasonable opportunity to make representations, direct such municipality in writing to take specific measures[25]. If the municipality does not comply with this directive, the MEC may use any powers granted to the MEC under this Act to take measures to prevent or remedy adverse effects on the coastal environment.

Further Administrative Enforcement Measures by the Minister

Section 90 states that the Minister may in writing request an MEC to take specified measures if the Minister is "satisfied" that the MEC is not taking adequate measures to:

- prevent or remedy adverse effects on coastal public property;
- implement or monitor compliance with national norms and standards;

[25] Note that such a directive can never be issued without first consulting with the municipality, which makes it difficult to deal with urgent situations. Refer further to the SOP on Co-operative Governance in this regard.

- give effect to the national coastal management programme; or
- establish setback lines to implement or monitor compliance with provincial norms and standards.

If the MEC does not comply with this written request, (as opposed to a directive in the case of section 88 – see below), the Minister may, but only after having first consulted with the MEC and given the MEC a reasonable opportunity to make representations, exercise any powers given to the MEC by this Act in order to take any measures referred to in the request, including the power-

- to issue coastal protection or coastal access notices and repair and removal notices delegated to the MEC in terms of sections 59 and 60, respectively;
- to take measures and to recover costs in terms of section 61[26]; and
- to allow temporary occupation of land within the coastal zone and to take other measures in terms of section 67.

NOTE

There are no express provisions for the urgent issuing of any of these notices, but section 92 in Chapter 11 provides for urgent action by the Minister (or a delegated person - see section 59(3)), who may issue a verbal directive to any responsible person to stay an activity if such activity poses an immediate risk of serious danger to the public or property, or an immediate risk of serious damage, or potentially significant detriment, to the environment.

<u>Section 92 Verbal Directive</u>

Section 92 provides that where there is a reason to believe that urgent action is necessary for the protection of the coastal environment, the Minister (or delegated person- see section 59(3)) may issue a verbal directive to stay an activity if the activity poses:

- An immediate risk of serious danger to the public or property; or
- An immediate risk of serious damage, or potentially significant detriment, to the environment.

A verbal directive must be confirmed in writing at the earliest opportunity, which must be within 7 days. The issuing of a verbal directive should follow the provisions of sections 59(1), (3) and (4)

[26] Refer to Fn 21 above.

and sections 60(1), (3) and (4) with the necessary changes, but the provisions regarding consultation in section 59(2) and 60(2) do not apply. The provision for an urgent verbal directive in section 92 is only of assistance in the event that the structure is in the process of being erected or upgraded, in light of the fact that only allows for the Minister to issue a verbal directive to "stay an activity".

NOTE

Although the verb "stay" is not defined, the term has a rather wide ordinary meaning. "Stay" can mean to continue to be in the same condition, not to change, to postpone for a period, or to suspend or pursue a course of action.

2.3 CRIMINAL ENFORCEMENT OF THE ICM ACT: TOOLS, ROLES AND RESPONSIBILITIES

Various offences on the matters discussed above are created in section 79 and fall within one of three categories. Section 80 contains various penalty provisions that apply to these different categories of offences.

The following offences are provided for:

- Section 79(1) provides for the these <u>category one offences</u>:
    - Discharging of effluent originating from a source on land into coastal waters in contravention of section 69;
    - Incinerating any waste or material at sea in contravention of section 70;
    - Loading, importing or exporting of waste or any other material to be dumped or incinerated at sea in contravention of section 70;
    - Dumping of waste at sea in contravention of section 70;
    - Dumping of waste or other material at sea without a dumping permit in contravention of section 70;
    - Altering any authorisation;
    - Fabricating or forging any document for the purpose of passing it off as an authorisation;
    - Passing, using, altering or possessing any altered or false document purporting to be an authorisation;

- Making any false statement or report for the purpose of obtaining or objecting to an authorisation.

- Section 79(2) creates the following <u>category two offences</u>:

  - Failure to comply with a repair and removal notice issued in terms of section 60;

  - Hindering or interfering with a duly authorised person exercising a power or performing a duty in terms of the Act;

  - Knowingly falsely representing that one is a person authorised to exercise powers in terms of the Act.

- Section 79(3) creates the following <u>category three offences</u>:

  - Contravening or failing to comply with a condition of an authorisation (this only applies to the holder of an authorisation);

  - Performing an activity for which the authorisation was issued otherwise than in accordance with any conditions subject to which the authorisation was issued (only applies to the holder of an authorisation);

  - Allowing any person to do, or omit to do, anything which is an offence in terms of the previous two offences (this also only applies to the holder of an authorisation).

- Section 79(4) creates the following <u>category three offences</u>:

  - Failure to comply with a coastal protection notice or access notice issued in terms of section 59;

  - Contravening any other provision of this Act which is not referred to in subsection (1), (2) or (3).

NOTE

The contravention of section 79(4)(b) can be very valuable as a “catch all” as it covers any contravention of any provision in the Act except for those listed in subsections (1), (2) or (3). One very important transgression falling under this section will be the illegal occupation of, or construction on or in, coastal public property, in contravention of section 65(1).

The following maximum sentences apply:

- The maximum penalty for a category one offence is R5 million and/or 10 years imprisonment;
- The maximum penalty for a category two offence is R500 000 and/or imprisonment of up to 5 years and/or community service of up to 5 years;
- The maximum penalty for a category three offence "referred to in section 79(3)" is R50 000 and/or community service of up to 6 months (although no period of imprisonment is mentioned, section 287(1) of the CPA provides that a court may in such cases, add imprisonment as an alternative to a fine);
- In what seems to be an omission, no maximum penalty was set for category three offences referred to in section 79(4), leaving the court to exercise its discretion as to what the appropriate sentence should be[27];
- A person who is convicted of a category two or three offence "may be sentenced, on a second conviction for that offence, as if he or she has committed a category one or two offence".

Section 80(5) determines that where a person is sentenced to community service the court must impose community service that benefits the coastal environment "unless it is not possible to impose such a sentence in the circumstances".

NOTE

Note that the following offences under NEMA might also be relevant in cases dealing with transgressions in the coastal zone:

- Section 24F of NEMA in so far as it creates offences relating to the requirement to obtain an environmental authorisation for certain listed activities Some of these may find application due to the nature of the activity, others because of their presence in, or proximity to, the coastal environment.
- Section 28(14)(a) of NEMA, which creates a general offence for causing significant pollution or degradation of the environment, which includes the coastal environment[28].

[27] There is some difference in opinion on the application of the "nullum crimen sine poena" principle, see Jonathan Burchell, Principles of Criminal Law, Juta, Third Edition, 2005: 99.

- Section 28(14)(b) of NEMA for actions or omissions detrimentally affecting the environment, which includes the coastal environment, in a significant manner.

- Section 28(14)(c) of NEMA which creates an offence for non-compliance to a directive issued in terms of section 28 of NEMA, where such directive was issued in relation to an activity in the coastal environment.

- Section 31L of NEMA for failing to comply with a compliance notice, where such notice was issued for the failure to comply with a provision of the ICM Act, or failure to comply with the conditions of any authorisation or permit issued under the ICM Act.

- Offences created under the Regulations on the Control of Vehicles in the Coastal Zone in GN 1399 of GG 22960 of 21 December 2001 (as amended), promulgated in terms of NEMA. These might find application where vehicles were used in the prohibited activity under the ICM Act.

The following legislation might also find application, especially in relation to the provisions on marine and coastal pollution control in Chapter 8:

- The Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986)
- The Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981) (the authority tasked with the enforcement of these two Acts is the South African Maritime Safety Authority)
- The National Water Act, 1998 (Act No. 36 of 1998) (e.g. in the case of offences related to the discharge of effluent into estuaries)
- The National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (e.g. in the case of offences dealing with dumping)
- The National Environmental: Air Quality Act, 2004 (Act No. 39 of 2004) (e.g. in the case of offences dealing with incineration, and therefore by implication, emissions)
- The Hazardous Substances Act, 1973 (Act No. 15 of 1973) (e.g. in the case of dumping of hazardous waste)

As estuaries, internal waters, territorial waters and the Exclusive Economic Zone also form part of the coastal public property, the provisions of the Marine Living Resources Act, 1998 (Act No.

[28] The definition of "environment" in NEMA clearly includes the coastal environment, but this was further made explicit by section 58(1)(b)(ii) of the ICM Act.

18 of 1998), and the regulations and notices promulgated under this Act, either where it concerns marine living resources, and especially where it concerns prohibited conduct within marine protected areas, will also need to be taken into consideration when dealing with contraventions in the coastal environment.

Charge sheets for the offences under the ICM Act, those under NEMA referred to above and charge sheets for various of the other offences referred to above are included in the pro forma charge sheets included in Annexure C. These charge sheets also contain possible alternative main counts or alternative counts to the main count, where applicable.

As far as supplemental or ancillary orders are concerned:

- Section 80(5)(b) of the Act provides that a court, in sentencing any person for any offence in terms of the Act, may suspend, revoke or cancel any authorisation granted to the offender under this Act.
- Note that the above is in addition to a fairly similar provision in section 34C of NEMA that provides for the withdrawal or cancellation of a permit or authorisation, including those issued under a SEMA, and disqualification of a convicted person from obtaining a permit or authorisation for a period of up to 5 years.
- None of the offences under the ICM Act is currently listed in Schedule 3 of NEMA (the last amendment to Schedule 3 of NEMA was in September 2009, before the commencement of this Act), and one can expect that some of the more serious offences in the ICM Act will be added to Schedule 3 in a future amendment. Note however that the contravention of Sections 2(1)(a) and (b) of the Dumping at Sea Control Act, 1980 (Act No. 73 of 1980) (which have not yet been repealed) are listed on Schedule 3 of NEMA, and that prosecuting under these will have the added benefit of the NEMA section 34(1)-(4) orders being available at conviction. These provide for an order for damages and the cost of rehabilitation in favour of the state or another person, an additional award of damages, compensation or a fine to the value of the monetary value of any advantage gained or likely to be gained by the commission of the offence, as well as order to pay the costs of the investigation and the prosecution.

TIP

All enforcement officials must keep accurate notes and documentation of all expenses incurred in containing, preventing or rehabilitating damage to the environment caused by an offence listed under Schedule 3. In addition, investigators must gather evidence of the monetary value of any advantage gained or likely to be gained by the commission of the offence, and keep a record of all costs incurred in the investigation and prosecution of the offence.

Section 81 deals with jurisdiction and determines that if a person is charged with the commission of an offence in or above coastal waters, a court whose area of jurisdiction abuts on the coastal waters has jurisdiction in the prosecution of the offence.

Furthermore, in so far as penalty jurisdiction is concerned, section 34H of NEMA provides that "a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts". This means that magistrate's courts have extended penalty jurisdiction when convicting a person under the ICM Act, as section 5(2) clearly determines that the Act is a specific environmental management Act under NEMA.

As far as the investigation of offences are concerned, the primary responsibility rests on the Environmental Management Inspectorate who can, in terms of the powers provided for in NEMA, investigate non compliance with the ICM Act, as the ICM Act is a SEMA under NEMA.

NOTE

The EMI training material has been updated to include a discussion of the ICM Act. The rest of the EMI training material with regard to powers and mandates, as well as the material on criminal enforcement, also apply to the enforcement of the ICM Act.

Such an EMI will be appointed to specifically enforce the ICM Act, and will have the powers in NEMA based on the grade of appointment.

The EMI ranking system, as set out in the Regulations[29], can be summarized as follows:

Grade	Powers included	Powers excluded
Grade 1: "The Administrators"[30]	Inspection, investigation, enforcement and administrative powers: All the powers given to EMIs under the Act	None
Grade 2: "The Enforcers"	Inspection, investigation and enforcement powers: All the powers given to EMIs under the Act, except for the power under Section 31L.	Administrative powers, i.e. the power to issue compliance notices in terms of Section 31L.
Grade 3: "The Investigators"	Inspection and investigation powers: All the powers given to EMIs under the Act, except for the power under sections 31H(5) and 31L of the Act.	Enforcement powers (e.g. of search and seizure and arrest) and administrative powers
Grade 4: "The Inspectors"	Inspection powers: All the powers given to EMIs under the Act, except for the power under sections 31H(1)(b), 31H(5), 31I(3), 31J, 31L and 34G(2) of the Act.	Investigation powers and enforcement powers (e.g. of search and seizure and arrest) and administrative powers
Grade 5: "The Field Rangers"	Powers of investigation, search and seizure and arrest: section 31H, section 31I(3), and section 31J of the Act	Routine inspection powers and administrative powers

Section 31O of NEMA provides that all members of the South African Police Service have all the powers of an EMI, excluding the power to conduct routine inspections and issue compliance notices.

NOTE

The investigation of criminal offences committed in contravention of the ICM Act will be the responsibility of the Environmental Management Inspectorate. The SAPS will only assist where necessary, and will only take the lead in matters where the environmental offence is linked to another non-environmental matter. See the detailed provisions in this regard as contained in the EMI SOP 3.1 *Cooperation with the South African Police* in Annexure B, which contains the memorandum of agreement between the EMI and SAPS in this regard.

[29] Fn 160.

[30] Table from EMI Training Material: Mod 2, Unit 3. The "titles" in inverted commas are simply included to aid understanding of the purposes of the different grades, and have no legal effect.

The EMI SOPs included in Annexure B of this manual applies to all of these enforcement actions and investigations. Note the following in particular:

- 4.2: The Use of the Pocketbook
- 4.3: The Taking of Statements
- 5.2: Gathering Evidence During an Inspection
- 6.1: Conducting Surveillance
- 6.2: Search and Seizure
- 6.3: Interviewing of Witnesses and Suspects
- 6.4: Arrest
- 6.5: Crime Scene Management and Collection and Handling of Evidence
- 6.6: Compiling a Case Docket
- 6.7: Covert Investigations
- 6.8: Criminal Procedure

The potential role of voluntary coastal officers in criminal enforcement will be discussed under Part 4 below.

The <u>prosecution</u> of offences under the ICM Act is the responsibility of the prosecutors and state advocates falling under the various Directors of Public Prosecution, and who all form part of the National Prosecuting Authority.

NOTE

- *The Prosecution of Environmental Crime: A Guide for Prosecutors* has been updated to include a discussion of prosecution under the ICM Act, and pro-forma charge sheets for offences under the ICM Act have been added. These charge sheets are also contained in Annexure C to this Manual.
- A list of prosecutors and state advocates who have attended the course on the prosecution of environmental crime is included in the EMI website www.emi.gov.za, and investigators should contact these prosecutors in their jurisdictions for guidance on such investigations.

2.4 ENFORCEMENT TOOLS IN NEMA

Section 28(4) Directives

In addition to the fact that the ICM Act is a SEMA, section 58 of the Act explicitly states that the Section 28 “duty of care” in NEMA also applies to any impact caused by any person that has an adverse effect on the coastal environment. The persons to whom this apply (and note that a “person” can also be a legal person) include the following:

- A user of coastal public property;
- The owner, occupier, person in control of or user of land or premises on which an activity that caused or is likely to cause an adverse effect, occurred, is occurring or is planned;
- The owner or person in charge of a vessel, aircraft or platform or structure at sea, or the owner or driver of a vehicle, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
- The operator of a pipeline that ends in the coastal zone; or
- Any person who produced a substance that caused, is causing or is likely to cause an adverse effect.

A directive in terms of section 28 of NEMA can therefore be issued to protect the coastal zone.

Section 28(4) of NEMA places a general duty of care on all persons, including juristic persons (such as companies and closed corporations). It provides that any person *“who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment”.*

WHEN IS POLLUTION OR DEGRADATION *"SIGNIFICANT"*?

NEMA does not define what constitutes significant pollution or degradation. In the case of *Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products 2004 (2) SA 393 (E)*, the Court, in discussing this issue, agreed with Glazewski and held that the assessment of what is significant is a subjective one and the standard is not a particularly high one. Glazewski referred to this question and remarked that *"[t]his must be considered in the light of the constitutional right to an environment conducive to health and well-being, as well as the relevant principles in the NEMA…"* Glazewki then refers specifically to the precautionary and polluter pays principles and continues: *"If so viewed it is suggested that the threshold level of significance is not particularly high".*[31]

It is important to note that due to a recent court case[32], which held that this directive could not be issued for impacts that occurred before the commencement of NEMA, being 29 January 1999, that NEMA was recently amended to allow for such retrospective application and now further states that this section also applies to a *"significant pollution or degradation that…*

(a) occurred before the commencement of this Act;
(b) arises or is likely to arise at a different time from the actual activity that caused the contamination; or
(c) arises through an act or activity of a person that results in a change to pre-existing contamination"

The measures required in terms of the above section include but are not limited to the following:

- investigate, assess and evaluate the impact on the environment;
- inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
- cease, modify or control any act, activity or process causing the pollution or degradation;

[31] Jan Glazewski, Environmental Law in South Africa, Butterworths,First Edition, 2000: 178. Also see the Second Edition, 2005:150.
[32] Gencor v Chief Shadrack Pule Bareki 2006 (1) SA 432 (T).

- contain or prevent the movement of pollutants or the causant of degradation;
- eliminate any source of the pollution or degradation; or
- remedy the effects of the pollution or degradation.

Section 28 (4) provides further that the Director-General of the Department of Environmental Affairs & Tourism or a provincial head of the relevant environmental affairs department, may, after consultation with any other organ of state concerned and *"after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who fails to take the measures required under subsection (1) to-*

> *(a) investigate, evaluate and assess the impact of specific activities and report thereon;*
>
> *(b) commence taking specific reasonable measures before a given date;*
>
> *(c) diligently continue with those measures; and*
>
> *(d) complete them before a specified reasonable date".*

If urgent action is necessary for the protection of the environment, the Director-General or a provincial head of department may issue such a directive, and consult and give such opportunity to inform as soon thereafter as is reasonable.

Section 28(12) of NEMA also provides that in the event that the DG or provincial Head of Department do not issue a directive, a person can apply to court for relief:

> *"Any person may, after giving the Director-General or provincial head of department 30 days' notice, apply to a competent court for an order directing the Director-General or any provincial head of department to take any of the steps listed in subsection (4) if the Director-General or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps...."*

Until very recently (September 2009), the legal consequences of a failure to comply with a NEMA directive was not a criminal offence, but where a person fails to comply, or inadequately complies with a directive, the issuing authority (the DG or provincial head) may take reasonable measures to remedy the situation and recover all costs incurred as a result thereof. The September amendment also provides for the recovery of such costs for reasonable remedial measures to be undertaken, <u>before such measures are taken</u> and all costs incurred as a result, from any or all of the following persons-

- any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;
- the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner's successor in title;
- the person in control of the land or any person who has or had a right to use the land at the time when -
    - the activity or the process is or was performed or undertaken; or
    - the situation came about; or
- any person who negligently failed to prevent -
    - the activity or the process being performed or undertaken; or
    - the situation from coming about:

This can only be done where any of the above persons failed to take the measures required of him/her/it.

The September amendment further stipulates that it is now an offence to fail to comply with such a directive and, on conviction, the maximum sentence is a fine not exceeding R1 million and/or imprisonment for a period not exceeding 1year. In addition, this offence was listed on Schedule 3 of NEMA, in which case the court can, at conviction, make the following orders:

- Payment of the amount of loss or damage caused to an organ of state or other person as a result of the offence, including the cost incurred (or likely to be incurred by organ of state) in rehabilitating the environment or preventing damage to the environment; and

- Payment of the monetary value of any advantage gained (or likely to be gained) by person in consequence of the offence; and
- Payment of reasonable costs incurred by public prosecutor and organ of state in the investigation and prosecution of the offence.

Also of relevance, as this is now a Schedule 3 offence, it should also be noted that, in terms of section 34(5) – (10), a director, manager, agent or employee could, in certain circumstances, be liable for the offence in their personal capacities.

Section 31L Compliance Notices

As the ICM Act is a SEMA in terms of NEMA, a NEMA section 31L compliance notice can also be issued for non-compliance with a provision of the ICM Act, or for non-compliance with a term or condition authorised in terms of the ICM Act.

Section 31L of NEMA provides that where there are reasonable grounds for believing that a person has not complied with any term or condition of a permit or authorisation or with a provision of the law for which an EMI has been designated (i.e. referring to NEMA and the SEMAs), such an EMI (who must be appointed as a Grade 1 EMI, an appointment reserved for senior officials), may issue a compliance notice setting out the details of the action constituting non-compliance, and prescribe steps that the person must take and the period within which those steps must be taken or anything which the person may not do, and the period during which the person may not do it.

There is a prescribed form for the drafting of a compliance notice[33], and it must include reference to the fact that such notice may be objected to and how such objection procedure works.

A person who receives a compliance notice must comply with that notice within the time period stated. Failure to comply with a compliance notice is a criminal offence carrying a maximum penalty of R5 million and/or 10 years (see section 31N). This contravention is also listed on

[33] Regulations Relating to Qualification Criteria, Training and Identification of, and Forms to be used by, Environmental Management Inspectors, published under Government Notice R494 in Government Gazette 28869 of 2 June 2006.

Schedule 3 of NEMA and the supplementary orders described above therefore apply in the case of a conviction on this section as well.

Section 30 NEMA Emergency Directive

The measures in section 30 of NEMA are largely reactive, seeking to reduce the extent of the impacts on the environment that have already occurred as a result of an emergency incident. Section 30(6) provides that the responsible authority can issue such a directive where the person responsible for the incident fails to fulfill its obligations in terms of the prescriptions contained in section 30(4) and (5). The term "emergency" is not defined, but according to the definition in NEMA, an "incident" must satisfy the following cumulative requirements:

- It must be unexpected (not expected/surprising) sudden (without warning/abrupt) occurrence (of which major emissions, fires and explosions are three examples); and
- It must lead to serious danger to the public; or
- It must lead to potentially serious pollution (see definition below) of or detriment to the environment;
- irrespective of whether the above effects are immediate or delayed.

The "responsible person" to whom the directive can be issued includes any person who:

- is responsible for the incident;
- owns any hazardous substance involved in the incident; or
- was in control of any hazardous substance involved in the incident at the time of the incident.

The relevant authorities that can issue such a directive include a municipality with jurisdiction over the area in which an incident occurs. It can also be issued by the provincial head of department or any other provincial official designated by the MEC, the Director-General of the Department of Environmental Affairs, or any other Director-General of a national department, as they are all included in the definition of "relevant authority". In terms of section 30(2) such a directive can however, only be issued by these other authorities in some instances. A provincial Head of Department, or provincial official can, for example, only issue such a directive where a municipality has failed to do so.

Where an emergency incident took place, and the responsible person failed, as soon as reasonably practicable after knowledge of the incident, to:

- take all reasonable measures to contain and minimise the effects of the incident, including its effects on the environment and any risks posed by the incident to the health, safety and property of persons;
- undertake cleanup procedures;
- remedy the effects of the incident;
- assess the immediate and long-term effects of the incident on the environment and public health.

Or

where an emergency incident took place, and the responsible person failed, within 14 days of the incident, to report to the relevant authority such available information so as to enable an initial evaluation of the incident, including:

- the nature of the incident;
- the substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects;
- initial measures taken to minimise impacts;
- causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure; and
- measures taken and to be taken to avoid a recurrence of such incident

then such a directive may be issued. In light of the particular trigger for using such a directive, it will often be issued in a situation where the urgency of the situation would not allow for first issuing a notice of intention to issue a section 30 NEMA directive. Section 30(7) also provides that such a directive can be issued verbally, but must be confirmed in writing at the earliest opportunity, which must be within seven days.

In terms of section 30(11) various offences are created for non-compliance with the provisions in this section. This contravention is also listed on Schedule 3 of NEMA and the supplementary orders described above therefore apply in the case of a conviction on this section as well.

The value of this administrative tool where incidents occur within the coastal environment is clear from the above. Also see SOP 5.10 on the procedure for follow-up inspections subsequent to emergency incidents.

2.5 OTHER AVAILABLE ENFORCEMENT MECHANISMS

Section 31A ECA Directives

While almost all of the provisions in ECA have been repealed and replaced by provisions under NEMA and the SEMAs, section 31A of the ECA is still in place and provides as follows:

> *"(1) If, in the opinion of the Minister or the competent authority, local authority or government institution concerned, any person performs any activity or fails to perform any activity as a result of which the environment is or may be seriously damaged, endangered or detrimentally affected, the Minister, competent authority, local authority or government institution, as the case may be, may in writing direct such person-*
>
> *(a) to cease such activity; or*
>
> *(b) to take such steps as the Minister, competent authority, local authority or government institution, as the case may be, may deem fit,*
>
> *within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.*
>
> *(2) The Minister or the competent authority, local authority or government institution concerned may direct the person referred to in subsection (1) to perform any activity or function at the expense of such person with a view to rehabilitating any damage caused to the environment as a result of the activity or failure referred to in subsection (1), to the satisfaction of the Minister, competent authority, local authority or government institution, as the case may be.*
>
> *(3) If the person referred to in subsection (2) fails to perform the activity or function, the Minister, competent authority, local authority or government institution, depending on who or which issued the direction, may perform such activity or function as if he or it were that person and may authorize any person to take all steps required for that purpose.*
>
> *(4) Any expenditure incurred by the Minister, a competent authority, a local authority or a government institution in the performance of any function by virtue of the provisions of subsection (3), may be recovered from the person concerned".*

Non-compliance with this section is a criminal offence in terms of section 29(3) of ECA and the maximum sentence on conviction is an unspecified fine (meaning a maximum of R5 000.00 in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), and/or imprisonment for a period not exceeding 3 months. Section 29(6) provides that in the case of a continuing offence, a person can be sentenced to an additional R250.00 and/or 20 days imprisonment for each day the transgressor persists with such act or omission after conviction. Section 29(7) provides that on conviction the court may order that any damage to the environment that resulted from the offence, must be repaired by the person so convicted to the satisfaction of the Minister, competent authority or local authority concerned. In addition, section 29(8) provides that if such an order in terms of section 29(7) is not complied with within 30 days after a conviction, or such longer period as the court may determine, the issuing authority may itself take steps to repair the damage and recover the cost from the transgressor.

Non-compliance with such a directive is therefore criminalized, but the maximum penalty is quite low. Section 29(3) creates this offence and prescribes an unspecified fine or maximum imprisonment for a period of 3 months. In terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), the maximum fine will therefore be R5 000. However, this contravention was recently added to Schedule 3 of NEMA, and the NEMA section supplementary orders described above are therefore applicable, (since September 2009). Such orders in terms of section 34(1)-(4) of NEMA can add substantially to the consequences of a conviction on such an offence.

Although in many instances, and based on the same set of facts, the issuing of a section 28 NEMA directive, might be more appropriate, one of the advantages is that local authorities can issue such directives. Whether the activity or failure to act in question is an activity “as a result of which the environment is or may be seriously damaged, endangered or detrimentally affected, is a factual question which the experts in the issuing authority must decide.

TIP

“Competent authorities under ECA are required to satisfy themselves that an activity (or a failure to act) may seriously damage, endanger or detrimentally affect the environment. The test is subjective; the opinion must simply be reasonably held by the competent authority. The threshold for triggering a directive under s 31A of ECA is arguably lower than that of s 28(1) of NEMA, which requires an objective standard relating to a breach of the duty of care.”[34]

It is also common practice in some provinces to issue combined section 31A ECA and section 28(4) directives.

<u>Section 19 NWA Directives</u>

The National Water Act, 1998 (Act No. 36 of 1998) deals with fresh water pollution, but is relevant as the term "water resource" includes an estuary, and the marine environment is also polluted via rivers flowing into the sea. Section 19 of the NWA also creates a general duty of care similar to the one contained in section 28(4) of NEMA, and provides as follows:

"19. Prevention and remedying effects of pollution

(1) An owner of land, a person in control of land or a person who occupies or uses the land on which -

(a) any activity or process is or was performed or undertaken; or

(b) any other situation exists,

which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

Reasonable measures include but are not limited to the following measures to:

- cease, modify or control any act or process causing the pollution;
- comply with any prescribed waste standard or management practice;
- contain or prevent the movement of pollutants;
- eliminate any source of the pollution;
- remedy the effects of the pollution; and
- remedy the effects of any disturbance to the bed and banks of a watercourse.

Section 28 (4) provides further that a catchment management agency may direct any person who fails to take such reasonable measures required to-

(a) commence taking specific measures before a given date;

(b) *diligently continue with those measures; and*

(c) *complete them before a given date.*

Should a person fail to comply, or comply inadequately with such a directive, the catchment management agency may take the measures it considers necessary to remedy the situation and "*may recover all costs incurred as a result, jointly and severally from the following persons:*

"(a) *Any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;*

(b) *the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner's successor in title;*

(c) *the person in control of the land or any person who has a right to use the land at the time when -*

(i) *the activity or the process is or was performed or undertaken; or*

(ii) *the situation came about; or*

(d) *any person who negligently failed to prevent -*

(i) *the activity or the process being performed or undertaken; or*

(ii) *the situation from coming about."*

The catchment management agency may in respect of the recovery of costs, also claim from any other person who, in the opinion of the catchment management agency, benefited from the measures undertaken, to the extent of such benefit. Failure to comply with a directive issued in terms of section 19 as described above is also an offence.

<u>Other Legislation</u>

Depending on the particular contravention, provincial legislation and local government by-laws might also be applicable.

EXAMPLES OF RELEVANT PROVINCIAL LEGISLATION AND MUNICIPAL BY-LAWS

In the former Transkei, the Environmental Conservation Decree, 1992 (Decree No. 9 of 1992) was passed in the early nineties, which consolidated and amended the laws relating to environmental issues and specifically created a Coastal Conservation Area. Section 39 of the decree created a Coastal Conservation Area of 1 kilometre from the high water mark. This was the first time legislation was promulgated to specifically protect the coastline. It prohibited activities in the coastal conservation area unless the necessary permit was obtained. Furthermore it created offences for activities that were prohibited in Coastal Conservation Area.

Section 40 of the Decree created offences for driving off declared roads in the Coastal Conservation Area.[35]

Local authority legislation can also be helpful in protecting the coastal environment as well. By-laws, such as the City of Cape Town Wastewater and Industrial Effluent By-Law of 1 September 2006, can at least indirectly assist in the protection of the coastal environment by controlling the discharge of wastewater and industrial effluent which can ultimately land up, and cause pollution, within the coastal environment. The powers to enforce such by-laws are usually granted to municipal enforcement officials, but there is no reason why such a count cannot be added to the charge sheet when appropriate.

2.6 CIVIL ACTION

In the event that any of the notices, directives or compliance notices referred to above are not complied with, the Minister/MEC/Department/Provincial Department or organ of state charged with the enforcement of the ICM Act always has the option of approaching the High Court to apply for an interdict to either force someone to do something, or to refrain from doing something. This is trite law, but is also confirmed both in NEMA[36], and in section 82 of the ICM Act, which states that, "[t]*he Minister, an MEC or a municipality concerned may -*

(a) institute legal proceedings or take other appropriate measures -

(i) to prevent damage, or recover damages for harm suffered to coastal public property or the coastal environment; or

(ii) to abate nuisances affecting the rights of the public in its use and enjoyment of coastal public property; ….".

Interdicts are however, only available in certain circumstances, in that generally can only be applied for if all else fails. If it is an urgent interdict, the court will first require proof of this, and only when urgency is established, will the matter continue with regard to the merits.

There are also different categorizations of interdicts, one of them distinguishing between final interdicts and temporary interdicts. The proof required for each differs slightly, and usually what happens is that a temporary interdict will be applied for, and if granted, there will be a period of time before both parties must return to court to argue why that interdict/court order should be not made a final order, for example, the temporary interdict is granted pending the outcome of

[35] Thank you to Nigel Carpenter from the DPP in Mthatha for providing this information. He successfully prosecuted under this legislation in relation to illegal cottages on the Wild Coast. Nigel can be contacted at njcarpenter@npa.gov.za for further information.

[36] Section 28(7), which specifically provides for approaching the court for relief.

an action in which the rights of the parties are to be determined. The reason for this is that because an interdict is such a drastic curtailing of someone's rights, the person whose rights are being curtailed must be given reasonable and sufficient opportunity to argue why his/her/its rights should not be curtailed.[37]

A mandamus is a specific type of interdict, referring to an interdict applied for against government, to force it to do something, usually to make a decision or take an action[38]. Non-compliance with an interdict is contempt of court.

2.7 DELEGATIONS, ROLES & RESPONSIBILITIES REGARDING ENFORCEMENT

The table below provides a summary of the delegations contained in the ICM Act:

Enforcement Action	Who Can Take These Actions	To Whom the Power to Take the Enforcement Action May Be Delegated
Issue S59 Coastal Protection Notice	Minister	• MEC – who can further delegate the power to a municipality in that province • Official in the Department of Environmental Affairs
Issue S59 Coastal Access Notice	Minister	• MEC – who can further delegate the power to a municipality in that province • Official in the Department of Environmental Affairs
Issue S60 Repair/Removal Notice	Minister or MEC	• S60(3) provides that the Minister may delegate to the MEC – who can further delegate the power to a municipality in that province (this is unnecessary as the MEC already has the power to issue such notices) • The Minister may delegate this power further to an official in the "relevant department" (this is different to "the Department", and either this was an error and was meant to refer to "the Department" being the national department of

[37] Section 30 Magistrates' Court Act 32 of 1944: magistrate can issue interdicts within the limits of their jurisdiction.

[38] Section 28(12) of NEMA makes specific provision in the event that a person has requested a section 28(4) NEMA directive to be issued, and such directive has not been issued, to approach the Court.

Enforcement Action	Who Can Take These Actions	To Whom the Power to Take the Enforcement Action May Be Delegated
		environmental affairs, or it can be interpreted as meaning any provincial environmental affairs department) • S91 further allows for the MEC to delegate this power as described below in relation to the subdelegation of the power to issue a S92 verbal directive, but is in conflict with S60(3) which provides that if subdelegated by the Minister to the MEC, (which as explained above is unnecessary) the MEC can subdelegate further only to a municipality in that province
S92 Verbal Directive	Minister *With this enforcement action the delegation may contain the power to subdelegate – but see further below	• Director-General of the Department of Environmental Affairs • Officials in the Department of Environmental Affairs • MEC – by agreement with that MEC (See below as to whom the MEC may delegate this particular enforcement action further) • An Organ of State • A Statutory functionary • A Traditional Council • A Management Authority of a special management area.

Where the Minister has delegated the power to issue a verbal directive in terms of section 92 to a MEC, the MEC may further delegate such power by agreement to:

- The head of the provincial lead agency
- Any other organ of state
- A statutory functionary
- A traditional council
- A management authority of a special area (this management authority refers to a special area, whereas the delegation by the Minister just refers to a management authority)

NOTE

The fact that the Minister or MEC has delegated an enforcement action does not mean that the Minister or MEC no longer has the responsibility to take those enforcement actions. The Minister may also confirm, vary or revoke any decision “made taken in consequence of” a delegation or sub delegation in terms of a provision of the ICM Act or any statute repealed by the ICM Act. The MEC may confirm, vary or revoke any decision made taken as a consequence of a delegation or sub delegation in terms of section 91.

Note that section 42 of NEMA also contains provisions on delegations by the Minister, Director-General and MEC, applicable to the exercise of powers in terms of NEMA or any of the SEMAs, which will therefore apply to the ICM Act as well.

3. ENFORCEMENT GUIDELINES

3.1 ALIGNMENT OF THE EMI ENFORCEMENT GUIDELINES WITH THE ENFORCEMENT OF THE ICM ACT

The Enforcement Guidelines, as contained in 2.1 of the EMI SOPs in Annexure B, set out clear guidelines for taking the required enforcement action where any of the provisions of the relevant legislation are contravened, or where the requirements for administrative action are triggered. While this is binding on all EMIs, including of course EMIs designated to enforce the ICM Act, it is also applicable to other enforcement officials with powers to enforce in terms of the legislation, or where such powers are delegated to such officials, as is the case with officials empowered to issue coastal protection, access and repair and removal notices.

The following additional comments below are intended to guide the official to take the appropriate enforcement action in terms of the ICM Act.

NOTE

- Where the taking of enforcement action in relation to the protection of the coastal environment against marine and coastal pollution as is dealt with in Chapter 8 of the ICM Act is concerned, refer to the Standard Operating Procedure for the Enforcement of Chapter 8 below.

- Where, in terms of these guidelines, the issuing of an admission of guilt fine might be appropriate, refer to Part 3.3 directly below.

<u>Where the transgressor is an organ of state</u>

Follow the procedure in SOP 2.2: Guidelines for Dealing with Non Compliant Organs of State, which must be applied in addition to all the factors prescribed in 2.1: Enforcement Guidelines.

<u>Taking informal enforcement measures</u>

An informal enforcement action such as an oral or written warning might be appropriate where the particular action:

- Caused, or had the potential to cause, no or minor harm to the coastal environment; and

- The perpetrator did not act intentionally or recklessly; and

- The perpetrator has clearly demonstrated the desire, intention and capability to comply.

<u>The taking of an administrative enforcement action</u>

The different/various options of administrative enforcement measures in terms of the ICM Act and the requirements for issuing such notices are dealt with in EMI SOP 6.9: Administrative Enforcement, and, whenever these requirements are met, an administrative enforcement action in terms of the ICM Act can be taken.

WHO CAN ISSUE THE NOTICES OF INTENTION TO ISSUE?

Can an official other than the person who is mandated or delegated to issue the final notice, issue the notice of intention, often referred to as a "pre-notice" or "pre-directive?" As such notices of intention are not prescribed in the legislation, but issued in practice to comply with the rules of administrative justice, and in particular the *audi alteram partem* rule. There are no prescriptions on this issue in the various acts, other than in section 28 of NEMA. Only a person mandated or delegated to issue such a notice or directive, can however express the intention to issue the notice, and it is advised that only such persons issue the notices of intention/pre-notices.

Templates for the issuing of these notices are contained in Annexure A:

- Notice of Intention to issue a Coastal Protection Notice
- Coastal Protection Notice (section 59 of the ICM Act)
- Notice of Intention to issue a Coastal Access Notice
- Coastal Access Notice (section 59 of the ICM Act)
- Notice of Intention to issue a Repair Notice
- Repair Notice (section 60 of the ICM Act)
- Notice of Intention to issue a Removal Notice
- Removal Notice (section 60 of the ICM Act)

WHAT IS A REASONABLE TIMEFRAME?

There are no specific provisions in the ICM Act as to what constitutes a reasonable timeframe. It must however, be kept in mind that as the issuing of a notice constitutes an administrative action, that the action must be lawful, reasonable and procedurally fair. What is considered a reasonable timeframe will depend on the circumstances of each case, the nature and seriousness of the impacts and the measures that require to be undertaken. Officials should also remember that they must apply the principles in section 2 of NEMA when issuing such notices, and that the principles could assist in justifying the timeframes, depending on the circumstances.

Lastly, section 28(5) of NEMA could be of assistance. It states that “ *The Director-General or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following:*

(a) the principles set out in section 2;

(b) the provisions of any adopted environmental management plan or environmental implementation plan;

(c) the severity of any impact on the environment and the costs of the measures being considered;

(d) any measures proposed by the person on whom measures are to be imposed;

(e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;

(f) any other relevant factors.

Note that the following administrative enforcement tools in terms of other legislation may also find application in the coastal environment:

- A section 31A ECA Directive
- A section 28 NEMA Directive
- A section 30 NEMA Emergency Directive
- A section 31L NEMA Compliance Notice

For detailed instructions on the issuing of these notices, refer to EMI SOP 6.9: Administrative Enforcement.

HOW SHOULD DIRECTIVES AND NOTICES BE SERVED?

There are no legal prescriptions on how such notices, directives or pre-notices or directives should be served. The official will however have to prove that the notice was served on the transgressor, and is therefore advised to use all possible available methods to serve a notice. While service on the transgressor in person, or a manager or director in the case of a juristic person, would be ideal, also fax, e-mail and send by registered mail.

Additional factors that should be taken into consideration when issuing these notices:

- Section 60(5) makes provision for a procedure to follow in the issuing of repair and removal notices where the person responsible for the structure cannot readily be found. A pro forma notice to be attached to the structure can be found in Annexure A.
- Take particular note of the possibility of issuing more than one administrative notice, or taking administrative enforcement action in combination with criminal enforcement action, and the guidelines in this regard contained in the EMI SOP 2.1: Enforcement Guidelines.
- Note that non-compliance with the section 28 NEMA directive and the section 31L NEMA compliance notice are criminal offences, which are both listed in Schedule 3 of NEMA. Currently none of the offences in the ICM Act are listed, and the advantage of using the NEMA administrative measures, or using them in combination with the ICM Act notices, are that the supplementary orders and additional liability for directors, managers, agents and employees in terms of section 34 of NEMA are available in the case of a NEMA prosecution.

<u>The institution of criminal prosecution</u>

The various criminal offences in terms of the ICM Act are set out in 3.3 below, and in addition, templates for charge sheets for all of these contraventions are contained in Annexure C. In the case of minor offences, refer to the guidelines in Part 3.3 below, which must be read with EMI SOP 6.8: Criminal Procedure, relating to the issuing of such fines. Also note the following when investigating a criminal offence under the ICM Act:

- Activities listed under section 24 of NEMA, and which therefore require environmental authorisation, also include activities in the coastal environment, and thus might be an appropriate charge in some cases (the template charge sheet for this offence is also included below).

- The contravention of section 28(14) of NEMA has wide application, and might be either the main, or an alternative, count to a contravention of a provision of the ICM Act (the template charge sheet for this offence is also included below).
- The contravention of section 28(14) of NEMA is listed in Schedule 3 of NEMA, meaning that the provisions of section 34 of NEMA apply, whereas none of the contraventions of the ICM Act are currently listed in Schedule 3 of NEMA, which provides for supplementary orders. These orders provide for an order for damages and the cost of rehabilitation in favour of the state or another person, an additional award of damages, compensation or a fine to the value of the monetary value of any advantage gained or likely to be gained by the commission of the offence, as well as order to pay the costs of the investigation and the prosecution. Section 34 also provides for criminal liability for directors, employers, managers, agents and employees.
- Where a person hinders or interferes with an EMI in the execution of their duties, furnishes false information to an EMI or fails to comply with a request of an EMI, he or she commits an offence under section 34A of NEMA.
- Section 81 of the ICM Act provides that where an offence is committed on, in or above coastal waters, a court whose area abuts on the coastal waters has jurisdiction in the prosecution of the offence.
- Section 34H of NEMA, which was inserted by section 24 of Act 14 of 2009, and came into operation on 18 September 2009, provides for extended penalty jurisdiction to magistrate's courts (this means, that in spite of general limitations on the maximum penalty that a magistrate's court can impose, such a court may impose any penalty up to the maximum prescribed in the ICM Act).

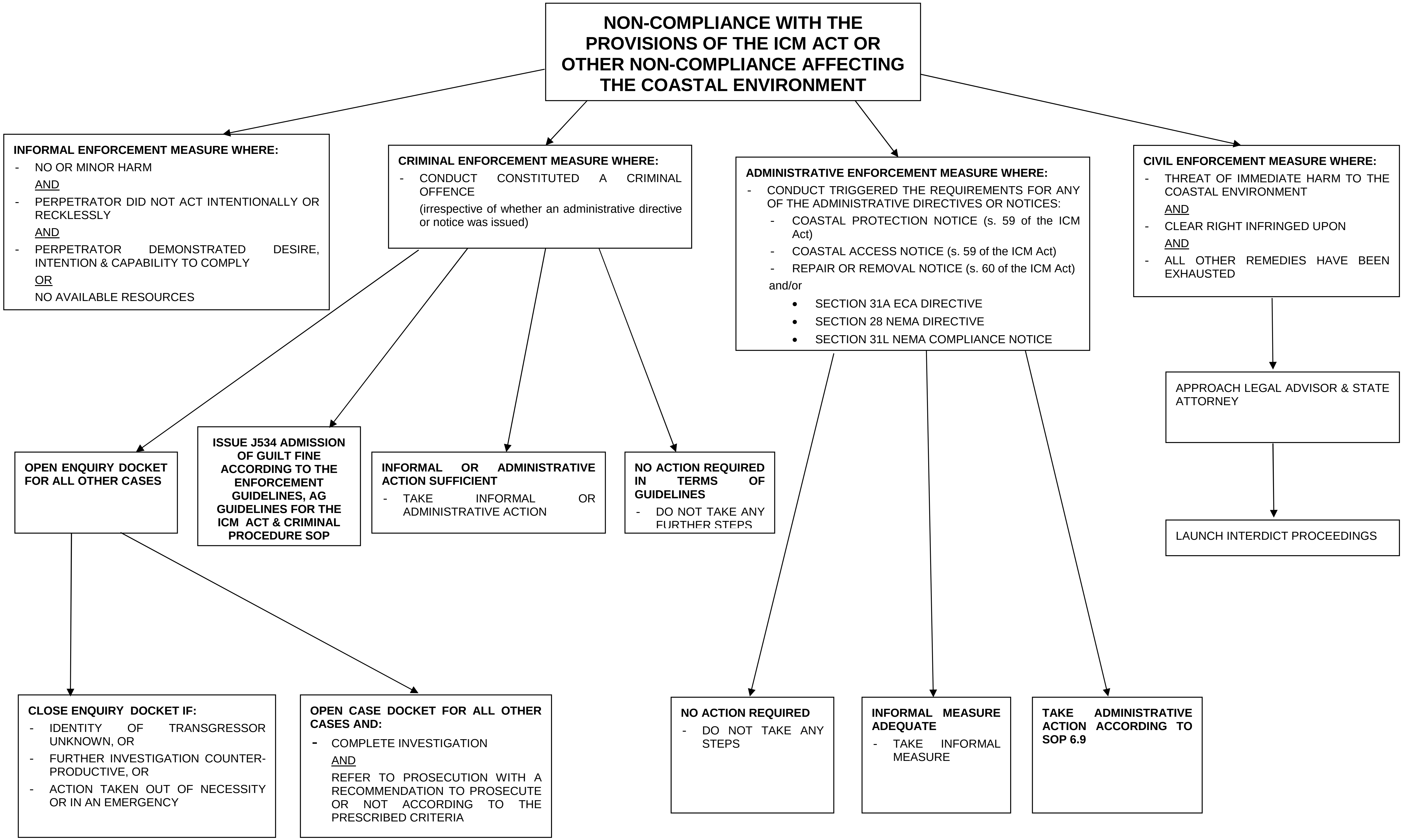
<u>The use of a civil action</u>

An interdict can be applied for where:

- There is a threat of immediate harm or imminent danger to the coastal environment; and
- There is an infringement of a clear right; and
- All other available remedies to achieve the desired effect, such as the administrative tools, have been exhausted.

There is no additional requirement that the legislation must expressly allow for the possibility of obtaining an interdict, however, section 82 of the ICM Act specifically provides that the Minister, MEC or municipality may institute legal proceedings.

Below follows a flow diagram on taking enforcement action where the provisions of the ICM Act have been contravened, or other non-compliance affecting the coastal environment has taken place.


NON-COMPLIANCE WITH THE PROVISIONS OF THE ICM ACT OR OTHER NON-COMPLIANCE AFFECTING THE COASTAL ENVIRONMENT
INFORMAL ENFORCEMENT MEASURE WHERE:
- NO OR MINOR HARM
AND
- PERPETRATOR DID NOT ACT INTENTIONALLY OR RECKLESSLY
AND
- PERPETRATOR DEMONSTRATED DESIRE, INTENTION & CAPABILITY TO COMPLY
OR
NO AVAILABLE RESOURCES
CRIMINAL ENFORCEMENT MEASURE WHERE:
- CONDUCT CONSTITUTED A CRIMINAL OFFENCE
(irrespective of whether an administrative directive or notice was issued)
ADMINISTRATIVE ENFORCEMENT MEASURE WHERE:
- CONDUCT TRIGGERED THE REQUIREMENTS FOR ANY OF THE ADMINISTRATIVE DIRECTIVES OR NOTICES:
- COASTAL PROTECTION NOTICE (s. 59 of the ICM Act)
- COASTAL ACCESS NOTICE (s. 59 of the ICM Act)
- REPAIR OR REMOVAL NOTICE (s. 60 of the ICM Act)
and/or
• SECTION 31A ECA DIRECTIVE
• SECTION 28 NEMA DIRECTIVE
• SECTION 31L NEMA COMPLIANCE NOTICE
CIVIL ENFORCEMENT MEASURE WHERE:
- THREAT OF IMMEDIATE HARM TO THE COASTAL ENVIRONMENT
AND
- CLEAR RIGHT INFRINGED UPON
AND
- ALL OTHER REMEDIES HAVE BEEN EXHAUSTED
APPROACH LEGAL ADVISOR & STATE ATTORNEY
LAUNCH INTERDICT PROCEEDINGS
OPEN ENQUIRY DOCKET FOR ALL OTHER CASES
ISSUE J534 ADMISSION OF GUILT FINE ACCORDING TO THE ENFORCEMENT GUIDELINES, AG GUIDELINES FOR THE ICM ACT & CRIMINAL PROCEDURE SOP
INFORMAL OR ADMINISTRATIVE ACTION SUFFICIENT
- TAKE INFORMAL OR ADMINISTRATIVE ACTION
NO ACTION REQUIRED IN TERMS OF GUIDELINES
- DO NOT TAKE ANY FURTHER STEPS
CLOSE ENQUIRY DOCKET IF:
- IDENTITY OF TRANSGRESSOR UNKNOWN, OR
- FURTHER INVESTIGATION COUNTER-PRODUCTIVE, OR
- ACTION TAKEN OUT OF NECESSITY OR IN AN EMERGENCY
OPEN CASE DOCKET FOR ALL OTHER CASES AND:
- COMPLETE INVESTIGATION
AND
REFER TO PROSECUTION WITH A RECOMMENDATION TO PROSECUTE OR NOT ACCORDING TO THE PRESCRIBED CRITERIA
NO ACTION REQUIRED
- DO NOT TAKE ANY STEPS
INFORMAL MEASURE ADEQUATE
- TAKE INFORMAL MEASURE
TAKE ADMINISTRATIVE ACTION ACCORDING TO SOP 6.9

3.2 ISSUING OF ADMISSION OF GUILT FINES

<u>What is an Admission of Guilt (AG) Fine?</u>

An admission of guilt fine issued to a perpetrator for allegedly committing a criminal offence provides the opportunity to the perpetrator to admit guilt by paying the prescribed fine, and thereby avoiding having to appear in court. It is however the choice of the perpetrator to pay the fine or not, and that he/she may choose to rather appear in court, and continue with a trial. As such fines are fairly limited as to the maximum amount of the penalty, it is mostly utilised for less serious transgressions. These fines are also referred to as J534's, named after the government printing code, or AG fines.

IMPORTANT NOTE
The EMI SOP on Criminal Procedure, attached to this manual (see par 4.1 in EMI SOP 6.8), must be followed when issuing such a fine. The information below serves to provide additional information, and information specific to fines under the ICM Act.

<u>Who can issue an AG Fine?</u>

There are three categories of persons who can issue an admission of guilt fine:

- A Peace Officer appointed in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) ("the CPA");
- Where other legislation specifically provides for such a power;
- A Prosecutor

A peace officer appointed in terms of section 51(5) of the CPA can issue admission of guilt fines in terms of section 56(1) of the CPA. Note that such an appointment as peace officer is linked to specific legislation. This means that a peace officer is appointed to enforce, which includes the power to issue AG-fines, specific legislation (it can of course be more that one piece of legislation). In addition, section 31H(5) of NEMA provides that all EMIs are regarded as being peace officers. This means that an EMI designated to enforce the ICM Act can issue AG fines for the contravention of the Act, where such list have been determined by the magistrate in terms of the CPA process as discussed below.

Section 34G of NEMA further specifically provides that EMIs can issue AG fines set by the Minister in terms of that section, and section 34G(4) provides that *[t]he provisions of sections 56, 57 and 57A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), apply subject to such* *modifications as the context may require, to written notices and admission of guilt fines referred to in this section*. This means that an EMI can issue such fines where it has been determined by the Minister via regulations.

In addition, a prosecutor can issue a summons in terms of section 54 and set an admission of guilt in terms of section 57(1)(a) of the Criminal Procedure Act, 1977 (Act no. 51 of 1977).

<u>What is the General Maximum limit of such a Fine?</u>

The maximum amount determined for such fines is currently set at R2 500, 00 by Government Notice R.239 of Government Gazette No.24393 of 14 February 2003. This maximum applies to peace officers issuing fines in terms of the CPA procedure. The maximum amount that prosecutors can determine in terms of section 57 of the CPA is set at R5 000, 00 by the same notice.

<u>What are the limits of such fines with regard to Specific Transgressions?</u>

Admission of guilt fines are usually issued in accordance with the list of fines determined by the magistrate for the district according to the prescriptions of section 57(5) of the Criminal Procedure Act, 1977 (Act no. 51 of 1977), or in the case of offences under NEMA and the SEMAs, including the ICM Act, by the list published by the Minister in terms of section 34G of NEMA.

Where no admission of guilt fine has been determined, the EMI can contact their local prosecutor (or a senior police official) for a determination where there are particular circumstances in a specific case which warrant the setting of an admission of guilt fine where it is not specified.

If there are cases that warrant the issuing of an admission of guilt fine of more than R2 500, 00, but less than R5 000, 00, EMIs can open a case docket without affecting an arrest, and then request the prosecutor to issue a summons in terms of section 54 and set an admission of guilt fine of up to R5 000. 00 in terms of section 57(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Even after affecting an arrest, the EMI can advise the prosecutor as to what an acceptable fine would be, which the prosecutor can then offer to the accused in an effort to secure a formal plea and sentence agreement in terms of section 105A of the Criminal Procedure Act, 1977

(Act No. 51 of 1977). In such a case the only limitation is the maximum penalty set for the offence in terms of the legislation, as section 34H of NEMA provides for extended penalty jurisdiction for magistrate's courts when sentencing in terms of NEMA or any of the SEMAs, and therefore includes the ICM Act.

When should it be issued?

It can only be issued where:

- The offence is listed on the AG fines list, with a specified amount, as was approved by the chief magistrate for the particular court district; or
- The offence, and specified fine, is listed on a determination made by the Minister in terms of section 34G of NEMA; or
- In the absence of a listing, where the prosecutor or senior police official gave permission for the setting of such a fine

The EMI or other enforcement official must take notice of the Enforcement Guidelines in the EMI SOP 2.1 for guidance on when such a fine will be appropriate. Additional guidelines specific to the enforcement of the ICM Act are provided below.

NOTE

The mere fact that an AG fine has been set for the particular offence does not mean that it is always appropriate to set a fine, and the mere fact that no such fine has been specified, does not mean that an AG fine is not necessarily appropriate in particular circumstances relating to minor offences.

The fact that a particular offence is listed on the AG fines list does not place any obligation on the official to issue such a fine. The discretion remains with the official, but must be exercised wisely, and according to both the guidelines provided, and a fair degree of common sense.

EXAMPLE

If the same transgressor repeatedly commits a fairly minor offence for which an AG fine is appropriate, it is clear that the fine does not have the required effect. In such a case it will be appropriate to rather open a case docket, and on conviction, request the court to hand down a higher fine. Also note that in terms of the ICM Act there is provision for an increased maximum penalty in the case of a second offence.

In all cases where the setting of an AG fine is not permissible, or not appropriate, a case docket must be opened (whether an arrest is affected or not) and the accused brought before the court.

How should it be issued?

AG fines are issued on an official J534 fine form. A mistake on the J534s often results in such cases having to be withdrawn or removed from the court roll. In this regard EMIs must please note the following:

- Ensure that handwriting is clear and legible.
- The date and place of the offence, the number of the particular regulation or section of the Act that has been transgressed and a description of the offence must appear on the J534 in sufficient detail.

TIP

Use the pro-forma charge sheets attached as Annexure C to this manual to correctly describe the offence in question.

- Note that any alteration on the J534 must be initialised.
- Attach a short affidavit setting out the facts of the case to the J534. The prosecutor might receive a request for withdrawal or reduction of the fine and will need the EMIs contact details and a short version of the facts. An accused might also prefer not to pay the fine in which case a trial would follow. Such a trial might follow only months after the fine has been issued, and the affidavit will serve to refresh your memory.

In the table below is a list of all offences under the ICM Act, as well as a proposed admission of guilt fines list for such offences. Currently there are no set admission of guilt fines, and due to the potential seriousness of these offences, no such fines for the offences listed below may be set in future. Officials can however still approach the prosecutor in such cases, and the table below is therefore intended to guide enforcement officials in this matter. It is also probable that admission of guilt fines may be set in future, especially for transgressions of regulations that may be published under the ICM Act.

What is the effect of issuing such a fine?

Note that where such a fine has been issued and paid by the offender, the principle of *autrefois convict* applies (this means that as the accused has already been convicted of the offence by admitting guilt and paying the fine, he or she cannot now also be prosecuted for the same offence that he or she just admitted to and paid the fine for). Two other factors should be kept in mind here:

- Section 32 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) provides that where a person pays an admission of guilt fine, seized items must be returned to that person if that person can lawfully possess it, otherwise it will be forfeited to the State. The implication of this is that certain tools used in the commission of the offence, such as equipment, will be returned to the perpetrator and the court cannot order it to be forfeited to the State; and
- The ancillary orders for Schedule 3 offences in terms of NEMA will not be available

TABLE:

List of offences and Admission of Guilt Fines under sections 79 And 80 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)

<table>
<tr><td colspan="3">CATEGORY 1 OFFENCES
Maximum penalty of R5000 000 fine and/or imprisonment of up to 10 years</td></tr>
<tr><td colspan="3">PROPOSED ADMISSION OF GUILT FINES
As the offences relating to discharging, incineration and dumping are all category 1 offences, being serious offences with a maximum fine of R5 million, and potential serious adverse impact on the environment, the issuing of an AG fine will in most cases be inappropriate. However, in some instances there might be a combination of factors that might warrant the issuing of an AG fine. These factors can be a combination of:
• The volume of effluent or waste involved was minimal; and/or
• The adverse effect on the environment was minor or negligible; and/or
• The conduct of the transgressor was neither intentional or grossly negligent <u>and</u> the adverse effect on the environment was minor or negligible.
As far as the contravention of sections 79(1)(f) to (i) is concerned, these all relate to fraudulent or dishonest conduct, and the setting of an AG fine is inappropriate. In many cases the accused will probably be charged with fraud as well.</td></tr>
<tr><td>Offences</td><td>Proposed AG Fine</td><td>Discretion</td></tr>
<tr><td>• Discharging Effluent in contravention of s 69 read with sections 1, 79(1)(a) and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) and read with s 250 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)</td><td>No set AG fine</td><td>An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases</td></tr>
<tr><td>• Incineration of Waste at Sea in contravention of s 70 read with sections 1, 79(1)(b) and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) and read with s 250 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).</td><td>No set AG fine</td><td>An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases</td></tr>
<tr><td>• Loading, Importing or Exporting of waste to be dumped or incinerated at sea in contravention of s 70 read with sections 1, 79(1)(c) and 80(1) of Integrated Coastal</td><td>No set AG fine</td><td>An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate</td></tr>
</table>

Management Act, 2008 (Act No. 24 of 2008) and read with s 250 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).		cases
• Dumping of waste in contravention of s 70 read with sections 1, 79(1)(d) and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Dumping without a dumping permit in contravention of s 70 read with sections 1, 79(1)(e) and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) and read with s 250 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Altering any authorization in contravention of s 79(1)(f) read with sections 1 and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	No discretion
• Fabricating or forging any document in contravention of s 79(1)(g) read with sections 1 and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	No discretion
• Passing, using, altering or having in possession any altered or false document in contravention of s 79(1)(h) read with sections 1 and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	No discretion
• Making any false statement or report in contravention of s 79(1)(i)) read with sections 1 and 80(1) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	No discretion

CATEGORY 2 OFFENCES

Maximum penalty, on a first conviction, of a fine up to R500 000 and/or imprisonment or community service for up to 5 years, and on a second conviction, a penalty as if convicted for a category 1 offence

PROPOSED ADMISSION OF GUILT FINES

Category 2 offences are serious transgression carrying a maximum fine of R500 000, and the issuing of an AG fine will in most cases be inappropriate.

As far as the non-compliance to a repair and removal notice is concerned, there might in some instances be a combination of factors that might warrant the issuing of an AG fine. These factors can be a combination of:

- The non compliance to the notice was not substantial; and/or
- The non compliance only related to the time frames; and/or
- The conduct of the transgressor was neither intentional nor grossly negligent and the adverse effect on the environment due to the non-compliance was minor or negligible.

As far as the offence of hindering or interfering with an authorized person exercising their powers or performing their duties is concerned, any serious and/or physical interference will normally lead to an arrest, and the setting of an AG fine will be inappropriate. Minor interference such as vocal and non-physical conduct might however be of such a short-term nature and minor effect, that an AG fine might be appropriate.

As far as the contravention of sections 79(2)(c) is concerned, this relates to fraudulent or dishonest conduct, and the setting of an AG fine is inappropriate.

Offences	Proposed AG Fine	Discretion
• Failing to comply with a repair and removal notice issued under s 60 of this Act in contravention of s 79(2)(a) read with sections 1 and 80(2) or 80(4) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Hindering or interfering with an authorized person exercising power or performing a duty in terms of this Act in contravention of s 79(2)(b) read with sections 1 and 80(2) or 80(4) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Knowingly and falsely representing to be authorized to exercise powers in terms of the Act in contravention of s 79(2)(c) read with sections 1 and 80(2) or 80(4) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	No discretion

CATEGORY 3 OFFENCES UNDER SECTION 79(3)

(Applying only to holders of authorization)

Maximum penalty, on a first conviction, of a fine up to R50 000 and/or community service for up to 6 months, and on a second conviction, a penalty as if convicted for a category 1 offence

PROPOSED ADMISSION OF GUILT FINES

Category 3 offences carries a maximum fine of R50 000, and the issuing of an AG fine can in some cases be appropriate.

These offences all deal with non-compliance with the conditions of authorisations, and only apply to the holder of an authorisation. No AG fine should however be set where the contravention is serious, substantial or has, or potentially has, a serious adverse effect on the environment. Where such failure or contravention is minor, unsubstantial and does not have a serious adverse effect on the environment, the prosecutor can be approached for permission to set an AG fine.

Offences	Proposed AG Fine	Discretion
• Contravening or failing to comply with a condition subject to which authorization has been issued, in contravention of s 79(3)(a) read with sections 1 and 80(3) or 80(4) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Performing an authorized activity otherwise than in accordance with conditions subject to which an authorization has been issued in contravention of s 79(3)(b) read with sections 1 and 80(3) or 80(4) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Allowing any other person to do, or to omit to do, anything which is an offence in the two above instances in contravention of s 79(3)(c) read with sections 1 and 80(3) or 80(4) of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases

CATEGORY 3 OFFENCES UNDER SECTION 79(4) Maximum penalty on first conviction unspecified and, on a second conviction a penalty as if convicted for a category 2 offence		
PROPOSED ADMISSION OF GUILT FINES These offences are still potentially serious, and the issuing of an AG fine can be appropriate in some cases. As far as the non compliance to a coastal protection or coastal access notice is concerned, and where the following factors, or a combination of such factors, are present, an AG fine will be appropriate: • The non compliance to the notice was not substantial; and/or • The non compliance only related to the time frames; and/or • The conduct of the transgressor was neither intentional nor grossly negligent and the adverse effect on the environment due to the non-compliance was minor or negligible. No AG fine should however be issued where the contravention is serious, substantial or has, or potentially has, a serious adverse effect on the environment. The contravention of section 79(4)(b) is an "umbrella" provision that provides that the contravention of any other provision of the Act, not referred to above, is also an offence. This is a very useful provision, and the seriousness of the particular transgression, and the adverse effect, or potential adverse effect, on the coastal environment as well as the degree of culpability will determine the suitability of an AG fine.		
Offences	Proposed AG Fine	Discretion
• Failing to comply with a coastal protection notice or access notice issued under s 59 in contravention of s 79(4)(a) read with section 1 of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases
• Contravening any other provision of the Act not referred to above in sections 79(1) to ((3) in contravention of s 79(4)(b) read with section 1 of Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).	No set AG fine	An AG fine of up to R2 500 can be issued with permission of the prosecutor in appropriate cases

4. CONTACT DETAILS

Department of Environmental Affairs: Oceans & Coasts Branch
Email address – szide@environment.gov.za, tel.no. 021 819 2497

Northern Cape Department of Tourism, Environment and Conservation
Email address – ebotes@ncpg.gov.za, tel. no. 053 807 7306

Western Cape Department of Environmental Affairs and Development Planning
Email address – epalmer@pgwc.gov.za, tel. no. 021 483 3506

CapeNature
Email address – estuaries@capenature.co.za, tel. no. 021 866 8023

Eastern Cape Department of Economic Affairs, Environment and Tourism
Email address – Div.DeVilliers@deaet.ecape.gov.za, tel.no. 040 609 4623

Eastern Cape Parks Board
Email address - simphiwe.ndzundzu@ecparks.co.za, tel. no. 043 742 2557

Kwa-Zulu Natal Department of Agriculture and Environmental Affairs
Email address – omar.parak@kznndae.gov.za, tel.no. 033 355 9438

Ezemvelo KwaZulu-Natal Wildlife
Email address - gumedet@kznwildlife.com, tel. no. 031274 1182

iSimangaliso Wetland Park Authority
Email address - peter@isimangaliso.com , tel. no. 035 590 1633

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Email address - sarely@sanparks.org , tel. no. 021 949 6414

Department of Agriculture, Forestry and Fisheries: Marine and Coastal Management
Email address – morongoal@nda.agric.za, tel.no. 021 402 3500

CODE OF CONDUCT FOR EMI

1 PREAMBLE

The need exists to provide guidelines to EMIs with regard to their relationship with the environment, fellow EMIs, the regulated community and the general public, as well as to provide guidelines to EMI institutions in instances where an EMI contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

2 PERFORMANCE OF DUTIES

EMIs shall carry out their duties within the confines of their mandates, powers and functions in an effective and efficient manner and in accordance with all relevant legislation, standard operating procedures and the compliance and enforcement guidelines adopted by the Inspectorate from time to time.

3 RELATIONSHIP WITH THE ENVIRONMENT

EMIs will, in the performance of their duties, carry out their work and conduct themselves in a manner that gives effect to Section 24 of the Constitution and the principles contained in section 2 of NEMA.

4 RELATIONSHIP WITH THE REGULATED COMMUNITY

EMIs undertake to treat all institutions, enterprises and individuals within the regulated community efficiently and objectively in the public interest, in a manner which is firm but fair, and consistent with the highest professional standards of accountability and responsibility, and in accordance with the legislation in terms of which the EMI has been designated.

5 RELATIONSHIP WITH THE PUBLIC

EMIs are committed to providing a service to the public by recognising the Constitutional right that everyone has to an environment that is not harmful to their health or well-being, and to provide a service to the public which is courteous, helpful, timely in dealing with queries and requests, and in accordance with the Batho Pele principles.

6 ETHICAL CONSIDERATIONS

6.1 Under no circumstances may an EMI solicit, either directly or indirectly, gifts, hospitality, employment etc. for personal use, gain or benefit. The offer of any unsolicited gifts related to compliance and enforcement activities must be declined and notified to the EMIs supervisor immediately.

6.2 No EMI shall initiate or accept any offer of employment while he or she is related to that person or organisation.

6.3 An EMI shall not disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of NEMA or a specific environmental management Act, except if that information is disclosed in terms of any of the exceptions referred to in terms of Section 31Q of NEMA.

6.4 Any EMI who is involved with any outside organisation, whether economic, social, cultural or

political, shall ensure that such involvement is not prejudicial to the interests of the Inspectorate and that it does not create a conflict of interest or potential conflict with their employment within the Inspectorate.

7 RELATIONSHIP WITH OTHER EMIS AND EMI INSTITUTIONS

All EMIs will co-operate fully with other EMIs, both from within their own institution, as well as with EMIs from other EMI institutions to advance the public interest and the Constitutional mandate.

8 CODE OF CONDUCT FOR PUBLIC SERVANTS

The provisions of this Code of Conduct are ancillary to the Code of Conduct for Public Servants and will be binding upon all designated EMIs.

9 CLOTHING AND EQUIPMENT

9.1 The official uniform and equipment of the Environmental Management Inspectorate are symbols of the Inspectorate's authority, mission and service commitment.

9.2 When using the EMI uniform or equipment, EMIs shall act in a manner that recognizes the value of, and enhances the positive image created by, the wearing of a distinctive and recognizable uniform and marked equipment.

9.3 EMIs must further comply with the provisions of Annexure 1 hereto.

10 BREACH OF CODE OF CONDUCT

10.1 A nominated MINTECH WGIV representative will become the focal point for receipt of all allegations of a breach of the Code of Conduct for all EMIs within his/her institution.

10.2 In the event that the complaint triggers a reasonable suspicion that the EMI Code of Conduct has been breached, the nominated MINTECH WGIV representative is obliged to investigate the matter and report such incident to DEA and the complainant.

10.3 Where the allegation involves a serious breach of the EMI Code of Conduct, (e.g. corruption, release of confidential information), the nominated MINTECH WGIV representative must recommend to the relevant designating authority that the EMI's designation be suspended pending the outcome of the investigation.

10.4 A breach of the EMI Code of Conduct must be taken into account in any internal disciplinary process initiated by the relevant EMI Institution; and where the disciplinary process results in a finding of a breach of the EMI Code of Conduct (in addition to any other charge), the nominated MINTECH WGIV representative must recommend to the relevant designating authority that the EMI's designation be withdrawn permanently.

10.5 The nominated MINTECH WGIV representative must ensure that a finding of a breach of the EMI Code of Conduct is reflected in the offender's employment records as well as the national EMI Register.

ANNEXURE 1

Clothing and Equipment

EMI Institutions shall, as far as is practicably possible, adhere to the guidelines set out in the Corporate Identity Manual in the procurement, design, application and use of EMI clothing, logos and equipment.

Each EMI Institution shall designate a person or persons who will be responsible for the issuing, management and collection of EMI uniforms and equipment. The responsible person shall ensure compliance within his or her institution with this Code of Conduct.

EMIs are responsible for ensuring that their uniform and equipment is kept in a neat and presentable condition. In the event that the EMI uniform or equipment becomes damaged or worn, the EMI shall return the item to the responsible person with a request for a replacement. All lost EMI clothing equipment must be reported to the responsible person as soon as possible. The responsible person must then report this to the DEA as soon as possible.

All EMIs that have been issued with official uniform and equipment must wear their uniforms and use the equipment when acting in their official EMI capacity. In the event that an EMI has not been issued with the official uniform, or is unable to wear his or her uniform for valid reasons, he or she shall wear the EMI brooch.

The wearing of civilian clothing together with EMI uniform items is permissible on condition that the civilian items are of such a nature and condition that they do not detract from the positive and distinctive image of the wearer as an EMI.

Formal and appropriate attire must be worn by an EMI who is required to appear at a public function or media event or any other similar occasion.

EMIs shall only wear the official uniform whilst on duty and acting in their official capacity, including court appearances. No EMI insignia, items or logos may be worn whilst attending private social functions.

While on duty, civilian clothing may only be worn under special circumstances such as when conducting covert operations, and then only with permission of the person in charge of such an operation.

No alteration shall be made to the EMI uniform or logo, including the addition of unauthorized badges or other ornaments. Where EMIs are employed at institutions that have their own uniform and insignia, the EMI logo must be applied in an unaltered condition whilst adhering to the dress code of that institution.

EMI clothing and equipment that is issued to a specific EMI shall not be lent to another person, including another EMI, without the consent of the responsible person, unless in the event of an emergency.

EMIs shall not wear the uniform or use the equipment in a manner that will bring the Inspectorate into disrepute. This includes a prohibition on the consumption of alcoholic beverages or other intoxicating substances whilst in uniform.

An EMI shall not use the display of uniform or insignia for personal advantage such as, but not limited to, gaining entry into facilities that levy entrance fees for entry.

PROCEDURE FOR THE DESIGNATION AND WITHDRAWAL OF EMI STATUS

1 OBJECTIVE

The purpose of this document is to provide a procedure for the designation and withdrawal of an Environmental Management Inspector (EMI)'s status.

2 BACKGROUND

The appropriate designation and withdrawal of EMI status is necessary to ensure that environmental compliance and enforcement officials in its ranks properly represent the Inspectorate. The relevant designating authorities are responsible for ensuring that the correct principles are procedures are applied in the designation/withdrawal.

3 DESIGNATION

3.1 A designating authority may only designate an official within his/her department once they have received written proof that the candidate has passed all required modules of the EMI Basic Training from an approved tertiary institution (except for those circumstances provided for in Regulation 2 of Regulations Relating To Qualification Criteria, Training And Identification Of, And Forms To Be Used By, Environmental Management Inspectors, published under Government Notice R494 in Government Gazette 28869 of 2 June 2006. "The EMI Regulations");

3.2 The designating authority shall ensure that the candidate is designated as soon as is reasonably possible after receipt of the candidate's results;

3.3 In designating the candidate, the designating authority must take into account the functions of EMIs as set out in S31G of NEMA; as well as the provisions of the EMI Regulations;

3.4 The designating authority shall ensure that all designating/withdrawals are recorded in an EMI register which shall be updated from time to time.

4 WITHDRAWAL/SUSPENSION

The designating authority is responsible for ensuring that withdrawal/suspension of the EMI takes place in the following circumstances:

4.1 Transfer to another designating institution

4.1.1 In the case where an EMI who takes up a position in another organ of state (e.g. resigns from a job at DEAT and starts a new position at a provincial department), the designation must be withdrawn in accordance with 5 below and a new designation facilitated by the new designating authority.

4.2 Transfer to another position that does not require EMI powers

4.2.1 When an EMI is transferred internally, within the same institution, to another position that does not require EMI powers, follow the procedure in 5 below.

4.3 Discretionary withdrawal by designating authority

4.3.1 Without limiting the discretion of the designating authority, the designating authority may withdraw the designation of an EMI in the following instances:

- An EMI is found guilty of misconduct.
- An EMI brings the Environmental Management Inspectorate into disrepute.

- An EMI is in breach of the EMI Code of Conduct 1.1.
- Where the EMI has been convicted of a criminal offence.

4.4 Automatic lapsing of EMI designation

4.4.1 Death of an EMI

4.4.2 Resignation from the designating institution, or expiry or termination of an employment contract

- Since NEMA provides that only staff members of certain organs of state can be designated as EMIs, it follows that, if an EMI resigns or retires from the public service, he or she can no longer continue to be an EMI.

4.5 Suspension of EMI designation

4.5.1 Without limiting the discretion of the designating authority, the designating authority may suspend the designation of an EMI where

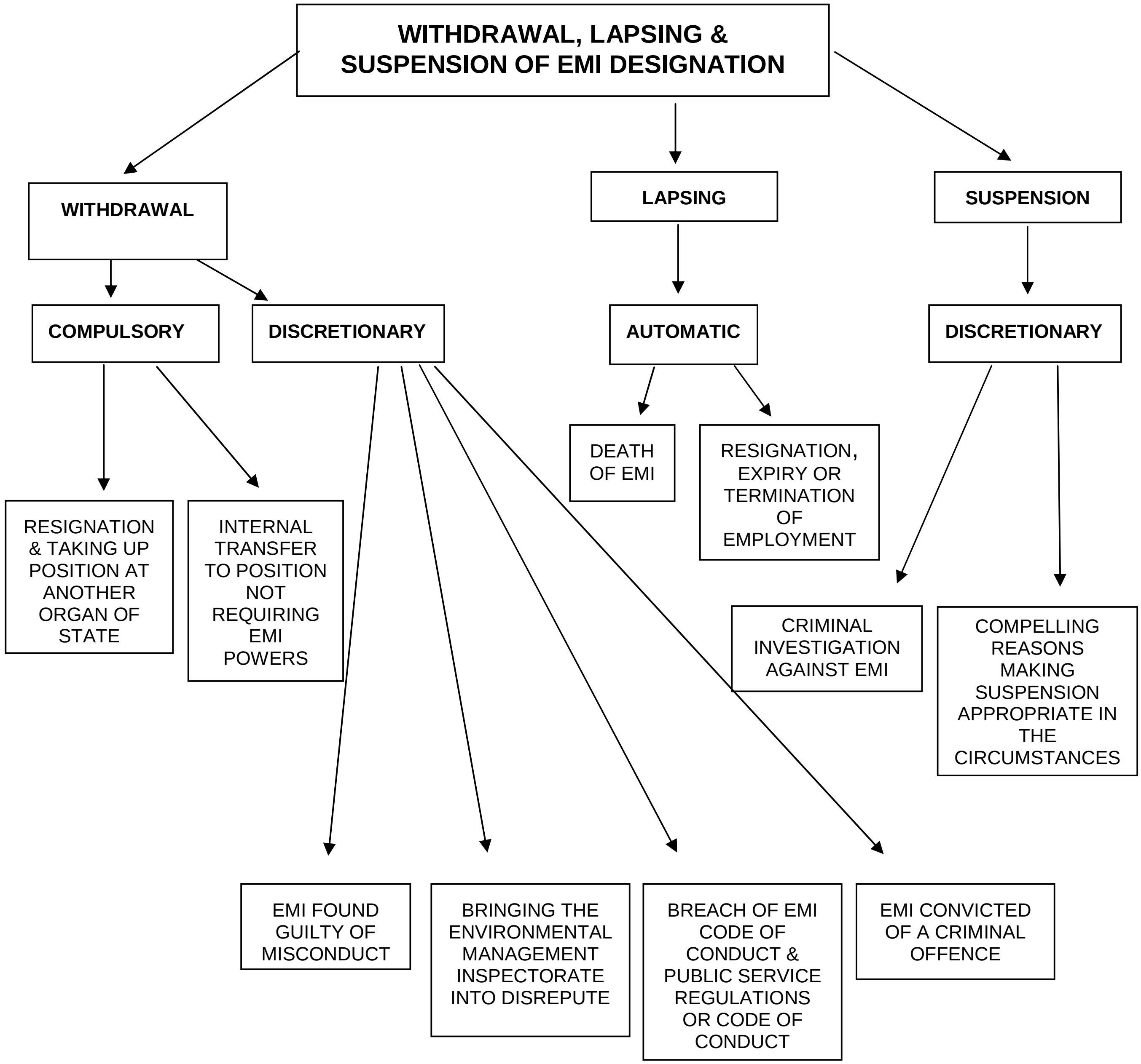
- there is a criminal investigation being undertaken against the EMI, or
- there is any other compelling reason in the circumstances.

5 PROCEDURE

Card issuance	withdrawal
MINTECH WGIV member sends request to DEA for EMI identity card	MINTECH WGIV member notifies DEA[39] immediately, by telephone or email of need for withdrawal
Request to include: Copy of EMI Basic Training results from accredited tertiary institution; Electronic copy of EMI photo showing clearly the facial features of the EMI; Electronic signature of the designating authority; Copy of duly signed designation letter.	MINTECH WGIV member makes necessary internal arrangements for designating authority to sign a Letter of Withdrawal of Designation
DEA issues EMI identity card. DEA and designating authority update their EMI register with the relevant designation.	MINTECH WGIV member send to DEAT: a copy of the Letter of Withdrawal; the affected official's original Letter of Designation; the affected official's EMI Identity Card; confirmation that all EMI branded items have been handed in to the EMI Task Team member;
	On receipt of the items above, DEA must remove the affected official's name from the EMI Register; and the designating authority must remove the affected official's name from the EMI Register

[39] This includes any other authority that has been given the approval of the Director-General to issue cards in terms of Regulation 4(1)(b) of the EMI Regulations

PROCEDURE DIAGRAM



PROCEDURE FOR WITHDRAWAL

MINTECH WGIV MEMBER NOTIFIES DEAT IMMEDIATELY, BY TELEPHONE OR EMAIL

MINTECH WGIV MEMBER MAKES NECESSARY INTERNAL ARRANGEMENTS FOR DESIGNATING AUTHORITY TO SIGN A LETTER OF WITHDRAWAL OF DESIGNATION

MINTECH WGIV MEMBER SENDS THE FOLLOWING TO DEAT:

- A COPY OF THE LETTER OF WITHDRAWAL
- THE AFFECTED OFFICIAL'S ORIGINAL LETTER OF DESIGNATION
- THE AFFECTED OFFICIAL'S EMI IDENTITY CARD
- CONFIRMATION THAT ALL EMI BRANDED ITEMS HAVE BEEN HANDED IN TO THE EMI TASK TEAM MEMBER

ON RECEIPT OF THE ITEMS IN ABOVE, DEAT MUST REMOVE THE AFFECTED OFFICIAL'S NAME FROM THE EMI REGISTER.

ENFORCEMENT GUIDELINES

1 OBJECTIVE

To inform the EMI of the guidelines to be applied where non-compliance with provisions in the relevant legislation has occurred and the law provides for enforcement action to be taken. These guidelines apply to informal, administrative, criminal and civil enforcement actions.

2 DEFINITIONS

Prosecution (where used as a noun): Generic term used for the prosecuting authority, and includes the NPA, DPP and any prosecutor or state advocate.

3 BACKGROUND

Introduction

The taking of enforcement action must be seen within the wider context of compliance. While compliance refers to a particular state of adherence to a set of legal standards or requirements, enforcement refers to the actions taken in response to detected non-compliance, and includes criminal prosecution and administrative or civil measures taken to ensure that the environment is protected. All non-compliance should be met with some form of enforcement action or consequence, which must be firm but fair, proportionate, consistent and transparent.

Purpose and Methods of Enforcement

The purpose of enforcement is therefore to ensure that preventative or remedial action is taken to protect the environment or to secure compliance with a regulatory system. It achieves its goal by providing that non-compliance results in specific consequences, be it punishment in the form of a fine or imprisonment, or directives, notices or court orders to ensure compliance and remediation at the cost of the transgressor. In some instances only the threat of one of these measures is sufficient. Such actions also act as deterrents, and can ultimately change behaviour. Although the protection of the environment is the primary goal, in the field of industry and development it also helps to reduce the competitive advantages of being non-compliant. Enforcement is therefore one of the tools used in achieving compliance and ultimately in protecting the environment, as is guaranteed in section 24 of the Bill of Rights.

Some minor instances of non-compliance may warrant nothing more than an informal response such as a warning, or a negotiated compliance schedule. Others might trigger the requirements for the use of more than one tool simultaneously and require swift and firm action. Repeat offences or multiple offences will justify an escalation in the enforcement response.

Informal measures:
Informal measures in this context refer to measures either not specifically prescribed by the legislation, or the use of alternative measures which do not have enforcement as their primary objective. This includes oral or written warnings, the issuing of inspection reports with an opportunity to rectify instances of non-compliance, the imposition of conditions in new permits, or withholding the issuing of a permit, or amendment of a permit until such time as the applicant is in full compliance.

Criminal measures:
The criminalisation of certain acts of non-compliance allows for prosecution as an enforcement tool. The main aims of prosecution are retribution and individual and general deterrence, but in the field of environmental crime, to also progressively ensure that the perpetrator carries the cost of prevention and rehabilitation, and to eliminate any advantage gained by the commission of such an offence. Conviction can in some cases, also lead to the cancellation of a permit or authorisation and even to an order by the court that the convicted person is disqualified from obtaining a permit or authorisation for a specified period of up to five years. Such previous conduct can also play a role in future applications where the licensing authority will have to determine whether the applicant is a fit and proper person.

Although criminal prosecution can be a relatively inexpensive process, some cases require intensive investigation and case development, making the process quite resource intensive. Criminal cases often take very long to conclude and involve external role players. The high burden of proof means that such cases are not always successful. It can however create the most significant and normative impact, partly due to the social stigma associated with a criminal conviction.

Administrative measures:
Typical administrative enforcement measures include the issuing of directives and notices. The main aim of these mechanisms is to prevent or mitigate damage to the environment or to ensure rehabilitation. Administrative measures can also be used to amend or withdraw a permit, license or authorisation.

Administrative measures are inexpensive and may be fairly brief. As the necessary expertise, capacity and powers all lie within the issuing department or organ of state, there is no need to involve external role players. It is only where such measures are challenged in court that the costs will increase and may become fairly significant.

Civil measures:
Prohibitive or mandatory interdicts, to either stop a person from doing something or to compel a person to do something, are usually applied for in the High Court and the legal costs are high. These tools are only available in limited circumstances, but may be appropriate in some urgent matters. In urgent matters a temporary interdict, pending the outcome of an action in which the rights of the parties are to be determined, can be applied for, and in exceptional circumstances this can be done without giving the respondent notice.

Principles of Enforcement

Firm but fair regulation is based on the principles of:

- Proportionality: The enforcement action taken must be proportionate to the risks posed to the environment and to the seriousness of any breach of the law.
- Consistency: This means taking a similar approach in similar circumstances to achieve similar ends, but also recognizing that decisions are based on a variety of variables, and that a certain amount of discretion is necessary to function effectively.
- Transparency: The regulated community must clearly understand what is expected from them, and what they can expect of the Inspectorate.
- Targeting: Regulatory effort is directed primarily towards transgressors whose activities lead, or may lead, to serious environmental damage or degradation, where the risks are least well controlled, or against deliberate or organised crime – this however does not exclude a zero tolerance approach towards even minor transgressions where the situation requires such action.

4 DETERMINING THE APPROPRIATE ENFORCEMENT ACTION

Bearing in mind that the law makes it possible to choose different types of enforcement action in response to non-compliance, it is essential that the most appropriate action is followed, which may often be a combination of different enforcement actions. In deciding which enforcement option is the most appropriate, it is firstly important to decide whether the specific option is legally possible given the case under consideration. By answering the questions in 4.1 to 4.4 below, the EMI can first decide which options are legally available in relation to a specific case before moving onto paragraphs 5 and 8 to decide on the most appropriate option to follow.

4.1 When is an informal measure appropriate?

A formal enforcement action might be inappropriate or counterproductive where the particular action:

- Caused, or had the potential to cause, no or minor harm to the environment; and
- The perpetrator did not act intentionally or recklessly; and
- The perpetrator has clearly demonstrated their desire, intention and capability to comply.

The failure to comply or adequately comply with an informal measure might lead to one of the formal measures being utilised. Therefore, where an informal measure is utilised, care must be taken not to prejudice the possible subsequent taking of a formal measure, and under no circumstances must an informal measure contain an undertaking that no further or other measures will be taken.

4.2 When can an administrative action be taken?

4.2.1 The different options of administrative enforcement measures and the requirements for issuing such directives or notices are dealt with in SOP 6.9: Administrative Enforcement.

4.2.2 Whenever these requirements are met, an administrative enforcement action can be taken.

4.2.3 If the requirements for the use of any of the administrative tools are triggered, refer to 5 below.

4.3 When can a criminal action be taken?

4.4.1 The particular action or activity must constitute an offence (the principle of legality); and

4.4.2 There must be an identified accused (or more than one); and

4.4.3 There must be sufficient, admissible and reliable evidence available to prove the charges against an accused, and therefore a realistic prospect of conviction.

4.4.4 If these requirements are met, refer to 6 below for the appropriate action.

4.4 When can a civil action be taken?

4.4.1 An interdict can be applied for where:

- There is a threat of immediate harm or imminent danger; and
- There is a clear right infringed upon; and
- All other available remedies to achieve the desired effect, such as the administrative tools, have been exhausted.

4.4.2 There is no additional requirement that the legislation must expressly allow for the possibility of obtaining an interdict, but in some instances you will find that the legislation expressly makes provision for interdicts, for e.g. see section 155 of the NWA or section 28(7) of NEMA.

4.5 What if the transgressor is an organ of state?

4.5.1 If so, refer to Enforcement Guideline 2.2: Guidelines for Dealing with Non Compliant Organs of State.

4.5.2 Enforcement Guideline 2.2 must be applied in addition to all the factors in this policy.

5 THE DECISION TO TAKE ADMINISTRATIVE ENFORCEMENT MEASURES

5.1 When should an administrative enforcement measure be taken?

5.1.1 If the requirements for taking such a measure have been triggered, the particular action must be taken, unless:

- The identity of the transgressor is unknown; or
- There is an alternative, more suitable enforcement measure available and using this particular measure will not add any additional benefit; or
- The transgressor has already done what will be required from him/her by the administrative action;
- The transgressor acted in necessity or in a genuine emergency and there is no need for halting the activity or for mitigation or rehabilitation; or
- The threat or damage or potential damage to the environment is so negligible that no action is required; or
- Any other factor that makes the taking of such an action unnecessary, ineffective or inappropriate in the circumstances.

5.1.2 Additional factors that must be considered in the decision to take an administrative enforcement measure:

- Previous administrative actions taken in similar circumstances;
- The effectiveness of such previous administrative enforcement measures;
- Estimated cost of taking such a measure.

5.2 When more than one administrative enforcement measure applies

5.2.1 If various administrative enforcement measures are available, determine whether they will meet the same goal, or if one of them will be sufficient. If there is an additional benefit to using more than one such measure, two or more may be used. If the different administrative actions will achieve the same result, determine which tool is the most appropriate by looking at the following factors:

- Whether specific legislation makes provision for a specific instance of non-compliance, e.g. a directive in terms of section 69(2) or 73(3) of the Biodiversity Act or section 28(4) of NEMA for breach of the duty of care;
- The action that can be taken in the case of non-compliance with the administrative measure;
- In a case where urgent action is required, whether provision is made for the issuing of a verbal directive, for e.g. as is provided for in section 92 of the National Environmental Management: Integrated Coastal Management Act;
- Whether non-compliance with the administrative measure is a criminal offence;
- What the maximum penalty is for such an offence;
- Whether the particular offence is listed under Schedule 3 of NEMA, providing for the ancillary orders in terms of section 34(1)-(4) of NEMA, and whether that will be of added benefit;
- Whether the particular offence is listed under Schedule 3 of NEMA, providing for additional liability for employers, managers, agents, employees and directors, and whether that will be of added benefit.

As a general rule it is advisable to rather use all of the available administrative measures that were triggered by the conduct.

5.3 Whose decision is it?

5.3.1 The decision is made by the person mandated to do so by the particular provisions in the legislation, or a person duly delegated to do so.

6. THE DECISION TO TAKE CRIMINAL ACTION

6.1 When should criminal enforcement action be taken?

6.1.1 As a general guideline, criminal enforcement action should be taken in the following circumstances:

- Where the action was intentional or grossly negligent, irrespective of whether the threat or damage or potential damage to the environment is or was negligible;
- Where the offence caused, or had the potential to cause, serious environmental harm;
- Where the offence is of an organised nature;
- Where the offence is linked to other serious offences such as fraud, falsification or corruption;
- Where the carrying out of any activity was intentionally done without the necessary licenses, permits or authorisations and no reasonable steps were taken to obtain such authorisation;
- Where there is substantive failure to comply with the conditions of a license, permit or authorisation;
- Where there is substantive failure to comply with an administrative directive or notice (where such conduct is criminalised);
- Persistent wrongdoing or non-compliance (eg. failure to comply with standards where this has been pointed out in the past);
- Where there is substantive failure to comply with a prescribed duty (e.g. the section 28 NEMA duty of care or the duty to report a section 30 NEMA emergency incident);
- Where there is a failure to supply information, or the supplying offalse information to an EMI;
- In the case of obstruction or hindering of an EMI in carrying out their powers;
- Where an EMI has been impersonated.

6.1.2 If a criminal offence has been committed and a person(s) has/have been arrested, a criminal case docket must be opened and the matter must be fully investigated under the guidance of the prosecutor, who will also take the final decision on prosecution.

6.1.3 If a criminal offence has been committed, or allegedly committed, but no one has been arrested, an enquiry docket must be opened unless:

- The perpetrator was issued with an admission of guilt fine (J534 fine) according to the guidelines below; or
- The action was not intentional or grossly negligent <u>and</u> the threat or damage or potential damage to the environment is or was so negligible that no action is required;
- An informal enforcement measure was taken in accordance with the guideline above, and such measure was met with a satisfactory response; or
- Any other highly exceptional factor that makes the taking of such an action impossible or highly undesirable.

6.1.4 An enquiry docket may be closed by the Inspectorate if:

- The identity of the transgressor is unknown, and remains unknown after a thorough enquiry; or
- After an initial enquiry the evidence shows that the action was not intentional or grossly negligent or that the threat or damage or potential damage to the environment is or was so negligible that a further investigation and prosecution would be counter-productive; or
- In the case of a contravention of section 24F of NEMA, the action was taken in a situation of necessity or in an emergency, (in the case of any doubt, the matter should be referred to the prosecution for a decision- also see 6.6 below); or
- An informal enforcement measure was taken in accordance with the guideline above, and such measure was met with a satisfactory response; or
- Any other highly exceptional factor that dictates against the desirability of further investigation and prosecution.

6.2 <u>When will an admission of guilt fine (J534 fine) be sufficient?</u>

6.2.1 When an offence is not serious enough to warrant a fine of more than R2 500, 00.

6.2.2 This is usually where the action was intentional or grossly negligent, but the threat or damage or potential threat or damage to the environment was negligible.

6.2.3 Where the same perpetrator has committed multiple offences, and any one of the offences is too serious to allow for a J534 fine, then no J534 fine may be set for any of the offences and the matter must be referred to the prosecuting authority.

6.2.4 The procedure in SOP 6.8: Criminal Procedure relating to the issuing of such fines must be followed.

6.3 <u>When must a matter be referred to the prosecution authority?</u>

6.3.1 All cases where a criminal case docket has been opened.

6.3.2 All cases referred to the prosecutor must be accompanied by a recommendation on whether to prosecute or not.

6.4 <u>When must a matter be referred to the prosecution with a request to prosecute?</u>

6.4.1 Any matter where the seriousness of the offence warrants a fine in excess of R2 500. 00 or imprisonment; and

6.4.2 The combined weight of the additional factors listed in 6.7 dictates that such an action is desirable.

6.4.3 The motivation to prosecute must be contained in a covering letter setting out all the factors listed in 6.7 below.

6.4.4 If the particular offence was of such a nature to warrant a fine of less than R5 000. 00, the prosecution can be requested to issue a summons in terms of section 57 of the CPA with an appropriate admission of guilt fine not exceeding R5 000. 00.

6.5 When can a matter be referred to the prosecution with a request not to prosecute?

6.5.1 The combined weight of the additional factors listed in 6.7 dictates that a prosecution is not desirable in the circumstances.

6.5.2 The motivation in the request not to prosecute must be contained in a covering letter setting out all the factors listed in 6.7 below.

6.6 What constitutes acting in necessity or an emergency?

6.6.1 Acting in necessity is where a person is confronted with suffering some evil brought about by the force of surrounding circumstances or by human agency, or breaking the law in order to avoid it. Such an action will exclude unlawfulness, and therefore criminal liability, if:

- a legal interest of the accused was endangered by a threat which commenced or was imminent; and
- the threat was not caused by the accused’s fault; and
- it must have been necessary for the accused to avert the danger; and
- the means used for the purpose must have been reasonable in the circumstances

6.6.2 Where a transgressor has commenced or continued with a listed activity in contravention of section 24F of NEMA, and the activity was commenced or continued in response to an emergency so as to protect human life, property or the environment, as set out in section 24F(3) of NEMA.

6.6.3 An emergency will be a serious, unexpected, and potentially dangerous situation requiring immediate action. Where a delay in the implementation occasioned by the environmental authorisation process might result in serious detrimental affects on the environment, this in itself will not entitle a person to rely on the section 24F(3) defence. The activity must, in addition, be commenced or continued as a response to a serious, unexpected and potentially dangerous situation requiring immediate action to protect life, property or the environment.

6.7 Factors to be taken into account

6.7.1 Who the accused person(s) are, and whether they are natural or juristic persons;

6.7.2 What the charge(s) against the accused are;

6.7.3 Whether there is, in the opinion of the EMI, sufficient, admissible and reliable evidence to prove the commission of the offence(s);

6.7.4 Set out , in short, the three main deciding factors:

- The seriousness of the offence – this will include the view of the particular state department or organ of state on the seriousness, as well as what the maximum prescribed penalty for the offence(s) are;
- The harm to, or impact on, or potential harm or impact on the environment;
- The culpability of the accused – whether it was intentional, grossly negligent or negligent behaviour.

6.7.5 Set out, in short, the other deciding factors:

- How the transgression was detected – was it through surveillance, a report or compliant of the public, detected during an inspection, reported by the accused during a section 24G application etc?
- The history of the transgressor – does the transgressor have any previous convictions or has administrative action been taken against the transgressor before?
- Conduct of the transgressor immediately after the incident – did the transgressor take any steps to mitigate or rectify harm to the environment?
- Co-operation by the transgressor during the investigation – did the transgressor co-operate during the investigation?
- What, if any, benefit accrued to the transgressor, or could potentially have been gained by the commission of the offence?
- Was the incident reported on in the media and what is the general public perception and expectations?
- Is it foreseen that a private prosecution in terms of section 33 of NEMA may be instituted should the State decide not to prosecute?

6.7.6 In the case where an accused has made an application in terms of section 24G of NEMA, note the following:

- Did the accused make the application on his/her own initiative, or was he/she informed of the possibility by the relevant department or organ of state?
- What was the amount of the administration fine?
- Was the application successful?
- Where the application is still pending, what is the suspected outcome?
- Where the transgressor is an organ of state, also set out all the factors mentioned in SOP 2.2: Guidelines for Dealing with Non-Compliance Organs of State.
- Are there any exceptional reasons for not prosecuting? (e.g. the accused is on his deathbed….)
- Ultimately, will a prosecution be in the interests of the community?

6.8 Whose decision is it?

6.8.1 Where a J534 has been issued, or an accused arrested, the matter has for all practical purposes been referred to the prosecution.

6.8.2 Where an informal enforcement action was deemed to be appropriate according to the guidelines above and the action proved to be effective, the docket may be closed;

6.8.3 In all other cases where a criminal case docket has been opened, the case must be referred to the prosecuting authority for a decision, irrespective of whether the request is to prosecute or to decline to prosecute.

6.8.4 The final decision maker on prosecution in any criminal matter is the prosecuting authority, and not the investigating authority or the complainant. The investigating authority or complainant can however lodge a formal request that a matter be withdrawn, or that no prosecution be instituted.

1. THE DECISION TO TAKE CIVIL ACTION

7.1 When must civil action be taken?

7.1.1 If the requirements for taking such action have been triggered, including the fact that other available remedies (such as administrative enforcement tools) must have been exhausted, and:

- Substantial harm or damage to the environment may occur if no action is taken;
- The potential cost of such an action has been weighed up against the urgency and benefit of taking such a step.

7.1.2 An interdict can be structural, in that a court may require the respondent to take very specific steps and to report at regular intervals on the implementation of such steps.

7.2 Whose decision is it?

7.2.1 The request must be referred to the legal advisor/ legal services department of the specific department or organ of state, depending on the organisational structure.

7.2.2 The legal advisor/legal services department, where in agreement, will in most cases refer such a matter to the office of the state attorney.

7.2.3 The office of the state attorney will make a final decision on whether to make such an application and will request the necessary affidavits as required.

2. TAKING THE APPROPRIATE ENFORCEMENT ACTION WHEN BOTH ADMINISTRATIVE AND CRIMINAL ACTION IS POSSIBLE

8.1 What if more than one enforcement option is available?

8.1.1 In the case of an emergency incident, first refer to SOP 5:10 on emergency incidents. In the case where urgent action, (as opposed to en “emergency incident”), is required, refer to the procedure for urgent action in SOP 6:9 on administrative enforcement. Where neither of these options are available, also look at the civil measures described directly above, which can also be appropriate where urgent action is required.

8.1.2 Administrative enforcement measures allow for preventative or remedial measures, sometimes as a matter of urgency, and the “triggers” for taking such measures are set out in SOP 6.9: Administrative Enforcement. Criminal prosecution has retribution as its main aim, and only in some instances, and only after conviction, can it also play a remedial role. It can of course also only be used where the particular conduct is criminalised, whereas the triggers for administrative measures are generally formulated in much wider terms.

8.1.3 In all cases where the main aim is to prevent or mitigate damage to the environment, or to ensure rehabilitation, the administrative action should be the primary tool. Administrative enforcement measures enables the authorities to issue instructions within a short period to ensure non-compliances are rectified, and/or environmental harm is mitigated and remediated. Only where the particular conduct only, or also, constitutes a criminal offence, can criminal prosecution be instituted, based on the guidelines provided above.

8.1.4 The taking of administrative or civil enforcement measures does not exclude the possibility of launching a criminal investigation simultaneously.

8.1.5 In most cases the non-compliance to the administrative measure is criminalised, and the failure to comply with the administrative measure should be prosecuted.

8.1.6 If various administrative enforcement measures are available, determine whether they will both meet the same goal, or if one of them will be sufficient.

8.1.7 If there is an additional benefit to using more than one such measure, both may be used.

8.1.8 If both administrative actions will reach the same goal, determine which tool is the most appropriate by looking at the following factors:

- Whether specific legislation makes provision for a specific instance of non-compliance, e.g. a directive in terms of section 69(2) or 73(3) of the Biodiversity Act ;
- The action that can be taken in the case of non-compliance to the administrative measure;
- Whether non-compliance with the administrative measure is a criminal offence;
- What the maximum penalty is for such an offence;
- Whether the particular offence is listed under Schedule 3 of NEMA, providing for the ancillary orders in terms of section 34(1)-(4) of NEMA, and whether that will be of added benefit;
- Whether the particular offence is listed under Schedule 3 of NEMA, providing for additional liability for employers, managers, agents, employees and directors, and whether that will be of added benefit.

8.2 <u>What should be the primary tool?</u>

8.2.1 Administrative enforcement measures should be the primary tool in the following situations:

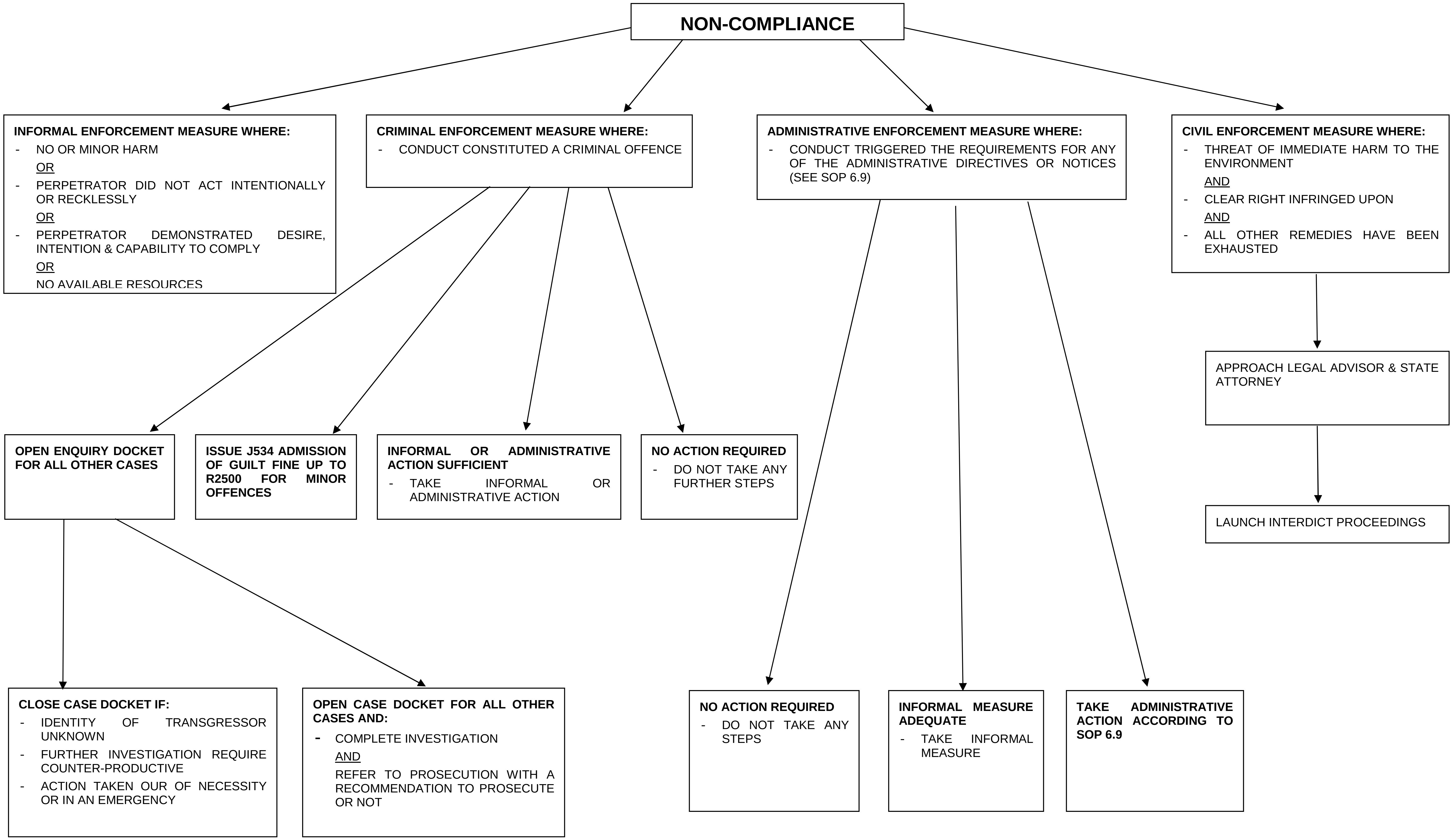
- Where the main aim of the enforcement action is to prevent or mitigate damage to the environment, and/or to ensure cessation of the damaging activity and/or ensure rehabilitation of the environment;
- To address activities, situations or non-compliances that are causing, have caused or will cause damage to the environment but that do not constitute criminal offences;

8.2.2 Note however that the threat of criminal action often exerts the pressure required to ensure the person complies with the administrative enforcement tool.

8.2.3 Criminal enforcement measures should be the primary tool in the following situations (although administrative measures may be adopted simultaneously to ensure mitigation measures are implemented, activities ceased, or rehabilitation takes place):

- Where the action was intentional or grossly negligent, and the offence caused, or had the potential to cause, serious environmental harm;
- Where the offence is linked to other serious offences such as fraud, falsification or corruption;
- Persistent wrongdoing or non-compliance (such as repeat offences or failure to comply with notices);
- Certain offences provided for in the legislation that can only be addressed through criminal enforcement action (such as interfering with an EMI in the execution of his/her duties, or failure to supply information, or supplying false information);
- Where a particular sector has been targeted as a priority sector and a decision taken that criminal action is required to address the issues;

PROCEDURE DIAGRAM



GUIDELINES FOR DEALING WITH NON- COMPLIANT ORGANS OF STATE

1. OBJECTIVE

These guidelines spell out the key steps to follow in determining whether to take enforcement action against an organ of state, and if so, which tool to use. It applies to administrative, criminal and civil enforcement measures taken against organs of state. This procedure must be read with 2.1: Enforcement Guidelines.

2. DEFINITIONS

Organ of state means, in terms of section 239 of the Constitution:

- Any department of state or administration in the national, provincial or local sphere of government; or
- Any other functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial constitution, or any other functionary or institution exercising a public power or performing a public function in terms of any legislation, but the above does not include a court or judicial officer.

The last phrase of this definition includes parastatals, but only where such parastatal is exercising a public power or performing a public function in terms of legislation.

Principles of Co-operative Government: As set out in Chapter 3 (sections 40 and 41) of the Constitution.

Prosecution: Generic term used for the prosecuting authority, and includes the NPA, DPP and any prosecutor or state advocate.

3. PROCEDURE

3.1 General

3.1.1 Determine whether the offender is an organ of state, based on the definition provided in the Constitution. If not, refer back to 2.1: Enforcement Guidelines.

3.1.2 Determine what enforcement measure(s) should be taken in accordance with 2.1: Enforcement Guidelines and SOP 6.9: Administrative Enforcement.

3.1.3 Where administrative enforcement measure(s) needs to be taken, refer to 3.2 below. Where the non-compliance constitutes a criminal offence, refer to 3.3 below. Should the situation require that an interdict should be applied for, refer to 3.4 below.

3.1.4 Administrative Enforcement Measures

3.1.5 Although in terms of the Constitution there is a duty to avoid "legal proceedings" against organs of state, the term, which is undefined in the Constitution, does not seem to include the taking of administrative enforcement measures, nor can the taking of an administrative enforcement measure be described as an "intergovernmental disputes" as defined in the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). Practical considerations and acting in the spirit of co-operative governance however dictate a less confrontational approach in dealing with non-compliant organs of state.

3.1.6 In any case where urgent action is required to protect the environment against serious harm, an urgent directive or notice can be issued as per SOP 6.9: Administrative Enforcement. Subsequent to the issuing of such an urgent directive or notice, immediately set up a meeting with the targeted organ of state to discuss the contents of, and compliance with, the directive or notice. In accordance with the provisions as set out in SOP 6.9, the organ of state will also have the opportunity to react to the issuing of the directive or notice. Should the organ of state fail to comply with a directive or compliance notice, proceed to take the necessary steps provided for in the legislation in the case of such non-compliance, as per SOP 6.9: Administrative Enforcement. Also proceed to 3.3 below (criminal enforcement measures) and 3.4 (civil action) below.

3.1.7 In the case of non-urgent matters, conduct a site visit to assess the nature and scope of the problem. Issue a pre-directive or pre-notice according to the procedure set out in SOP 6:9 on administrative enforcement to the organ of state, and in addition, require a formal undertaking from the organ of state to comply with the demands. Address the pre-directive or pre-notice to the person in the most senior management position, and clearly set out that the demands are directed at the particular organ of state, e.g. "To: Blue Mountain Municipality, For attention: Mr Mark Fish, Municipal Manager".

3.1.8 After receipt and review of the written response received from the organ of state, and if the matter is satisfactorily resolved and needs no further intervention, do not proceed with any enforcement action.

3.1.9 If the organ of state fails to respond to the pre-directive or pre-notice, or, despite the response received, the activity remains illegal and steps are required to address the non-compliance, issue a letter requesting a meeting following a review of the response (or in the absence of a response). This letter must contain an action plan and/or recommendations with a timeframe, or a request for an action plan to be drafted. Receipt of this letter must be established through e-mail or a follow-up telephone call.

3.1.10 During the meeting with the relevant officials provide assistance to the organ of state by making detailed technical recommendations on options to address the non-compliance. Formalise all demands and undertakings in a finalised action plan, which must be documented and signed by the appropriate officials. In case of non-compliance with section 24F of NEMA, advise the organ of state to make an application in terms of section 24G of NEMA. If the relevant officials do not attend the meeting, move to corrective action as is set out in 3.2.9 below.

3.1.11 Monitor compliance with the pre-directive or pre-compliance notice and the action plan. Conduct a site inspection to verify the response from the offending organ of state. Where appropriate, agree on amendments or extensions. If compliance is achieved, the issue can be signed off following a letter of acknowledgement to the offending organ of state stating that a decision has been made not to issue a compliance notice. If no significant progress is made towards compliance, progress to the next step.

3.1.12 Move to corrective action. Arrange a meeting with senior officials from the organ of state in non-compliance. A corrective action plan with timeframes must be agreed to on at this meeting. If the senior officials do not attend the meeting, or no agreement is reached on a corrective action plan, proceed to the next step.

3.1.13 Conduct a detailed investigation and make a recommendation regarding compliance. The investigation must include a site visit to establish partial or full compliance with the pre-directive or pre-notice, as well as the corrective action plan.

3.1.14 If the organ of state is still not complying, issue a final directive or notice. If there is no response to the final directive or notice, proceed to the next step.

3.1.15 Write a letter of warning to the head of the organ of state in non-compliance. If the organ of state is part of local government structures, copy the letter to SALGA. If no significant progress is made towards compliance, proceed to the next step.

3.1.16 Where an interdict can be an appropriate response, proceed to 3.4 below and, should the non-compliance with such an administrative enforcement measure be criminalised, proceed to 3.3 below.

3.2 Criminal Enforcement Measures

3.2.1 Determine whether the particular Act is binding on the state as far as criminal prosecution is concerned (e.g. section 48 of NEMA clearly states that the Act is not binding on the State as far as criminal liability is concerned, while section 156 of the NWA just declares that the Act is binding on the state, in which case the state, or an organ of state, can be held criminally liable). If the Act is not binding on the state as far as criminal prosecution is concerned (e.g. NEMA and ECA), the criminal investigation must be closed (unless of course where it is possible to proceed against persons employed by the organ of state in their personal capacity).

3.2.2 If the particular Act is binding on the state as far as criminal liability is concerned, open an enquiry docket. Follow the procedure in 2.1: Enforcement Guidelines. Investigate the case accordingly and where a case docket has been opened, submit the completed case docket to the prosecution for a decision to prosecute or not, irrespective of whether an administrative or civil enforcement measure was also used. Although in terms of the Constitution there is a duty to avoid "legal proceedings" against organs of state, there is a strong argument to be made out that in this particular context the term “legal proceedings” was not intended to, and indeed does not, include criminal proceedings. The Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), deals with “intergovernmental disputes”, a term that also does not include criminal prosecutions. The final decision whether to prosecute or not is the decision of the DPP. The completed case docket must therefore contain a recommendation whether to prosecute or not, based on, and setting out, the following:

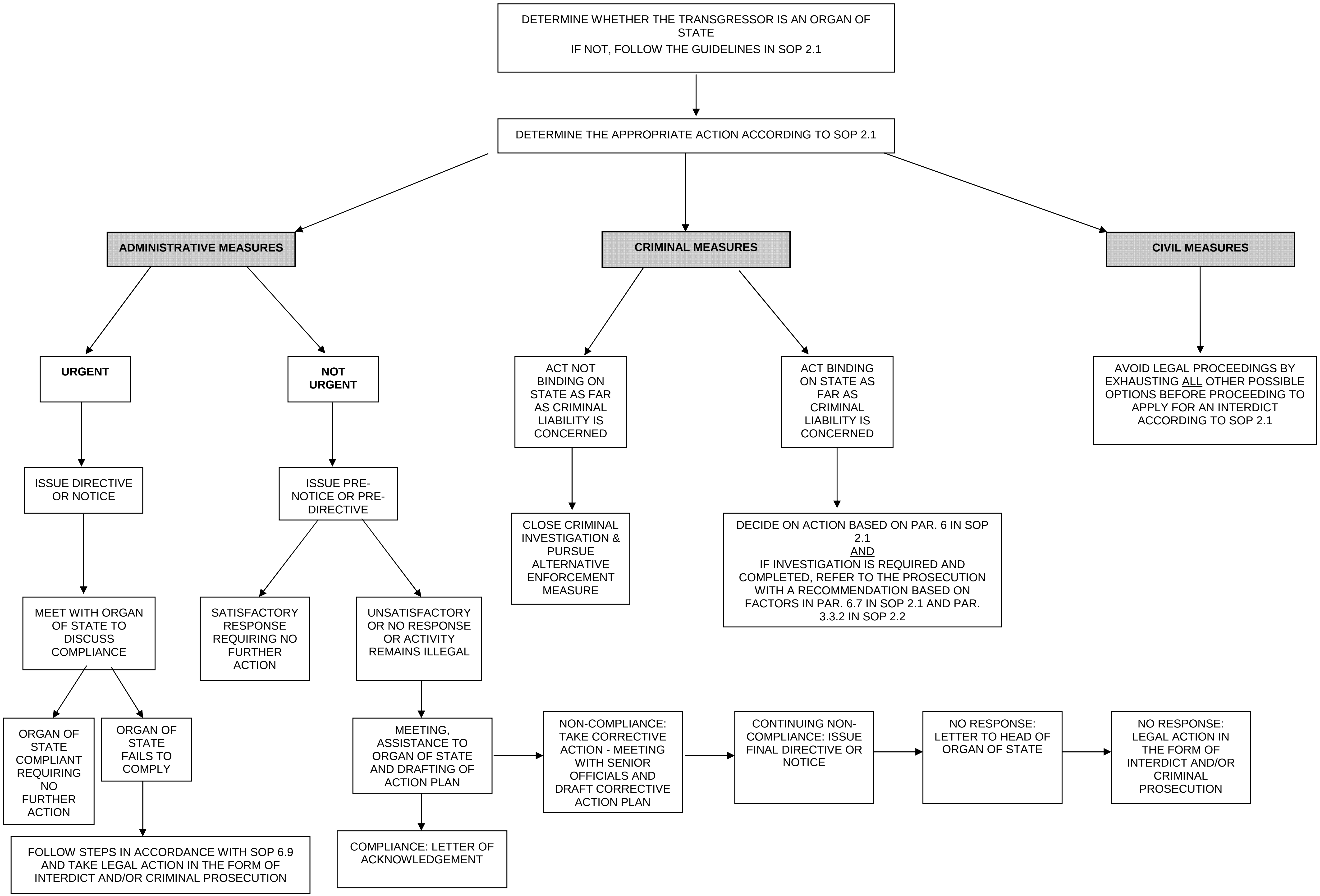
- All the considerations outlined in 2.1: Enforcement Guidelines;
- Clearly stating that the transgressor is an organ of state, and whether, in addition, any person(s) within that organ of state can be held personally liable, and possibly be prosecuted;
- Whether a lack of resources contributed to the commission of the offence;
- Whether a prosecution might place an additional burden on the resources of the particular organ of state, which will ultimately be borne by the public/taxpayers/ratepayers; and
- Whether, in light of other investigations or prosecutions of an offence of a similar nature against a person other than an organ of state, the impression might be created that organs of state are not treated as being equal before the law.

3.3 Civil Action

3.3.1 An application for an interdict will be “legal proceedings” as contemplated in the Constitution, and such proceedings must be avoided. The requirements for applying for an interdict already prescribe that all other remedies must have been exhausted, and in urgent matters an interdict might be the only avenue left. If the interdict application follows on non–compliance of a directive or notice, and all the steps in 3.2 above have been followed, it will clearly show that legal proceedings were avoided as far as possible.

3.3.2 Note that the Constitution does not prohibit legal proceedings between organs of state, but merely places a duty on organs of state to avoid such proceedings against each other. In the case of an intergovernmental dispute, the Constitution requires that existing mechanisms or procedures available for settling such a dispute must first be pursued. If a court is not satisfied that every reasonable effort to settle the dispute was made and that all other remedies have been exhausted, it may refer such a dispute back to the organs of state involved.

PROCEDURE DIAGRAM



ANNEXURE A: TEMPLATES FOR NOTICES

NOTICE OF INTENTION TO ISSUE A COASTAL PROTECTION NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: ……..………

BY HAND

Dear Sir/Madam

SECTION 59(2)(b) NOTICE OF INTENTION TO ISSUE A COASTAL PROTECTION NOTICE IN TERMS SECTION 59(1) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: …….

1. RECORDAL

1.1 It is recorded that I, Minister ……………, the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority the Minister / person to whom this power has been duly delegated*, have reason to believe that you *are currently carrying on an activity that is having, or is likely to have / intend carrying out an activity that is likely to have* an adverse effect on the coastal environment, in that *you are proposing to undertake the following activities/the following activities are being undertaken*:

1.1.1 Xxx
1.1.2 Xxx
1.1.3 xxx

1.2 *This activity is having/these activities are having/ this activity is likely/ these activities are likely to have*, an adverse effect, or effects, on the coastal zone, in that:

1.2.1 …
1.2.2 …
1.2.3 …

2. SECTION 59(2)(b) NOTICE

2.1 Having regard to inter alia the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998), in particular:

- the preventive and the precautionary principle; and
- the potential adverse effects of the activity on the coastal environment;
- and the objects of the ICM Act to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone,

and in order to prevent such *activity/ies* from having an adverse effect on the coastal environment, you are hereby notifed that I, Minister …………, the Minister of the Department of Environmental Affairs *(or delegated authority)*, being the relevant *(delegated)* authority intend issuing you with a notice in terms of section 59(1) of the ICM Act, *prohibiting the following activity/ies /instructing you to undertake the following activities:*

2.1.1 take the following steps:

2.1.1.1 Build, maintain or demolish any specified works….., *(describe the specific place and measures here);*

2.1.1.2 To close a public access or prevent unauthorised access to coastal public property at *(specify the place and measures)*;

2.1.2 To plant, cultivate, preserve or stop damaging indigenous vegetation at … *(specify the place)*;

2.1.3 To stop altering the geographical features of land at … *(specify the place)*;

2.1.4 To build or maintain any specified works at a specified place to protect land from wind erosion *(specify the place and measures)*;

2.1.5 To rehabilitate land at … *(specify the place and measures)*;

2.1.6 To remove stock from land at …*(specify the place)*;

2.1.7 To take measures to protect indigenous fauna *(specify the place and measures)*;

2.1.8 And to……………………………..

2.1.9 to investigate and evaluate the impact of the activity on an aspect of the coastal environment in accordance with Chapter 5 of NEMA, within 21 calendar days of receipt of this notice; *(check whether you can use this timeframe, and adapt to a shorter or longer period according to circumstances);*

2.1.10 to stop / postpone the activity until …….. to allow for the investigation to be carried out and for the report to be evaluated.

In addition:

2.2 If any of the steps required above will require further authorisation from any other organ of state, such authorisation and all necessary further approvals, for example, environmental management plans, must be obtained and be brought to this department's attention prior to taking the prescribed steps; *(make sure that you know what these are before this notice is issued because there is no provision to amend this notice to change timeframes!)*

2.3 If the you intend using a vehicle to take any of the above steps, you must apply to this Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

2.4 All material and debris which remains after the steps have been taken, must be removed from the site and appropriately and legally[40] disposed of;

2.5 All pollutants, litter etc. must be removed from the location and surrounding coastal environment[41];

2.6 Once the structure has been removed, the site must be rehabilitated at your cost and returned to its natural state by………, and all other approvals referred to above must be complied with;

2.7 An environmental management inspector or other authorised official of the ….. must be present at the site of removal during operations;

2.8 A written report must be submitted to this Department after completion of steps 2.1.1 to 2.6, and must indicate the level of compliance with this section 59(1) notice and any challenges or outstanding measures to be taken.

3. You are hereby provided with an opportunity to submit in writing, **within 14 (fourteen) calendar days from date of receipt of this notice**, any compelling reasons why I should not exercise my discretion and issue a notice in terms of section 59(1) of the ICM Act as described above.

---

40 Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

41 Fn 1.

4. Written reasons must be addressed to the Assistant Director: Institutional and Legal Development within the Chief Directorate: Integrated Coastal Management, Department of Environmental Affairs, PO Box 52126, Victoria and Alfred Waterfront, Cape Town, 8002 or faxed to……… or e-mailed to…….

5. Please be advised that this notice constitutes notice of an intention in terms of section 59(6) to issue a coastal access notice in terms of Section 59(5) of the ICM Act on the terms and conditions set out above. (*not applicable where the notice was issued by the Minister)*

Yours faithfully

……………………………….

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

COASTAL PROTECTION NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: ………..………

BY HAND

Dear Sir/Madam

SECTION 59(1) COASTAL PROTECTION NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: ………

3. RECORDAL

1.1 It is recorded that I, Minister ………………, the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority the Minister / person to whom this power has been duly delegated*, have reason to believe that you *are currently carrying on an activity that is having, or is likely to have / intend to carry out an activity that is likely to have* an adverse effect on the coastal environment.

1.2 A notice in terms of section 59(2)(b) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("the ICM Act") was issued to you on …..….. giving you an opportunity to make written representations, as to why you should not be issued with a section 59(1) coastal protection notice. *No submissions in this regard were received from you / The following submissions by you were received on…..:*

1.2.1 …..

1.2.2 ….

1.3 Having considered the above submissions, the following should be noted:

1.3.1 …

1.3.2 …

1.4 I, Minister ……………., the Minister of the Department of Environmental Affairs or MEC or (delegated authority) have consulted with all other relevant organs of state, namely:

1.4.1 ….

1.4.2 …

4. ACTION TO BE TAKEN

Despite your submissions, and in light of the fact that I, Minister …………….., the Minister of the Department of Environmental Affairs or *MEC or (delegated authority the Minister / person to whom this power has been duly delegated*, have reason to believe that you *are currently carrying on an activity that is having, or is likely to have / intend to carry out an activity that is likely to have* an adverse effect on the coastal environment, I have decided to issue a coastal protection notice for the following reasons:

2.1 You *are carrying out /intend to carry out* the following activities:

2.1.1 ….

2.1.2 ….

2.1.3 ….

2.2 This activity *is having/ is likely to have* an adverse effect, or effects, on the coastal zone, in that:

2.2.1 …

2.2.2 …

2.2.3 …

5. SECTION 59(1) NOTICE

3.1 Having regard to inter alia the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998), in particular:

3.1.1 the preventive and the precautionary principle; and

3.1.2 the potential adverse effects of the activity on the coastal environment;

3.2 and the objects of the ICM Act to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone,

3.3 I, Minister ………….., the Minister of the Department of Environmental Affairs *(or delegated authority)*, being the relevant *(delegated)* authority, hereby issue a notice in terms of section 59(1) of the ICM Act and instruct you, in terms of this Act and/or other applicable legislation, with reference to sections …. of …….. within *21 calendar days* of receipt of this notice; *(check whether you can use this timeframe, and adapt to a shorter or longer period according to circumstances):*

3.3.1 take the following steps:

3.3.1.1 Build, maintain or demolish any specified works….., *(describe the specific place and measures here)*

3.3.1.2 To close a public access or prevent unauthorised access to coastal public property at *(specify the place and measures)*;

3.3.1.3 To plant, cultivate, preserve or stop damaging indigenous vegetation at *(specify the place)*;

3.3.1.4 To stop altering the geographical features of land at (specify the place);

3.3.1.5 To build or maintain any specified works at a specified place to protect land from wind erosion *(specify the place and measures)*;

3.3.1.6 To rehabilitate land at *(specify the place and measures)*;

3.3.1.7 To remove stock from land at *(specify the place)*;

3.3.1.8 To take measures to protect indigenous fauna *(specify the place and measures)*;

3.3.1.9 Or to……………………………..

3.3.2 to investigate and evaluate the impact of the activity on an aspect of the coastal environment in accordance with Chapter 5 of NEMA, within 21 calendar days of receipt of this notice; *(check whether you can use this timeframe, and adapt to a shorter or longer period according to circumstances);*

3.3.3 to stop / postpone the activity untill …….. to allow for the investigation to be carried out and for the report to be evaluated.

In addition:

3.4 If any of the steps required above will require further authorisation from any other organ of state, such authorisation and all necessary further approvals, for example, environmental management plans, must be obtained and be brought to this department's attention prior to taking the prescribed steps; *(make sure that you know what these are before this notice is issued because there is no provision to amend this notice to change timeframes!)*

3.5 If the you intend using a vehicle to take any of the above steps, you must apply to this Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

3.6 All material and debris which remains after the steps have been taken, must be removed from the site and appropriately and legally[42] disposed of;

3.7 All pollutants, litter etc. must be removed from the location and surrounding coastal environment[43];

3.8 Once the structure has been removed, the site must be rehabilitated at your cost and returned to its natural state by………, and all other approvals referred to above must be complied with;

---

[42] Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

[43] Fn 1.

3.9 An environmental management inspector or other authorised official of the ….. must be present at the site of removal during operations;

3.10 A written report must be submitted to this Department after completion of steps 3.3 to 3.9, and must indicate the level of compliance with this section 59(1) notice and any challenges or outstanding measures to be taken.

6. Please be advised that in the event that there is non-compliance with this notice, I or ……may-

   6.1. in terms of section 61 of the ICM Act, undertake/direct whatever steps I deem necessary to carry out what is required by this notice;

   6.2. claim re-imbursement of all reasonable costs incurred in carrying out the required action; from the owners/responsible persons jointly and severally.

7. **Furthermore, non-compliance with this notice is a criminal offence in terms of section 79(4)(a), and this may therefore be referred for prosecution.**

8. You may lodge an internal appeal against this decision to the Minister of Water and Environmental Affairs within 30 days of receipt of this notice, in accordance with the provisions of Chapter 9 of the ICM Act. (*not applicable where the notice was issued by the Minister)*

Yours faithfully

…………………………………..

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

NOTICE OF INTENTION TO ISSUE A COASTAL ACCESS NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: ………………………………………………………………………………………………..………

BY HAND

Dear Sir/Madam

SECTION 59(6) NOTICE OF INTENTION TO ISSUE A SECTION 59(5) COASTAL ACCESS NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: ………

1. RECORDAL

1.1 It is recorded that I, Minister ……………….., the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority / person to whom this power has been duly delegated)*, have reason to believe that you *are currently carrying on an activity that is having, or is likely to have / intend to carry out an activity that is likely to have* an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property.

1.2 This activity *is having/ is likely to have*, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, in that:

1.2.1 …

1.2.2 …

1.2.3 …

2. NOTICE

2.1. Having regard to *inter alia*:

- the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998); and

- the potential adverse effects of the activity on the rights of natural persons to gain access to, use and enjoy coastal public property; and
- the objects of the ICM Act to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone;

and in order to prevent such activity from having an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, you are hereby notifed that I, Minister Buyelwa Sonjica, the Minister of the Department of Environmental Affairs *(or delegated authority)*, being the relevant *(delegated)* authority intend issuing you with a notice in terms of section 59(5) of the ICM Act, prohibiting the following *activity/activities*:

2.8.1 …

2.8.2 …

2.8.3 …

2.2. You are hereby provided with an opportunity to submit in writing, **within 14 (fourteen) calendar days from date of receipt of this notice**, any compelling reasons why I should not exercise my discretion and issue a notice in terms of section 59(5) of the ICM Act as described above. Written reasons must be addressed to the Assistant Director: Institutional and Legal Development within the Chief Directorate: Integrated Coastal Management, Department of Environmental Affairs, PO Box 52126, Victoria and Alfred Waterfront, Cape Town, 8002 or faxed to……… or e-mailed to…….

2.3. Please be advised that this notice constitutes notice of an intention in terms of section 59(6) to issue a coastal access notice in terms of Section 59(5) of the ICM Act on the terms and conditions set out above.

Yours faithfully

……………………………..

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

COASTAL ACCESS NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: ……..………

BY HAND

Dear Sir/Madam

SECTION 59(5) COASTAL ACCESS NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: ……

1. RECORDAL

1.1 It is recorded that I, Minister ……………….., the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority / person to whom this power has been duly delegated)*, have reason to believe that you *are currently carrying on an activity that is having, or is likely to have / intend to carry out an activity that is likely to have* an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property.

1.2 A notice in terms of section 59(2)(b) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("the ICM Act") was issued to you on …..….. giving you an opportunity to make written representations, as to why you should not be issued with a section 59(5) coastal access notice. *No submissions in this regard were received from you / The following submissions by you were received on…..:*

1.2.1 …

1.2.2 …

1.2.3 …

1.3 Having considered the above submissions, the following should be noted:

1.3.1 …

1.3.2 …

1.3.3 …

1.4 I, Minister …………………., the Minister of the Department of Environmental Affairs or MEC or (*delegated authority*) have consulted with all other relevant organs of state, namely:

1.4.1 …

1.4.2 …

1.4.3 …

2. ACTION TO BE TAKEN

Despite your submissions, and in light of the fact that I, Minister …………….., the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority the Minister / person to whom this power has been duly delegated)*, have reason to believe that you *are currently carrying on an activity that is having, or is likely to have / intend to carry out an activity that is likely to have* an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, I have decided to issue a coastal access notice for the following reasons:

2.1 You *are carrying out /intend to carry out* the following activities:

2.1.1 ….

2.1.2 ….

2.2 This activity *is having/is likely to have*, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, in that:

2.2.1 …

2.2.2 …

2.2.3 …

3. SECTION 59(5) NOTICE

3.1. Having regard to *inter alia*:

- the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998); and
- the potential adverse effects of the activity on the rights of natural persons to gain access to, use and enjoy coastal public property; and
- the objects of the ICM Act to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone;

I, Minister …………………, the Minister of the Department of Environmental Affairs or *(delegated authority)*, being the relevant *(delegated)* authority, hereby issue a notice in terms of section 59(5) of the ICM Act, hereby prohibiting the following activity/activities:

3.1.1. …..

3.1.2. ….

3.2. In terms of this Act and/or other applicable legislation, with reference to sections …. of …….. within 21 calendar days of receipt of this notice; *(check whether you can use this timeframe, and adapt to a shorter or longer period according to circumstances),* I instruct you to take the following steps :

3.2.1. …

3.2.2. …

3.2.3. …

3.3. In addition:

3.3.1. If any of the steps required above will require further authorisation from any other organ of state, such authorisation and all necessary further approvals, for example, environmental management plans, must be obtained and be brought to this department's attention prior to taking the prescribed steps; *(make sure that you know what these are before this notice is issued because there is no provision to amend this notice to change timeframes!)*

3.3.2. If you intend using a vehicle to take any of the above steps, you must apply to this Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

3.3.3. All material and debris which remains after the steps have been taken, must be removed from the site and appropriately and legally[44] disposed of;

3.3.4. All pollutants, litter etc. must be removed from the location and surrounding coastal environment[45];

3.3.5. Once the structure has been removed, the site must be rehabilitated at your cost and returned to its natural state by………, and all other approvals referred to above must be complied with;

3.3.6. An environmental management inspector or other authorised official of the ….. must be present at the site of removal during operations;

3.3.7. A written report must be submitted to this Department after completion of steps 3.3.1 to 3.3.6, and must indicate the level of compliance with this section 59(1) notice and any challenges or outstanding measures to be taken.

---

44 Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

45 Fn 1.

3.4. Please be advised that in the event that there is non-compliance with this notice, I or ……may-

3.4.1. in terms of section 61 of the ICM Act, undertake/direct whatever steps I deem necessary to carry out what is required by this notice;

3.4.2. claim re-imbursement of all reasonable costs incurred in carrying out the required action; from the owners/responsible persons jointly and severally.

3.5. **Furthermore, non-compliance with this notice is a criminal offence in terms of section 79(4)(a), and this may therefore be referred for prosecution.**

3.6. You may lodge an internal appeal against this decision to the Minister of Water and Environmental Affairs within 30 days of receipt of this notice, in accordance with the provisions of Chapter 9 of the ICM Act. (*not applicable where the notice was issued by the Minister)*

Yours faithfully

……………………………………..

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

NOTICE OF INTENTION TO ISSUE A REMOVAL NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: THE OWNERS OF THE STRUCTURE LOCATED AT:

……………..

………………

AND TO: THE OCCUPIERS/RESPONSIBLE PERSONS OF THE STRUCTURE LOCATED AT:

BY HAND

Dear Sir

SECTION 60(2)(b) NOTICE OF INTENTION TO ISSUE A REMOVAL NOTICE IN TERMS OF SECTION 60(1) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: REMOVAL OF STRUCTURE FROM THE COASTAL ZONE LOCATED AT……

1. RECORDAL

1.1. It is recorded that on or about …….a structure/s was erected within the coastal zone located at…. (hereinafter referred to as 'the structure'). The structure has been erected in contravention of section 60(1) of the National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("the ICM Act") in that:

1.1.1 the structure is having or is likely to have an adverse effect on the coastal environment in that……..and/or

1.1.2 the structure was erected, constructed or upgraded in contravention of the ICM Act and/or any other law specifically sections……………...

1.2. The structure poses a potential risk to public safety by virtue of its current condition and location as it is ………. and could be detrimental to the coastal environment and have an adverse effect on the surrounding coastal zone in that…………..

2. ACTION TO BE TAKEN

In order to prevent and/or minimize the potential danger to the public and the potential adverse effects, to the coastal environment and sense of place, I………as the delegated authority require(s) the structure/s to be removed from its current location at ……………..

3. NOTICE

3.1. Having regard to *inter alia* the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998), in particular:

- the precautionary principle;
- the potential adverse effects of the structure on the coastal environment;
- the measures already taken relating to the removal of the structure; (delete if not relevant)
- the location of the structure in the sensitive coastal zone area; and
- the objects of the ICM Act to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone;

And, having further had regard to and having complied with the provisions of the Prevention of Legal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), the fact that the building/structure is located on coastal public property and *(choose from one of the following or delete this section entirely if not applicable – i.e. if the structure/building is not on coastal public property)*

- you did not apply for a coastal lease in terms of Section 96 of the ICM Act before ……(insert a date – 12 months from the date of commencement of section 96 which is still to be proclaimed)
- your application for a coastal lease was refused on …… (Ref:…)
- you did not demolish the structure/restore the site to its condition before the building/structure was built before ……….*(insert a date – 12 months from the date of commencement of section 96 which is still to be proclaimed)*

I, Minister …………….…., the Minister of the Department of Environmental Affairs *(or delegated authority)*, being the relevant *(delegated)* authority, hereby provide you with an opportunity to submit in writing **within 14 (fourteen) calendar days from date of receipt of this notice**, any compelling reasons why I should not exercise my discretion and issue a notice in terms of section 60(1) of the ICM Act and direct you/the owners/responsible persons of the structure/s to undertake the following specific measures:

3.1.1 Remove the structure/s located at ………..from the coastal zone within 21 calendar days of receipt of a notice in terms of section 60(1) of the ICM Act;

3.1.2 All material and debris which remains after the structure has been dismantled must be removed from the site and legally disposed[46] of;

3.1.3 If you/the owner/responsible person intends using a vehicle to remove any material or debris where the structure is located, he/she must apply to the Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

[46] Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

3.1.4 All pollutants, litter etc. must be removed from the coastal zone at the location of the structure and surrounding coastal environment[47];

3.1.5 Once the structure has been removed the site must be rehabilitated and returned to its natural state by………

3.1.6 An environmental management inspector or other authorised official of the….. must be present at the site of removal during operations.

3.1.7 A report must be submitted after completion of the steps in 3.1.1 to 3.1.5 (the removal process) indicating the level of compliance with the section 60(1) notice and any challenges or outstanding measures to be taken.

3.2 Written reasons should be addressed to the Assistant Director: Institutional and Legal Development within the Chief Directorate: Integrated Coastal Management, Department of Environmental Affairs, PO Box 52126, Victoria and Alfred Waterfront, Cape Town, 8002 or faxed to……… or e-mailed to……

3.3 Please be advised that this notice constitutes a notice of intention in terms of section 60(2)(b) to issue a coastal removal notice in terms of Section 60(1) of the ICM Act on the terms and conditions set out above.

Please be advised accordingly.

Yours faithfully

………………………………..

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS
DATE:

Or

DELEGATED AUTHORITY

47 Fn 1.

REMOVAL NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: THE OWNERS OF THE STRUCTURE LOCATED AT:

……………..

………………

AND TO: THE OCCUPIERS/RESPONSIBLE PERSONS OF THE STRUCTURE LOCATED AT:

BY HAND

Dear Sir

SECTION 60(1) REMOVAL NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: REMOVAL OF STRUCTURE FROM THE COASTAL ZONE LOCATED AT……

1. RECORDAL

1.1. It is recorded that on or about ……. a structure/s was erected within the coastal zone located at…. (hereinafter referred to as 'the structure'). The structure is:

1.1.1 Having or is likely to have an adverse effect on the coastal environment in that ……..*(delete if inapplicable)* and/or

1.1.2 The structure was erected, constructed or upgraded in contravention of the National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICM Act) and/or any other law, specifically sections ……….. *(delete if inapplicable)*

1.2. A notice in terms of section 60(2)(b) of the ICM Act was issued to you on ….. giving you an opportunity to make written representations, as to why you should not be issued with a section 60(1) removal notice. The following submissions by you/the owner/responsible persons were received on….: *(delete if inapplicable)*

1.2.1. …..

1.2.2. …..

1.3. Having considered the above submissions, and having complied with the provisions of the Prevention of Legal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), the following should be noted:

1.3.1. ….

1.3.2. ….

1.3.3. …

1.3.4. you did not apply for a coastal lease in terms of Section 96 of the ICM Act before ……(insert a date – 12 months from the date of commencement of section 96 which is still to be proclaimed or delete entirely if not applicable)

1.3.5. your application for a coastal lease was refused on …… (Ref:…) *(delete if not applicable)*

1.3.6. you did not demolish the structure/restore the site to its condition before the building/structure was built before *………(insert a date – 12 months from the date of commencement of section 96 which is still to be proclaimed or delete if not applicable).*

1.4. I, Minister …………………, the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority)* have consulted with all other organs of state, namely:

1.4.1. …..

1.4.2. …..

1.4.3. …..

2. ACTION TO BE TAKEN

Despite the submissions by you/the owner/responsible person, in light of *1.1* (*refer to applicable section(s) above*) above, the Department of Environmental Affairs ("the Department") hereby requires that the structure be removed from its current location at ……………. The reasons are as follows; *(the following are merely examples)*

2.1. *The structure poses a potential risk to public safety by virtue of its current condition and location, as it is ………. ; and*

2.2. *The structure poses a potential danger to the public; and*

2.3. *The structure has potential adverse effects, to the coastal environment and sense of place; and*

2.4. *……*

3. SECTION 60(1) NOTICE

3.1. Having regard to *inter alia* the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998), in particular:

- the precautionary principle;
- the potential adverse effects of the structure on the coastal environment;

- the measures already taken relating to the removal of the structure; *(delete if not relevant)*
- the location of the structure in the sensitive coastal zone area; and
- the objects of the ICM ACT to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone;

I, Minister …………….., the Minister of the Department of Environmental Affairs or *(delegated authority)*, being the relevant *[delegated]* authority, hereby issue a notice in terms of section 60(1) of the ICM Act and direct you/the owners/responsible persons of the structure/s to undertake the following specific measures:

3.1.1. The structure located at ………. must be removed at your cost, from the coastal zone within *21 calendar days* of receipt of this notice; *(check whether you can use this timeframe if for example, other environmental authorisation would be required, e.g. construction within 100m of the high water mark; or where it is not physically possible to remove the structure within 21 calendar days)*

3.1.2. If the removal of the structure will require further authorisation from any other organs of state, such authorisation and all necessary further approvals, for example, environmental management plans, must be obtained and be brought to this department's attention prior to the removal of the structure; *(make sure that you know what these are before this notice is issued because there is no provision to amend this notice to change timeframes!)*

3.1.3. If you/owner/responsible person intends using a vehicle to assist in the removal of the structure, you/he/she must apply to this Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

3.1.4. All material and debris which remains after the structure has been dismantled, must be removed from the site and appropriately and legally[48] disposed of;

3.1.5. All pollutants, litter etc. must be removed from the coastal zone at the location of the structure and surrounding coastal environment[49];

3.1.6. Once the structure has been removed, the site must be rehabilitated at your cost and returned to its natural state by………, and all other approvals referred to above must be complied with;

3.1.7. An environmental management inspector or other authorised official of the ….. must be present at the site of removal during operations;

---

[48] Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

[49] Fn 1.

3.1.8. A written report must be submitted to this Department after completion of steps 3.1.5 to 3.1.6 (the removal process), and must indicate the level of compliance with this section 60(1) notice and any challenges or outstanding measures to be taken.

3.2 Please be advised that in the event that there is non-compliance with this notice, I or ……may-

3.2.1 in terms of section 61 of the ICM Act, undertake/direct whatever steps I deem necessary to carry out what is required by this notice;

3.2.2 claim re-imbursement of all reasonable costs incurred in carrying out the required action/s; from the owners/responsible persons jointly and severally.

3.3 **Furthermore, non-compliance with this notice is a criminal offence in terms of section 79(2)(a), and this may therefore be referred for prosecution.**

3.4 You/the person/s to whom this notice is addressed may lodge an internal appeal against this decision to the Minister of Water and Environmental Affairs within 30 days of receipt of this notice, in accordance with the provisions of Chapter 9 of the ICM Act *[This would only apply if the notice was issued by a delegated authority and not the Minister].*

Yours faithfully

…………………………

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

REMOVAL NOTICE FOR A STRUCTURE IN TERMS OF SECTION 60(5)

NOTICE IN TERMS OF SECTION 60(5) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

THIS STRUCTURE IS SITUATED IN THE COASTAL ZONE IN CONTRAVENTION OF SECTION …. OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008) AND/OR *(SPECIFIY ANY OTHER LAW).*

THIS NOTICE SERVES TO WARN THAT THIS STRUCTURE IS ILLEGAL OR THIS STRUCTURE IS HAVING OR MAY HAVE AN ADVERSE EFFECT ON THE COASTAL ENVIRONMENT AND TO INSTRUCT THE OWNER/OCCUPIER/RESPONSIBLE PERSON TO REMOVE IT FROM THE COASTAL ZONE AND REHABILITATE THE SITE TO ITS NATURAL STATE ON OR BEFORE …………………………………….

IF THE OWNER/OCCUPIER/RESPONSIBLE PERSON FAILS TO COMPLY WITH THIS NOTICE, THE DEPARTMENT INTENDS TO REMOVE THE STRUCTURE AND RECOVER THE COSTS FROM THE PERSONS RESPONSIBLE FOR ERECTING IT AND/OR ITS OWNER/OCCUPIER.

YOU ARE HEREBY GIVEN NOTICE THAT IF YOU INTEND OBJECTING TO THIS NOTICE OR WISH TO MAKE REPRESENTATIONS CONCERNING THIS NOTICE, YOU ARE TO MAKE WRITTEN REPRESENTATION TO ASSISTANT DIRECTOR: COASTAL PLANNING & ENVIRONMENTAL PROTECTION TEL:……AND EMAIL………AND SEND TO EITHER:
DEPARTMENT OF ENVIRONMENTAL AFFAIRS, PO BOX 52126, VICTORIA AND ALFRED WATERFRONT CAPE TOWN, 8002 , OR DELIVER BY HAND TO THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS, EAST PIER BUILDING II, EAST PIER ROAD, WATERFRONT, CAPE TOWN, 8001 ON OR BEFORE ……………………………………………………..

A COPY OF THE FULL NOTICE CONTAINING THE DETAILS OF THE CONDITIONS AND MEASURES WHICH THE DEPARTMENT REQUIRES TO BE CARRIED OUT CAN BE OBTAINED FROM THE ABOVEMENTIONED OFFICIAL

IN THE EVENT THAT NO WRITTEN REPRESENTATIONS ARE MADE, THE DEPARTMENT WILL PROCEED WITH THE REMOVAL OF THE STRUCTURE ON …………………………..

REFERENCE:………………………………….

TEL.NO. 021-819-2497
BY ORDER

environmental affairs
Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

NOTICE OF INTENTION TO ISSUE A REPAIR NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: THE OWNERS OF THE STRUCTURE LOCATED AT:

……………..

………………

AND TO: THE OCCUPIERS/RESPONSIBLE PERSONS OF THE STRUCTURE LOCATED AT:

BY HAND

Dear Sir

SECTION 60(2)(b) NOTICE OF INTENTION TO ISSUE A SECTION 60(1) REPAIR NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: REPAIR OF STRUCTURE IN THE COASTAL ZONE LOCATED AT……

1. RECORDAL

1.1. It is recorded that there is/are (a) structure/s within the coastal zone located at…. (hereinafter referred to as 'the structure'). The structure/s is/are:

1.1.1 Having or is/are likely to have an adverse effect on the coastal environment in that …….. and *(delete if inapplicable)* and/or

1.1.2 The structure was erected, constructed or upgraded in contravention of the National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICM Act) and/or any other law, specifically sections *……….. (delete if inapplicable)*

1.2. The structure poses a potential risk to public safety by virtue of its current condition and location as it is ………. and could be detrimental to the coastal environment and have an adverse effect on the surrounding coastal zone in that…………..

2. ACTION TO BE TAKEN

In order to prevent and/or minimize the potential danger to the public and the potential adverse effects, to the coastal environment and sense of place, I……….as the delegated authority require(s) the structure to be repaired.

3. NOTICE

3.1. Having regard to *inter alia* the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998), in particular:

the precautionary principle;

the potential adverse effects of the structure on the coastal environment;

the measures already taken relating to the repair of the structure; *(delete if not relevant)*

the location of the structure in the sensitive coastal zone area; and

the objects of the ICM ACT to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone;

I, Minister …………, the Minister of the Department of Environmental Affairs or (*delegated authority)*, being the relevant [delegated] authority, hereby provide you with an opportunity to submit in writing, **within 14 (fourteen) calendar days from date of receipt of this notice**, any compelling reasons why I should not exercise my discretion and issue a notice in terms of section 60(1) of the ICM Act and direct you/the owners/responsible persons of the structure/s to undertake the following specific measures:

3.1.1. Repair the structure situated at ………. at your cost, within *21 calendar days* of receipt of this notice; *(check whether you can use this timeframe if for example, other environmental authorisation would be required, e.g. construction within 100m of the high water mark; or where it is not physically possible to repair the structure within 21 calendar days andalso whether any building plan approval is required); and*

3.1.2. If the repair of the structure will require further authorisation from any other organs of state, such authorisation and all necessary further approvals, for example, environmental management plans, must be obtained and be brought to this department's attention prior to the removal of the structure; *(make sure that you know what these are before this notice is issued because there is no provision to amend this notice to change timeframes!)*

3.1.3. If the you/the owner/responsible person intends using a vehicle for this purpose where the structure is located, you/he/she must apply to this Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

3.1.4. All material and debris which remains after the structure has been repaired, must be removed from the site and appropriately and legally[50] disposed of;

3.1.5. All pollutants, litter etc. must be removed from the coastal zone at the location of the structure and surrounding coastal environment[51];

3.1.6. Once the structure has been repaired, *the site must be rehabilitated at your cost* (delete only if not applicable), and all other approvals referred to above must be complied with;

3.1.7. An environmental management inspector or other authorised official of the ….. must be present at the site during removal operations;

3.1.8. A written report must be submitted to this Department after completion of steps 3.1.1 to 3.1.6 (the repair process), and must indicate the level of compliance with this section 60(1) notice and any challenges or outstanding measures to be taken.

3.2. Written reasons must be addressed to Assistant Director: Institutional and Legal Development within the Chief Directorate: Integrated Coastal Management, Department of Environmental Affairs, Foretrust Building, PO Box 52126, Victoria and Alfred Waterfront, Cape Town, 8002 or faxed to……… or e-mailed to…….

3.3. Please be advised that this notice constitutes notice of an intention in terms of section 60(2)(b) to issue a coastal repair notice in terms of Section 60(1) of the ICM Act on the terms and conditions set out above.

Yours faithfully

……………………………….

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

[50] Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

[51] Fn 1.

REPAIR NOTICE

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

TO: THE OWNERS OF THE STRUCTURE LOCATED AT:

……………..

………………

AND TO: THE OCCUPIERS/RESPONSIBLE PERSONS OF THE STRUCTURE LOCATED AT:

BY HAND

Dear Sir

SECTION 60(1) REPAIR NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

RE: REPAIR OF STRUCTURE IN THE COASTAL ZONE LOCATED AT……

6. RECORDAL

.1. It is recorded that there is/are (a) structure/s within the coastal zone located at…. (hereinafter referred to as 'the structure'). The structure(s) is/are:

1.1.1 Having or is/are likely to have an adverse effect on the coastal environment in that ……..and *(delete if inapplicable)* and/or

1.1.2 *…..The structure was erected, constructed or upgraded in contravention of the National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICM Act) and/or any other law, specifically sections ……….. (delete if inapplicable)*

.2. A notice in terms of section 60(2)(b) of the ICM Act was issued to you on ….. giving you an opportunity to make written representations, as to why you should not be issued with a section 60(1) repair notice. The following submissions by you/the owner/responsible persons were received on….:

.2.1. …..

.2.2. …..

.3. Having considered the above submissions, the following should be noted:

.3.1. ….

.3.2. ….

.4. I, Minister ……………., the Minister of the Department of Environmental Affairs or *MEC* or *(delegated authority)* have consulted with all other organs of state, namely:

.4.1. …..

.4.2. …..

.4.3. …..

6. ACTION TO BE TAKEN

Despite the submissions by you/the owner/responsible person, in light of *1.1 (refer to applicable section(s) above)* above, the Department of Environmental Affairs ("the Department") hereby requires that the structure be repaired. The reasons are as follows; *(the following are merely examples)*

.1. *The structure poses a potential risk to public safety by virtue of its current condition and location, as it is ……… ; and*

.2. *The structure poses a potential danger to the public; and*

.3. *The structure has potential adverse effects, to the coastal environment and sense of place; and*

.4. *……*

.5.

6. SECTION 60(1) NOTICE

.1. Having regard to *inter alia* the environmental principles contained in the National Environmental Management Act, 1998 (Act No. 107 of 1998), in particular:

.1.1. the precautionary principle;

.1.2. the potential adverse effects of the structure on the coastal environment;

.1.3. the measures already taken relating to the repair of the structure; *(delete if not relevant)*

.1.4. the location of the structure in the sensitive coastal zone area; and

.1.5. the objects of the ICM ACT to protect, preserve and enhance the South African coastline, particularly coastal public property for the benefit of all citizens and future generations and the role of the State to act as trustee of the coastal zone;

.2. I, Minister ……………., the Minister of the Department of Environmental Affairs *(or delegated authority)*, being the relevant *(delegated)* authority, hereby issue a notice in terms of section 60(1) of the ICM Act and direct you/the owners/responsible persons of the structure/s to repair the structure/s and undertake the following specific measures:

.2.1. The structure must be repaired at your cost, within *21 calendar days* of receipt of this notice; *(check whether you can use this timeframe if for example, other environmental authorisation would be required, e.g.*

construction within 100m of the high water mark; or where it is not physically possible to repair the structure within 21 calendar days and also whether any building plan approval is required); and

.2.2. If the repair of the structure will require further authorisation from any other organs of state, such authorisation and all necessary further approvals, for example, environmental management plans, must be obtained and be brought to this department's attention prior to the removal of the structure; *(make sure that you know what these are before this notice is issued because there is no provision to amend this notice to change timeframes!)*

.2.3. If you/the owner/responsible person intends using a vehicle for this purpose where the structure is located, you/he/she must apply to this Department for authorization in terms of the Regulations for the Control of Use of Vehicles within the Coastal Zone (GNR 1429 of 7 December 2004) published in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

.2.4. All material and debris which remains after the structure has been repaired, must be removed from the site and appropriately and legally[52] disposed of;

.2.5. All pollutants, litter etc. must be removed from the coastal zone at the location of the structure and surrounding coastal environment[53];

.2.6. Once the structure has been repaired, *the site must be rehabilitated at your cost* (delete only if not applicable), and all other approvals referred to above must be complied with;

.2.7. An environmental management inspector or other authorised official of the ….. must be present at the site during removal operations;

.2.8. A written report must be submitted to this Department after completion of steps 3.2.1 to 3.2.6, (the repair process), and must indicate the level of compliance with this section 60(1) notice and any challenges or outstanding measures to be taken.

.3. Please be advised that in the event that there is non-compliance with this notice, I or ……may-

.3.1. in terms of section 61 of the ICM Act, undertake/direct whatever steps I deem necessary to carry out what is required by this notice;

.3.2. claim re-imbursement of all reasonable costs incurred in carrying out the required action; from the owners/responsible persons jointly and severally.

.4. Furthermore, non-compliance with this notice is a criminal offence in terms of section 79(2)(a), and this may therefore be referred for prosecution.

[52] Please note and comply with the provisions of the National Environmental Management: Waste Management Act, 1998 (Act No. 59 of 2008), where relevant.

[53] Fn 1.

.5. You/the person/s to whom this notice is addressed may lodge an internal appeal against this decision to the Minister of Water and Environmental Affairs within 30 days of receipt of this notice, in accordance with the provisions of Chapter 9 of the ICM Act. (*Not applicable where the notice was issued by the Minister)*

Yours faithfully

………………………………

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS, MP

DATE:

Or

DELEGATED AUTHORITY

CC: …….(any other relevant organs of state) Fax:

ANNEXURE B: STANDARD OPERATING PROCEDURES

SOP FOR COOPERATION BETWEEN EMI AND SAPS

Standard Operating Procedure for Cooperation between the Environmental Management Inspectorate (represented by the Department of Environmental Affairs and Tourism) and the South African Police Service

DEFINITIONS:

DEAT means the Department of Environmental Affairs and Tourism;

EMI means **Environmental Management Inspector** or **Environmental Management Inspectorate**, as provided for in the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA). EMIs are designated employees of any of the list of organs of state attached as Annexure A;

SAPS means **the South African Police Service**;

Designated SAPS representative means the SAPS official/s within each province who will be the designated SAPS nodal point for the purpose of this Standard Operating Procedure;

Environmental crimes mean all contraventions of environmental legislation (as referred to in **Annexure B**) that constitute criminal offences, or other criminal offences directly linked to environmental legislation (e.g. fraudulent conservation permits). Environmental crimes include, but are not limited, to the following:

- environmental pollution;
- criminal activities relating to damaging of natural resources and habitats (including watercourses, ridges, marine areas and other ecosystems);
- illegal disposal, handling and management of waste (including hazardous waste);
- damaging activities within nature and wilderness areas;
- criminal activities associated with endangered and / or indigenous species of fauna and flora.

INVESTIGATION OF ENVIRONMENTAL CRIMES

1. Where an alleged environmental crime is reported directly to the SAPS by the public, the case will be referred to the EMI via the designated SAPS representative where such designated representative is of the view that the matter is a pure environmental crime and is not of an organised crime nature. The investigation of environmental crime will be undertaken by an EMI.

2. Where there is a combination of crimes involved in a particular case (i.e. other types of crimes in addition to an environmental crime), or where the crime(s) is of an organised nature, the case will be investigated by the SAPS with the assistance of the EMI. This includes organised crime in respect of the hunting, importation, exportation, buying and selling of endangered species or any products thereof as prescribed, as set out in section 16(2)(e) of the South African Police Service Act, 1995 (Act No. 68 of 1995).

CONTACT LISTS

1. A list of EMI officials who will act as designated EMI's in each province will be provided to the respective SAPS representatives for that province, and will be updated whenever necessary.

2. A list of SAPS officials who will act as designated SAPS representatives is attached as Annexure C and will be updated whenever necessary.

COSTS

If it becomes apparent that the execution of this Standard Operating Procedure will entail expenses of an extraordinary nature the Parties shall consult each other to determine liability for such expenses and the way in which the expenses shall be borne.

CASE DOCKETS

1. EMIs will use a green case docket, G.P-S 022-9455 (the EMI docket) that is almost identical to the standard SAPS docket, SAPS3M/G.P.S. 002-9230 (the SAPS docket).

2. When it becomes necessary to register a criminal case on the CAS system, the EMI must approach the designated SAPS representative who will assist in registering the case docket on the CAS system.

3. After the allocation of the CAS number, the designated SAPS representative will sign for the relevant docket(s) and immediately transfer the same to the EMI, using the form set out in Annexure D.

4. The relevant designated SAPS representative must keep separate record of all case dockets (CAS) transferred to the EMI.

5. The EMI will carry out the investigation independently of the SAPS in relation to environmental crimes, but may request the SAPS for assistance where appropriate. Such assistance may, subject to existing laws, include

the following:

* use of the SAPS Criminal Record and Forensic Science Services to assist with the collection and analysis of evidence;

* access to information for purposes of law enforcement and criminal investigation;

* assistance in the execution of certain search warrants;

* assistance with undercover operations in accordance with Section 252A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and

* setting up of roadblocks in accordance with Section 31J(6) of NEMA, as read with Section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995).

EMI CASE REGISTRATION SYSTEM

The EMI will implement a national case registration system that captures relevant information related to all registered case dockets investigated by the EMI. This system will also reflect the CAS No. in respect of each docket as well as the relevant designated SAPS representative.

CRIME SCENES, EXHIBITS AND ITEMS SEIZED

1. As a general rule, all items seized by an EMI in terms of environmental legislation, must be kept in police custody.

2. Where seized items cannot be kept in police custody, due to the nature and/or volume of the items seized, other arrangements must be made with regard to the custody thereof as the circumstances may require, with due regard to the integrity of the exhibits seized and to ensure that the chain of custody is maintained.

3. Forensic exhibits/items which are collected at crime scenes and which are referred to the Criminal Record and Forensic Science Services Division of

the SAPS for forensic analyses are subject to the rules, instructions and policies of the said Division and the SAPS in general. In this regard it is essential that the EMI apply the same crime scene management principles as the SAPS in respect of crime scene approach, - preservation and investigation.

4. All items seized by an EMI in terms of environmental legislation must be registered in the SAPS 13 Exhibit Register. Such items may be signed back to EMIs using the SAPS 136, in which event the EMI takes full responsibility for the item seized.

5. Each institution in which EMIs are employed will keep an EMI Exhibit Register. All items signed out from the SAPS 13 must be signed into the EMI Exhibit Register to ensure that the chain of custody is maintained.

CLOSURE OF DOCKETS

1. Decisions on the closure of EMI case dockets will be made by the National Prosecuting Authority and the EMI. Before a docket is closed and filed, it is the responsibility of that EMI to make photocopies of the complete docket for future reference.

2. The original case docket will be returned to the designated SAPS representative for closure on the CAS system and filed in the SAPS docket filing system.

ROLE OF DESIGNATED SAPS REPRESENTATIVE

1. Only the designated SAPS representatives are responsible for facilitating and coordinating all requests for assistance by EMIs in terms of this Standard Operating Procedure.

2. Save for the powers of South African Police Service members as referred to in section 31O (1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) designated SAPS representatives / members of the SAPS are not designated Environmental Management Inspectors for

purposes of the Act, and are not to be utilised for such purpose.

PHASED IMPLEMENTATION

The SAPS and the EMI recognise that the implementation of this Standard Operating Procedure will take place through a phased implementation process. The SAPS and the EMI acknowledge that in order to give effect to the Standard Operating Procedure, the EMI may need to undertake certain capacity building initiatives and that until such time as the EMI have been appropriately capacitated to enable full implementation of the SOP, both parties will where reasonable, provide assistance to each other to give effect to this SOP and the principle of cooperative governance as provided for in section 41 of the Constitution.

REVISION AND AMENDMENT

This Standard Operating Procedure may be revised from time to time as required or by the changing legislative and structural framework of the SAPS relating to priority crime. Any amendment must be with the consent of both DEAT and SAPS and must be in writing. This process for revision and amendment applies only for the Standard Operating Procedure and specifically excludes the annexures attached hereto.

DIRECTOR-GENERAL: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

DATE:

NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE

DATE:

CRIME REPORT

PROCEDURE DIAGRAM

SAPS

EMIs

Refer to SAPS if combination of crimes or crime of organised nature

Or

Investigate if combination of crimes or crime of organised nature

And

Investigate if environmental crime

Refer to EMI if purely environmental matter

Or

Investigate if combination of crimes or crime of organised nature

And

Obtain assistance from EMI where required

SAPS

Provide assistance to EMI where required

ANNEXURE A

List of organs of state that employ EMIs, with contact details

Institution	Specific area of enforcement	Primary EMI contact person	Tel	Cellphone	Fax	email
National						
Department of Environmental Affairs and Tourism	Marine and coastal management	Nkosinathi Dana	021 402 3504	084 586 4804	021 425 2920	Ncdana@deat.gov.za
	Pollution, waste and illegal development	Sonnyboy Bapela	012 310 3098	082 373 0351	012 320 4431	Sbapela@deat.gov.za
	Biodiversity and conservation	Sonja Meintjes	012 310 3545	082 655 4711	012 320 7026	Smeintjes@deat.gov.za
South African National Parks (SANParks)	All national parks	Ken Maggs	013 7355109	082 804 7895	0137355319	kenm@sanparks.org
Isimangaliso Wetland Park Authority	Isimangaliso Wetland Park (formerly Greater St Lucia Wetland Park)	Peter Hartley	035 5901633	079 493 7470	035 590 1602	peter@simangaliso.com
Provincial						
Cape Nature	All provincial parks, wildlife and smuggling in Western Cape	Paul Gildenhuys	021 866 8012	082 551 8312	021866 1532	pgilden@kingsley.co.za
Western Cape Department Of Environmental Affairs & Development Planning	Pollution, waste and illegal development in Western Cape	Mark Gordon	021 483 3966	083 784 5665	021 483 4440	magordon@pgwc.gov.za
Eastern Cape Department of Economic Development & Environment Affairs	Pollution, waste and illegal development Wildlife and smuggling in Eastern Cape	Div de Villiers	040 609 3116	082 417 0155	040 635 2535	div.devillers@daeat.ecape.gov.za
Eastern Cape	All provincial parks,	Wayne Erlank	0422830630	072 430 6423	042 283 0636	wayne@ecparks.co.za

Parks Board	wildlife and smuggling in Eastern Cape					
Ezemvelo KZN Wildlife	All provincial parks, wildlife and smuggling in KZN	Rod Potter	033 2391504	082 772 8343	033 330 2108	rodp@kznwildlife.com
Kwazulu-Natal Department Of Agriculture & Environmental Affairs	Pollution, waste and illegal development in KZN	Khumbulani Mbatha	035 874 3330	082 777 2412	035 874 3301	mbathakd@uld.kzntl.gov.za
Free State Department Of Tourism, Environment & Economic Affairs	Pollution, waste and illegal development in Free State All provincial parks, wildlife and smuggling in Free State	Werner Boing	051 400 9535	082 789 4468	051 400 9538	boing@dteea.fs.gov.za
Gauteng Department Of Agriculture, Conservation and Environment	Pollution, waste and illegal development in Gauteng All provincial parks, wildlife and smuggling in Gauteng (including ORTIA and other Gauteng airports)	Lourens Badenhorst	(011) 355 1457	082 572 9577	(011) 333 0667	Lourens.Badenhorst@gauteng.gov.za
Limpopo Department of Economic Development, Environment & Tourism	Pollution, waste and illegal development in Limpopo All provincial parks, wildlife and smuggling in Limpopo	Philip Monyepao	015 295 3980	082 330 6325	015 891 5480	Monyepaomp@ledet.gov.za
Mpumalanga Department Of Agriculture & Land Affairs	Pollution, waste and illegal development in Mpumalanga	Gerhadus Lotter	013 766 6059	082 805 4349	013 7668429	glotter@mpg.gov.za

Mpumalanga Tourism & Parks Agency	All provincial parks, wildlife and smuggling in Mpumalanga	Juan de Beer	013 759 5320	083 628 1827	013 755 3787	juan@mpta.co.za
Northern Cape Department Of Tourism, Environment & Conservation	Pollution, waste and illegal development in Northern Cape All provincial parks, wildlife and smuggling in Northern Cape	Tokgamo Gaoraelwe	053 8074800	082 828 0234	053 813 3530	ogaoraelwe@half.ncape.gov.za
Northwest Department Of Agriculture, Conservation & Environment	Pollution, waste and illegal development in Northwest	Mafu Nkosi	018 389 5929	082 901 8362	018 389 5006	mnkosi@nwpg.gov.za
Municipal						
Municipalities (district and local)	-	Use contact person for province in which municipality is located.	-		-	-
Other						
Other “organs of state”	-	Use contact person in DEAT.	-		-	-

ANNEXURE B

List of environmental legislation

NATIONAL LEGISLATION*

Name	Number and year
National Environmental Management Act	107 of 1998
National Environmental Management: Biodiversity Act National Environmental Management: Protected Areas Act	10 of 2004 57 of 2004
National Environmental Management: Air Quality Act	39 of 2004
National Heritage Resources Act	25 of 1999
Conservation of Agricultural Resources Act	43 of 1983
National Forests Act	84 of 1998
National Veld and Forest Fire Act	101 of 1998
Marine Living Resources Act	18 of 1998
Dumping at Sea Control Act	73 of 1980
Marine Pollution (Control and Civil Liability)	6 of 1981
Marine Pollution (Prevention of Pollution from Ships)	2 of 1986
Environment Conservation Act	73 of 1989
Atmospheric Pollution Prevention Act	45 of 1965
National Water Act	36 of 1998
Hazardous Substances Act	15 of 1973
Animals Protection Act	71 of 1962
Mountain Catchment Areas Act	63 of 1970
Sea Shore Act	21 of 1935
Sea Birds and Seals Protection Act	46 of 1973

PROVINCIAL LEGISLATION*

Name	Number and year
Orange Free State Nature Conservation	Ordinance No. 8 of 1969
Dumping of Rubbish	Ordinance No. 8 of 1976
Bophuthatswana Nature Conservation	Ordinance No. 3 of 1973
Boputhatswana Protected Areas	Act 24 of 1987
Boputhatswana Prevention and Control of Littering	Act 16 of 1981
Qwa Qwa Nature Conservation	Act 5 of 1976
Natal Nature Conservation	Ordinance No. 15 of 1974
KwaZulu Natal Nature Conservation KwaZulu-Natal Nature Conservation Management	Act 29 of 1992 Act 9 of 1997
KwaZulu-Natal Animal Protection	Act 4 of 1987
KwaZulu Natal Heritage	Act 10 of 1997
KwaZulu-Natal Planning and Development	Act 5 of 1998
Prevention of Environmental Pollution	Ordinance No. 21 of 1981
Cape Nature and Environmental Conservation	Ordinance No. 19 of 1974
Cape Problem Animal Control	Ordinance No. 26 of 1957
Ciskei Animal Protection	Act 20 of 1989
Ciskei Nature Conservation Act	Ordinance 10 of 1987, Ciskei
Eastern Cape Heritage Resources	Act No. 9 of 2003
Eastern Cape Parks Board Act Environmental Conservation Decree, No. 9	Act No.12 of 2003 Decree 9 of 1992, Transkei
Cape Land Use Planning	Ordinance 15 of 1985
Western Cape Planning and Development Northern Cape Planning and Development	Act No.__ of 1999 Act No. 7 of 1998
Transvaal Nature Conservation	Ordinance No. 12 of 1983
Local Government	Ordinance No. 17 of 1939
Transvaal Town Planning and Townships	Ordinance No. 15 of 1986
Mpumalanga Nature Conservation	Act No. 10 of 1998
Limpopo Environmental Management	Act No. 7 of 2003

* Includes all regulations, notices, proclamations passed in terms of these Acts and Ordinances.

ANNEXURE C

List of designated SAPS representatives, with contact details

Province	Designated SAPS representative	Unit	Tel	Cell	Fax	email
Eastern Cape	Capt Kumbaca	Eastern Cape Organised Crime	040 608 7009/3	082 723 1277	040 608 8528	Ecprovcomm.orgcrime@saps.org.za
Free State	Capt Daffue	Free State Organised Crime	051 507 6180/1	083 464 3731/079 516 6110	051 507 6686/057 400 4121	Fs:parkweg-preciousmetalsanstoreunit/fs: pc organised-Crime
Gauteng	Supt Scott	Gauteng Organised Crime	011 274 7896	082 335 1083	011 274 7573	Gp//prov.organizedcrime@saps.org.za
KZN	Insp K Singh	Kwazulu-Natal Organised Crime	031 325 4731	082 551 8047	031 249 1030	Singhk2@saps.org.za'singhkevin@saps.org.za
Limpopo	Insp Chris Pitjeng	Limpopo Organised Crime	015 293 7224	082 451 7170	015 293 7238	N/A
Mpumalanga	Capt Brits	Mpumalanga Organised Crime	013 249 1032/1		013 249 1030	Mp orgcrime@saps.org.za
Northwest	Supt PM Meyer	North West Organised Crime	018 299 087	082 856 1125	018 299 7165	schoonhgenc@saps.org.za
Northern Cape	Supt Barkhuizen	Northern Cape Organised Crime	053 839 2817	082 494 9987	053 833 5210	Nc provsection 252(a) coordinator@saps.org.za
Western Cape	Capt Potgieter	Western Cape Organised Crime	021 950 1400	082 559 4684	021 950 1428	wcprovhighflyers@saps.org.za
Head Office	Supt Motsepe	ESD	012 393 4172	080 779 8575	012 393 4147	motsepelineo@saps.org.za/espu@saps.org.za

ANNEXURE D

THE CONTENTS OF THIS DOCKET HAS BEEN BOOKED OUT TO AN ENVIRONMENTAL MANAGEMENT INSPECTOR (EMI) FOR INVESTIGATION

CAS No.		
Station		
Details of SAPS official who booked docket out	Surname	
	Full Names Rank	
	Number	
Details of EMI to whom docket booked out	Surname	
	Full Names	
	Identity Number	
	Grade	
	Institution	
	Tel	
	Cell	
	Fax	
	Supervisor	
	Supervisor's tel	
	Supervisor's cell	
	Supervisor's fax	
EMI Case number		
Signed by EMI		
Date:		

USE AND HANDLING OF PERSONAL PROTECTIVE EQUIPMENT

1 OBJECTIVE

The objective of this SOP is to ensure that EMIs identify and use personal protective equipment suitable to give protection from the health and safety risks associated with the facility to be inspected.

2 DEFINITIONS

individual protective equipment: items issued specifically to an individual EMI on account of fitting, size and other personal considerations

team protective equipment: items used or worn by various individuals forming part of a group or team of EMIs.

3 BEFORE YOU START

3.1 Know your duties and ensure that you have requested and have received the necessary items of PPE that will enable you to conduct your duties safely.

3.2 Important note: It is your responsibility to ensure that your PPE fits properly according to your personal measurements and meets your personal requirements.

3.3 If you have to use any items of PPE that may be supplied by a facility or individual where circumstances dictate the necessity for this, you must only wear PPE that fits and that is serviceable.

3.4 Make sure that you know how to use the items of PPE that you are going to use.

3.5 Ensure that you have received the best training possible in the use of PPE.

3.6 Clearly mark your individual PPE by inscribing your name indelibly on all your personal PPE.

3.7 Practise using your PPE regularly.

3.8 Before using any PPE, thoroughly consult any manual, document or instructions that describe the designer's recommendations for safe and efficient use of the PPE concerned.

3.9 Keep any manufacturer's instructions, manuals or CD's in a file where it may be easily retrieved.

3.10 From time to time, refresh your memory on the handling of your PPE.

3.11 Conduct regular inspections of your PPE for signs of wear and tear.

3.12 Place your requisition for replacement PPE items timeously.

3.13 Keep yourself updated with regard to improvements and new developments in the field of PPE.

4 GENERAL INFORMATION, PROCEDURE AND CARE OF PPE

4.1 Know the role of PPE

4.1.1 A working environment should be made as safe as possible through process and site design and operation;

4.1.2 Only once all measures have been taken to reduce safety risks, can use of PPE be seen as the next step;

4.1.3 Then suitable PPE can be devised and used to further reduce safety risks;

4.1.4 Wearing PPE will not reduce the risks to zero, so care is always needed;

4.1.5 Evaluate your environment and if you feel it is unsafe, irrespective of PPE, do not proceed.

4.2 Training in use of PPE

4.2.1 Most PPE is simple to use, but you must still ensure your PPE fits and you know the limits of its use;

4.2.2 If the PPE requires trained use, ensure your employer has trained you properly;

4.2.3 Read the documentation and instructions that come with PPE.

4.3 Use of PPE

4.3.1 Always have your basic PPE readily accessible, even though you may not use it;

4.3.2 Keep spares of disposable items like latex gloves and foam ear plugs;

4.3.3 Write your name on your personal PPE;

4.3.4 If the operator offers their PPE, accept their offer if the PPE fits properly and is comfortable;

4.3.5 Do not wear PPE that is too tight or too loose;

4.3.6 Use your common sense and do not wear PPE if it is not necessary, as PPE may restrict your ability to hear, see or move freely;

4.3.7 Note that suitable open field-work clothing, like cotton pants, a hat and a long-sleeved shirt with a collar, can assist substantially with your health and safety by keeping the sun, ticks and flies, splashes and other things at bay.

4.4 Care of PPE

4.4.1 Keep any manufacturer's instructions, manuals or CDs in a file where they can be retrieved;

4.4.2 Keep your PPE clean and in good working order;

4.4.3 Avoid leaving PPE in extreme weather conditions;

4.4.4 Look after your PPE by keeping it out of the sun, away from contact with harsh chemicals, avoiding impacts, etc.

4.4.5 Establish a routine for PPE inspections, cleaning after use and maintenance;

4.4.6 Be aware of limited life items such as filters and batteries;

4.4.7 Inspect your PPE for signs of wear and tear;

4.4.8 Report any damaged or lost PPE to the responsible person;

4.4.9 Place orders for new or replacement PPE allowing adequate time for purchasing;

4.4.10 Always leave team PPE in a condition ready for another EMI's use.

4.5 Planning for a site inspection

4.5.1 The key to identification of risks and adequate planning to ensure that you are protected lies in planning in advance of your inspection.

4.5.2 Based on your inspection planning you must identify potentially significant health and safety risks:

- from your review of the expected nature of site activities and operations
- from the list of inspection activities you intend to undertake
- through discussion with the facility representative to understand what PPE is required and what the potentially significant health and safety risks at the site may be.

4.5.3 If visiting a site unannounced, ensure that you have take all the required PPE;

4.5.4 If it is necessary contact the facility in advance to arrange PPE at the site, this is especially important where the facility requires special PPE for high risk activities or unusual risks for example radioactivity, extreme temperatures (e.g. smelter operation), highly noxious environments;

4.5.5 Speak to colleagues and associates who have visited the site before in order to identify and understand potential risks and PPE requirements

4.5.6 When preparing for your site visit:

- ensure that the number of items of PPE match the number of EMIs visiting the site

- check your PPE and ensure it is not damaged (e.g. cracks, tears, holes)
- ensure the PPE fits and is in working order (e.g. zips, buckles, buttons)
- ensure there are enough disposable items, if these will be used.

4.5.7 As a minimum the following PPE will suffice for most sites to be inspected:

- a hard hat
- steel-toe-cap boots
- safety glasses (clear for indoors or shaded for outdoors)
- ear plugs or ear muffs
- A dust mask
- reflective vest
- gloves for sampling and/or gloves for handling sharp objects.

4.5.8 The table below outlines the typical risks likely to be encountered at an industrial site, and should serve as a quick reference guide. This is not an exhaustive guide, you must assess your PPE needs according to the site and operations to be visited.

RISK AT SITE	RECOMMENDED PPE
HEAD & FACE	
flying objects, such as chips, shards and sparks, from machinery, from materials handling or from explosions. splashing liquids or chemicals dust blasts of gas, pressure releases	Safety glasses: clear for indoors, shaded for outdoors; with side-shields
falling objects from above head height	Hard hat
FEET	
falling objects sharp objects underfoot electrical shocks corrosive spills	Oil and acid resistant safety boots with protective toe-caps
HEARING	
Noisy environments (particularly noise level > 80dBA short, loud noise (explosion, impact, air blast)	Ear muffs or ear plugs
PERSONAL VISIBILITY	
Low lighting moving vehicles	Reflective vest
TEMPERATURE	
cold environments radiant environments (heat)	Thermal Protection and gloves: various types available depending on the risk
HANDS	
sharp or rough objects to handle	Safety Gloves
chemicals: toxic, corrosive, etc. splashing liquids or chemicals	Acid and Oil Resistant gloves and overalls
flying objects, such as chips, shards and sparks, from machinery, from materials handling or from explosions. dust blasts of gas, pressure releases	Safety Gloves
BODY PROTECTION	

Hazardous chemicals: toxic, corrosive, etc. splashing liquids or chemicals	Acid and Oil Resistant gloves and overalls
flying objects, such as chips, shards and sparks, from machinery, from materials handling or from explosions. dust blasts of gas, pressure releases	Gloves and overalls
Noxious gases Noxious fumes and vapours	Appropriate respirator mask – depends on nature of gas (e.g. for hazardous organics one might use a respirator with activated carbon filter)

4.6 Arrival at the site

4.6.1 Read signs at the site that state what PPE is compulsory, and ensure that you are suitably equipped

4.6.2 Communicate with site management to confirm what PPE is necessary

4.6.3 Above all be alert and use your training, experience and common sense to identify risks and ensure that you are adequately protected

4.6.4 DO NOT:

- Wear open shoes or work barefooted
- Wear loose clothing that can be caught up in machinery (e.g. ties)
- Use compromised safety equipment
- Dispose of contaminated PPE as general waste where the PPE has been exposed to or contains hazardous substances.
- Share ear plugs
- Share dust masks
- Count on the facility being inspected to provide you with PPE unless you have made prior arrangements

4.6.5 The use of PPE is a precautionary measure designed to add a degree of safety and protection. However, your own behaviour and good common sense will influence your safety far more

HOT TIP

Get EMI branded PPE!
Having the EMI brand displayed on your PPE will not only help to publicize the EMI cause and make you look more professional, but it will also make taking PPE in and out of a facility much easier.

USE OF POCKETBOOK

1 OBJECTIVE

This prescribes the proper procedure for the use and completion of a pocketbook. It applies to all EMIs whilst conducting investigations into suspected non-compliance or contraventions of environmental legislation.

2 BACKGROUND

Memories become unreliable with time and the purpose of pocketbook entries is to ensure that a contemporaneous, permanent and official record exists of the facts surrounding a particular event or occurrence. Pocketbook entries are valuable to use when drafting statements and to refresh the memory, even months after the incident. In some cases it might be used to refresh memory in court, in which case the prosecutor, defence counsel and magistrate might have insight into the entries. That also means that the EMI might be cross-examined on the contents. Pocketbooks also serve as a record of duties, and superiors may inspect pocketbooks at any time. Such an inspection must be noted, signed and the time and date of the inspection noted.

3 PROCEDURE

3.1 <u>Basic Rules for the Use Of Pocketbooks</u>

3.1.1 Keep your official pocketbook and a pen on your person at all times when on duty.

3.1.2 Write in clear, legible handwriting.

3.1.3 Keep the pocketbook as neat as possible.

3.1.4 Use a pen, and never use a pencil.

3.1.5 Never leave an open line between entries.

3.1.6 Never remove a page from a pocketbook. If a page becomes illegible for any reason, draw a line through the remaining part of the page, initial and note the date and time. Continue on the next page.

3.1.7 Never “write over” a mistake - draw a line through the error, initial and note the date and time. Proceed to make the correct entry following that.

3.2 <u>Making entries in the Pocketbook</u>

3.2.1 All entries must be made according to the sequence of events.

3.2.2 Enter the time of the occurrence on the left-hand side of each page in the margin.

3.2.3 Write in simple, direct language.

3.2.4 Ensure accuracy, honesty and completeness of information.

3.2.5 The pocket book firstly serves as a duty record:

- Enter the day, date and time of resuming duties (note however that this does not replace the need for other official requirement such as the signing of duty registers)
- Record times such as arrival and departure times at inspection sites or the scene of a crime, or when leaving the workplace for a short period.
- Record the particular duty or task, such as “Inspection at Airpol Refinery”, “Attending to report of illegal cycads at 202 Main Road, Pretoria, ...” “Interviewing suspect Mr Z Young.....”
- Enter the day, date and time of going off duty.

3.2.6 The pocketbook also serves as a task- or production record, e.g.:

- Note details of observations when doing surveillance, such as vehicle registration numbers, descriptions of persons observed etc.
- Note the issue of J534 fines, oral warnings given or arrests made.
- Note all observations when investigating a crime, e.g. details of suspects or arrested persons, where and when items are found an seized, how such items are sealed and numbered etc
- Note details of official registration or documentation such as SAPS CAS numbers and SAP 13 register numbers.
- Note details of interviews with witnesses or suspects.
- Note details of non-compliance during inspections.

3.2.7 Where it is impossible to document all the detail at a given date and time because of circumstances, document the occurrence as briefly as possible, and add detail to the entry as soon as the circumstances allow it.

3.3 Control over Pocketbooks

3.3.1 Each office must keep an alphabetical register and keep record of each pocketbook issued to, and received back from, an EMI.

3.3.2 Each office must appoint a responsible person to issue and receive pocket books, maintain the register and keep control over all pocketbooks.

3.3.3 Duties of the responsible person:

- Keep all pocket books, whether new or completed, as well as the register behind lock and key.
- Ensure that sufficient new pocket books are available at all times.
- Ensure that all pages are accounted for before issuing a pocketbook.
- Mark each pocket book issued with the name of the EMI and number of the pocketbook, e.g. Z. Young 1/2009, Z. Young 2/2009 etc.
- Enter the date of issue, name and number in the register.
- Let the EMI sign for receipt of the pocketbook.
- When receiving a completed pocketbook from an EMI, enter the date, name and number of the pocketbook in the register, and sign for the receipt of the pocketbook.
- New pocketbooks may only be issued if a completed pocketbook, or an affidavit as described in 3.3.4 below, is handed in.
- Keep all completed pocketbooks (and affidavits) for a period of not less than 10 years.

3.3.4 Duties of the EMI:

- Ensure all pages are accounted for when receiving a pocketbook.
- Sign for receipt of the new pocketbook in the register.
- Enter your name, contact details including telephone numbers, and department, as well as the physical and postal address of the department, as soon as you receive the pocketbook.
- Hand back full/completed pocketbooks to the responsible person.
- Ensure that the responsible person makes an entry in the register and sign for receipt of the pocketbook.
- If a pocketbook is lost, immediately report this to the responsible officer, and submit an affidavit to the responsible person to explain the circumstances under which it was lost.
- If transferred to another department, or on leaving the Inspectorate, close the pocketbook by making an entry stating the circumstances, sign and note the date. Hand the pocket book to the responsible person.
- If concerned that for e.g. prior to a long absence from the office, there is not sufficient open pages in the pocketbook, close the pocket book by drawing lines over the remaining pages, sign and note the date. Hand the pocket book in and obtain a new pocketbook.

ANNEXURE 1

Example of Pocketbook Entries

	Monday 1 June 2009
09h15	Receive report of suspected non-compliance with the National Environmental Management: Waste Act at 202 Main Road, Newlands, Cape Town from supervisor, Ms Buyelwa Sonjica.
09h30	Conduct drive-by inspection of 202 Main Road, Newlands. Note 5 black bags usually used for waste abandoned at site. Note medical waste next to perforated bag.
10h10	Draft affidavit to apply for search warrant.
10h50	Discuss application with chief prosecutor for Cape Town, Ms Antoinette Ferreira.
11h00	Apply for, and obtain search warrant from Magistrate Kemi Behari at Cape Town Magistrate's Court.
11h30	Brief team on planned search. Search team: [names of members] Equipment: [list of equipment] Health and Safety Equipment:[list of health and safety equipment]
12h15	Arrive on site. Only one person, who identifies himself as Johnny Depp, present at site. Show Mr Depp the original warrant, and hand copy of warrant to Mr Depp. Mr Depp cooperative.
	ETC

TAKING STATEMENTS

1 OBJECTIVE

This prescribes the procedure to taking, drafting and submitting of proper statements. It applies to all statements drafted and submitted by the EMI, as well as all statements taken down from witnesses.

2 INTRODUCTION

A statement is a sworn written record of facts as observed by the deponent. It is also referred to as an affidavit. It is often the most important tool in gathering evidence to prove a transgression, and to serve both as the motivation for taking enforcement action, and as a basis for oral evidence provided in court.

3 BASIC PRINCIPLES OF AN EFFECTIVE STATEMENT

3.1 A statement should be an honest, accurate, objective and complete recollection of the deponent's knowledge about the facts surrounding the particular matter.

3.2 The deponent must clearly state whether he or she bases particular contents on his/her own observations; or whether it is based on hearsay, assumptions or deductions, or is an opinion.

3.3 Although hearsay will generally be inadmissible as evidence in court, it can be noted in a statement, but the deponent must be explicit in noting that the particular part of the statement is based on hearsay, and from whom such information was obtained.

3.4 Assumptions, deductions and opinions must be avoided at all costs, and must only be noted where they serve as motivation for particular conduct.

3.5 Various factors can influence the observational ability of the deponent: Quality of sight and hearing, lighting, emotional state when making the observations, soberness, position from which the observations were made etc. These factors must be clearly noted where appropriate.

3.6 Statements should address the WHO, WHAT, WHERE, WHEN, HOW and WHY of the particular situation.

3.7 All facts must be recorded without being verbose.

3.8 Before taking a statement from a witness, conduct an interview with the witness according to SOP 6.3 (Interviewing Witnesses and Suspects).

4 GUIDELINES REGARDING THE TAKING OF STATEMENTS

4.1 Composition

4.1.1 A statement consists of a preamble, contents and a certification.

4.2 Construction

4.2.1 Divide the statement into short paragraphs with no more than a few sentences per paragraph.

4.2.2 Number each paragraph in the centre of the page to allow easy reference to particular parts of the statement.

4.2.3 Do not leave open any lines between paragraphs or sentences.

4.2.4 Do not make any additions to a statement once it has been drafted.

4.3 Correction of Errors

4.3.1 Draw a neat line through the error (word or figure);

4.3.2 Ensure that the incorrect word or figure is still legible;

4.3.3 The correct word or figure is entered either next to, or above the correction or in the margin;

- The deponent initials and dates the corrected error in the margin;
- If the statement was not written by the deponent, the person taking down the statement also initials and dates the corrected error in the margin;
- If an interpreter is used, he/she must also initial the statement.

4.4 The Preamble

4.4.1 State the following to clearly identify the deponent, and to ensure that the deponent can be traced, even months later:

- Full names and surname;
- Age;
- Gender;
- Identity number;
- Full residential address;
- Home telephone number;
- Cellular phone number;
- Occupation;
- Business address;
- Business telephone number

4.4.2 In certain circumstances, some personal information such as home address and contact numbers may be withheld for security reasons.

4.4.3 State in which language the statement is made, and whether the services of an interpreter were required.

4.4.4 State whether the statement is sworn ("states under oath") to or affirmed ("solemnly declares").

> **Example:**
>
> 1.
>
> I, Lucas Radebe, hereby states under oath/solemnly declares in English:
>
> I am a adult male, identity number 580801 5230 082, 50 years old, residing at 12 Church Street, Westbank, Delft, home telephone number (021) 885-3261, cell number 082 884 4961, employed as a financial advisor at Old Mutual, 10 Voortrekker Street, Bellville 7530, work telephone number (021) 948-8861.

4.5 The Contents

4.5.1 The contents start with the number "2", and provides a logical sequence of events:

> **Example:**
>
> 2.
>
> On Monday the 1st of January 2009 at 08:00 I was walking ………/I was instructed by my supervisor to ……/ I was on duty at ……………..

4.5.2 Follow a chronological and logical sequence of events.

4.5.3 Use the terminology and expressions of the witness as long as they are appropriate.

4.5.4 The statement must clearly reflect the observations of the witness: "I saw ....." and never refer to "we": "We then proceeded to ....". Rather say: "I and my colleagues then proceeded to ...."

4.5.5 Before concluding the statement, ensure that the WHO, WHAT, WHERE, WHEN, HOW and WHY of the particular situation have been covered adequately.

4.5.6 End the taking of the statement by asking the witness whether there is anything they want to add. Note the response of the witness in the statement: "There is nothing I can add to this statement....", or "I want to add that....."

4.6 The Certification

4.6.1 As peace officers EMIs are Commissioners of Oath (see Notice 903 in GG 19033 of 10 July 1998 under Act 16/1963) and can therefore certify statements. After taking a statement, read the whole statement to the witness, or give the statement to the witness to read.

4.6.2 If the deponent is satisfied that the statement is complete, he/she must be sworn in.

4.6.3 Put the questions below to the deponent. Note the replies to the questions in the statement:

- Do you know and understand the contents of this statement?
- Do you have any objection to taking the prescribed oath?
- Do you consider the prescribed oath to be binding on your conscience?

4.6.4 The deponent has to answer yes, no and yes respectively to the three questions. Note the replies in the statement:

- I know and understand the contents of this statement.
- I have no objection to taking the prescribed oath.
- I consider the prescribed oath to be binding on my conscience.

4.6.5 Request the deponent to say the following words out loudly so as to be clearly audible: "I swear that the contents of this statement are true, so help me God".

4.6.6 Once the oath has been administered, request the deponent to sign the statement. If the statement consists of more than one page, request the deponent to initial each page at the bottom of every page. The commissioner of oaths must then certify the statement.

> **Example:**
>
> I certify that the above statement was taken down by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Cape Town on 2009-05-01 at 12:00.
>
> Immediately after the above, the commissioner of oaths, must identify himself/herself. Note the following particulars:
>
> ____________________________________
>
> SIGNATURE
>
> SERVICE NUMBER AND RANK (IF SAPS MEMBER)
>
> COMMISSIONER OF OATHS
>
> FULL NAME AND SURNAME
>
> FULL STREET ADDRESS
>
> RANK (IF SAPS MEMBER)

4.6.7 An affirmation differs only academically from a sworn statement. The three questions remains as follows:

- Do you know and understand the contents of this statement?
- Do you have any objection to taking the prescribed oath?
- Do you consider the prescribed oath to be binding on my conscience?

4.6.8 The respective replies will be "Yes", "Yes" and "No". In the statement the answers will be written as follows:

- I know and understand the contents of this statement.
- I have objections to taking the prescribed oath.
- I do not consider the prescribed oath to be binding on my conscience.

4.6.9 Request the deponent to utter the following words: "I truly affirm that the contents of this statement are true".

4.6.10 Request the deponent to sign the statement.

4.6.11 The commissioner of oaths then notes the following certification and particulars:

I certify that the above statement was taken down by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was affirmed before me and the deponent's signature was placed thereon in my presence at Cape Town on 2009-09-01 at 11:00.

____
SIGNATURE
SERVICE NUMBER AND RANK (IF SAPS MEMBER)

COMMISSIONER OF OATHS
FULL NAME AND SURENAME
FULL STREET ADDRESS OF POLICE STATION
RANK (IF SAPS MEMBER)

4.6.12 In the case of an illiterate deponent:

- Read the statement to the deponent.
- If the deponent agrees with the contents of the statement, request him/her to apply his mark or preferably his thumbprint on the statement.
- Secure the presence of two witnesses, who must also sign as proof of their presence at the time the mark/print was made and that they will be able to identify the deponent.
- Note the full names of the witnesses.

4.6.13 Where a statement of a person under the age of 16 is taken:

- Ensure that a parent or guardian is be present while taking down the statement of a child under the age of 16.
- In the case of a very young child, ensure that the child has the mental capability to understand the difference between the truth and a lie, and fantasy and reality, and that the child understands the consequences of the prescribed oath, e.g. ask the child if he/she knows what is the difference between the truth and a lie, and what happens to a person when they tell a lie; whether lying is acceptable behaviour etc
- Request the help of a social worker where necessary.

4.6.14 If the child prefers the parent or guardian not to be present, the statement can still be taken from the child, but grant an opportunity to the parent or guardian to read the statement before it is commissioned (unless the statement reports a crime where the parent or guardian is the suspect, in which case the state act as guardian on behalf of the child, and it is preferable to have a social worker present).

4.6.15 Where a statement is taken down with the assistance of an interpreter:

- Ensure that the interpreter has been officially appointed by the state and sworn in by the magistrate. If an interpreter for that particular language is not readily available, the head interpreter at the court will have a list of officially recognised and appointed interpreters and their contact details, and will assist you to find an interpreter.
- The statement must be translated into one of the official languages, preferably English.
- Take down the statement as interpreted by the interpreter.
- The interpreter must certify the translation between the commissioner of oaths and the signature of the deponent in the following manner: "Translated from Xhosa into English".
- The interpreter must then sign the certification, and the interpreter's full names and position must be noted.

HOSTILE PEOPLE AND SITUATIONS

1 OBJECTIVE

This describes a standard procedure in preparing for and dealing with, hostile situations. In addition it provides certain basic guidelines for dealing with hostile people and volatile situations. These guidelines cannot replace specialised training or skills learned through experience and should not be regarded as an attempt to do so. The procedure applies to all EMIs while on duty and reflects the reality that most EMIs are unarmed.

2 DEFINITIONS

Hostile: in the context of this SOP means abusive, aggressive, dangerous, potentially harmful, uncooperative, unfriendly, unruly, violent, volatile and is herein extended to people and situations to have a corresponding meaning.

3 INTRODUCTION

Inspections, investigations and other related activities can at times lead to the development of situations in which the safety of the EMI or other people can be jeopardised by hostile people or volatile situations. Invariably these situations arise when people react adversely to the presence and authority represented by an official such as an EMI. Such situations can often be avoided, and where they do occur, the risks can be minimised by observing the instructions and guidelines in this procedure.

4 PREPARATION FOR ACTIVITIES

4.1 Evaluate the potential for hostility and conflict during the planning of any inspection, investigation or other related activity as part of the inspection or investigation plan.

4.2 Where necessary and possible, employ surveillance as a method of identifying possible threats.

4.3 Never work alone in situations where hostility can be encountered: Adjust the size and composition of the group according to what is expected.

4.4 If hostility or conflict is expected, contact the SAPS and arrange for an armed escort. Such assistance is provided for in the agreement with the SAPS as is set out in 3.1.

4.5 Ensure that accompanying SAPS members are aware they have in terms of section 31O of NEMA, in respect of an offence in terms of NEMA or the SEMAs, all the powers of an EMI except the power to conduct routine inspections and issue compliance notices. While such SAPS members cannot therefore use the EMI powers in terms of section 31K while escorting EMIs during an inspection, they can accompany EMIs in terms of section 31G(2)(b) of NEMA which provides that an EMI may be accompanied by any person whose assistance may reasonably be required.

4.6 Except during covert or clandestine operations, dress in the official uniform and drive officially marked vehicles, as these are symbols of authority.

5 APPROACHING POTENTIALLY HOSTILE PEOPLE AND VOLATILE SITUATIONS

5.1 Introduce yourself clearly and audibly as an EMI upon arrival or when approached by potentially hostile persons.

5.2 Show your identity card, and where necessary refer to, and produce a copy of the empowering legislation. There should be absolutely no doubt as to your designation and powers.

5.3 Should you act on the basis of a search warrant, show the warrant to the relevant person, and hand over a copy of the search warrant.

5.4 Should any person hinder or interfere with the execution of your duties, or fail to comply with a request, inform them of the provisions of section 34A of NEMA and warn them that they may be arrested and prosecuted for such conduct.

6 IN THE SITUATION

6.1 Always keep in mind that you represent authority, and that you have certain powers in terms of the law.

6.2 Do not allow any person to dictate to or manipulate you for their benefit.

6.3 Be firm without being overly aggressive.

6.4 Give clear instructions and insist that people comply.

6.5 Do not become distracted by or respond to behaviours designed to upset you.

6.6 Clear the scene by instructing bystanders to move away.

6.7 Always be alert to where imminent threats exist.

6.8 Take precautionary steps to minimise risks.

6.9 Do not hesitate to retreat for fear of ridicule – if necessary for your safety or that of your colleagues, rather retreat.

7 TACTICAL COMMUNICATION

7.1 Keep the tone even and clearly audible: The way we act and speak reflect our inner state and can have a positive result or it can trigger a negative response.

7.2 Display assertiveness where you need to gain immediate control. Do this in a loud and audible voice: "STOP! EMI LAW ENFORCEMENT, DO NOT MOVE!"

7.3 Replace natural instinctive reaction to verbal abuse by a studied response to deflect such abuse, for example:

- "I understand that, but....."
- "You have a point, but...."
- "I believe you, but...."

HOT TIP

If what is being said to you is really agitating you, apply the STOP/ STEP principle:

- **S**top — Pause for a moment
- **T**hink — Consider your next response or action
- **O**rientate/Evaluate — Organise your thinking / Evaluate your reaction
- **P**roceed — Continue

8 DEALING WITH A PHYSICAL ATTACK

8.1 If an attack cannot be avoided, defend yourself by applying the minimum degree of force necessary that will:

- Stop the attack
- Enable you to control the situation

8.2 Acting in self-defence requires a real and imminent unlawful attack on you, a colleague or another person.

8.3 The amount of force used in self-defence must be proportional to the severity of the attack.

8.4 Cease to apply force the moment the attack stops.

HOT TIP

The following signs (body language) may be indications that the person is about to launch an attack on the EMI:

- Visible tensing of muscles, hands and legs trembling;
- Rapid or staccato breathing;
- The eyes widen or narrow and the person's gaze intensifies;
- A sudden change in colour of complexion (face goes white, or very red);
- A change in tone of voice, it becomes louder or the person starts stuttering

Sudden lunges or movements to produce a weapon.

9 DEALING WITH CROWDS

9.1 Exercise extreme caution when encountering crowds or groups, especially if you are outnumbered.

9.2 Immediately assess the situation and ensure that escape routes are available.

9.3 Remain calm and call for assistance.

9.4 Keep a safe distance from the crowd.

9.5 Identify the leaders in the crowd so that if the need arises you know who to speak to.

9.6 Identify armed individuals in the crowd.

9.7 Assess the mood of the crowd continuously.

9.8 Do not allow the crowd to encircle you or your group.

9.9 Never threaten the crowd.

PERSONAL ATTRIBUTES FOR HANDLING HOSTILE PEOPLE & SITUATIONS:

Attitude: Base your attitude to life and people, including yourself, on respect, and more often than not you will receive respect and cooperation in return.

Belief: Believe in yourself and your cause without being self righteous or sanctimonious.

Common Sense: This implies rational and reasonable decision-making based on the principles of cause and effect

- Know yourself: Know your limitations and abilities in conflict situations.
- Learn to manage your emotions: Fear is a natural instinct and response to situations where danger is sensed or experienced. Fear and nervousness can be managed to a large degree by confidence that is developed through training and experience. While controlled aggression may be an appropriate response in return at times where there is no alternative, non-aggressive behaviour is a sign that you are in control and invariably the key to diffusing a possible conflict. Anger is potentially the most dangerous emotional state of all and often a reaction to a feeling that you are not being respected. When anger enters the picture, common sense leaves, as does control. Cultivate a professional attitude whereby the actions and words of people are deflected and not taken personally.
- Develop awareness: This is a state of mind requiring you to:
    - Always know where you are;
    - Always know what you are doing;
    - Always know what is going on.
- Be alert: Alertness is a heightened state of awareness used by all sentient beings as a

means to avoid death, accidents, injury, surprise or the unexpected. Be prepared, identify imminent threats, avoid situations in which danger is clearly evident, apply common sense and take heroic behaviour out of the equation.

- A useful technique: Teach yourself how to employ tactical breathing during stressful or dangerous situations. Practise this as often as you can:
    - First expel as much air as you can from your lungs
    - Simply let the air return
    - Now purposefully slow it down

HANDLING OF CONFIDENTIAL INFORMATION

1 OBJECTIVE

The purpose of this SOP is to assist the EMI in developing an ingrained ethic of discretion and confidentiality in respect of sensitive and confidential information. It applies to all EMIs when dealing with such information.

2 DEFINITIONS

Confidential Information: is that information which by virtue of its very nature, a reasonable person would know is confidential and not to be imparted to unauthorised persons.

Confidential business information: can include secret processes, secret methods of manufacture or production, trade secrets and other information possessed by a business which under existing legal concepts, the business has a right to preserve as confidential and limit its use by not disclosing it to others in order that the business may obtain or retain business advantages it derives from its rights in the information.

3 HANDLING CONFIDENTIAL INFORMATION

3.1 Introduction

3.1.1 In the course of their duties, EMIs will have insight into documents, personal accounts, sensitive information and other information that, if it became available to unauthorised persons, could have potentially damaging consequences.

3.1.2 Making confidential business or private information public can lead to claims for damages, and even a criminal prosecution against the official who made it public. Publicising certain information about an investigation might negatively affect the investigation, or divulge the identity of informers or whistleblowers.

3.2 Background

3.2.1 While the access to certain information is guaranteed by section 32 of the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), ("PAIA"), there is also the need for the protection of confidential, private and sensitive information.

3.2.2 PAIA requires the mandatory disclosure of information to a requester, where the disclosure would reveal evidence of a substantial contravention or failure to comply with the law, or imminent and serious public safety or environmental risk, and the public interest clearly outweighs the harm contemplated in the provision in question.

3.2.3 In terms of section 31Q of NEMA it is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of NEMA.

3.2.4 The above excludes the following:

- if the information is disclosed in accordance with the provisions of any law;
- if the person is ordered to disclose the information by a court;
- if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or
- for the purposes of the administration of justice

3.2.5 In terms of Section 31Q(1A) of NEMA, the following information may be disclosed:

- information regarding environmental quality or the state of the environment;
- information regarding any risks posed to the environment, public safety and the health and well-being of people; or
- information regarding compliance with or contraventions of any environmental legislation by any person.

3.3 The Golden Rules

3.3.1 When receiving a request for certain information and there is any doubt as to whether it may be disclosed or not, refer the requester to your dedicated information officer and advise the requester to make a formal application in terms of PAIA.

3.3.2 PAIA does not apply to the criminal justice process: Never divulge any information in a criminal investigation case docket to any person who does not form part of the investigation or prosecution team. The accused will be able to gain access to the docket prior to the trial, but such an application is made to, and responded to, by the prosecution.

3.3.3 Never divulge confidential business or commercially sensitive information, unless it is disclosed in a court, or under order of a court, or where there is a real risk that non-disclosure might cause serious harm to people or the environment.

3.3.4 Never divulge any personal or confidential information about any individual gained during the course of exercising your duties unless it is disclosed in a court, or under order of a court, or where there is a real risk that non-disclosure might cause serious harm to people or the environment.

3.3.5 Never divulge personal information about any of your colleagues.

3.4 Prescriptions for Safeguarding Documents

3.4.1 Take personal responsibility for any documents that come into your possession in the course of your duties.

3.4.2 Do not leave documents lying exposed on the desk in your office while not present – you will compromise the safe custody of the documents.

3.4.3 Certain documents may require copying: According to the degree of sensitivity of the document, perform this task yourself. Guard against leaving copies behind in the copier or leaving documents exposed whilst you are engaged in the process of copying.

3.4.4 Whilst engaged in routine duties, never leave sensitive documents in vehicles. Carry the documents with you in a briefcase or similar accessory.

3.4.5 Assess the importance of the documents, classify them accordingly and then safeguard them appropriately like placing them in a lockable filing cabinet or cupboard. Documents in this category may include:

- Case dockets;
- Investigation files;
- Internal communications (unless specifically designated as secret or top secret in which case they are stored as outlined below).
- The EMIs diary and pocketbook

3.4.6 Certain documents must be accorded a higher degree of security such as:

- Informer files;
- Investigation action plans, and pre-enforcement operational plans;
- Investigation files containing reports from undercover agents and/or informers;
- Personnel files containing personal information

Documents in the above category must be stored in a safe or vault. Preferably only one person should have the keys and, therefore, access to the vault. If more than one person has access to the safe or vault, a diary must be maintained wherein the date, time, and reason for entering the vault or opening the safe, are recorded as well as the removal and handling of such documents.

HOT TIP: DEVELOP PROFESSIONAL SILENCE

- Do not discuss any details of work-related matters with anyone, including family and friends, other than those who need to know.
- Be especially cautious during social interaction not to compromise investigations, security or divulge personal information about colleagues.
- Always keep in mind that criminals and criminal organisations, and sometimes even businesses and industries, have informants too.
- Remember that it is a criminal offence to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of NEMA, unless specific requirements are met.
- You cannot “take back” information once it is divulged!

REFERRAL AND REPORTING PROTOCOL

1 OBJECTIVE

The purpose of this document is to provide a procedure for the response to and referral of reports of alleged non-compliance with the relevant environmental legislation. This applies to all reports to the Inspectorate of alleged non-compliance with the relevant environmental legislation.

2 DEFINITIONS

Incident (not NEMA section 30 incident) and **Complaint** are used interchangeably in this SOP.
Responsible Authority: is the national, provincial or municipal department who should respond to reported cases of non-compliance in accordance with Annexure 1.
Receiving Authority: is the national, provincial or municipal department who receives the initial complaint/incident.
Role players: any other organ of state or organisation that has some form of jurisdiction with regard to the incident/complaint in question.
Focal point: is the person in the Responsible Authority that is responsible for receiving and processing external complaints and incidents.
Classification Officer: is the person responsible for determining the Responsible Authority in accordance with Annexure 1 and assessing whether the incident is a S30 emergency incident or not.
Incident Coordinator: is person responsible for responding to complaints where the inspection procedure is triggered.
Case Officer: is the person responsible for responding to complaints where the enforcement procedure is triggered.[54]

3 BACKGROUND

3.1 In several cases, inspection and enforcement will be triggered by complaints, tip-offs and emergency incidents reported to the Inspectorate by members of the public. Some provincial environmental departments have established call centres/hotlines to encourage the public to report on environmental crimes, complaints and emergency incidents. DEA has established an Environmental Crimes and Incident Hotline that provides the public with a single national point of entry to report and complain on environmental crimes and incidents.

3.2 The principles for the effective operation of the DEA and other hotlines include:

- effective and prompt response to complaints received;
- avoiding duplication of effort by different government departments and spheres; and
- ensuring coordinated and well planned investigations in respect of each complaint.

3.3 All reported and or referred cases of non-compliance must have a closure, and complainants must be given feedback on how their complaints were handled. In general this process will have three key elements:

- receiving the complaints or incidents reports;
- inspection and or investigation of the reported cases; and
- reporting back to the complainant.

3.4 Once the complaint has been referred to the appropriate Responsible Authority, they must ensure that proper feedback is given to the complainant.

[54] Please note that in certain instances where human resources do not permit this degree of specialization, these roles and responsibilities may be assigned to the same person who fulfills multiple functions.

4 PROCEDURE

4.1 Receiving the Report

4.1.1 Receive and record the report (from Hotline, media, Section 30 NEMA report, other).

4.1.2 Assess the report for

- urgency and
- actual or potential impact and decide whether a site visit is required immediately.

4.2 Mandate and Inspection/ Investigation of Incidents

4.2.1 The Classification Officer determines the primary mandate and relevant role players using Annexure 1. If the report is assessed to be a section 30 NEMA incident, continue in accordance with the provisions of SOP 5.10: Procedure for Follow-Up Inspections Subsequent to Emergency Incidents. (Refer to Annexure 2 for an extract of Schedules 4 and 5 in the Constitution determining competence of the various spheres of government).

4.2.2 The Classification Officer will determine whether it is an internal or external non-compliance incident:

4.2.3 Internal non-compliance incidents (these are incidents that are reported directly to the authority having the mandate to respond to the incident)

- The Classification Officer assigns the case to a Case Officer (where the incident clearly requires an enforcement response) or Incident Coordinator (where the incident requires a compliance inspection response) within the department. The Case Officer/Incident Co-ordinator may be required to notify all other relevant role players, as set out in Annexure A below.
- The Classification Officer provides the complainant with an acknowledgement letter to inform him or her of the fact that the Responsible Authority has been identified and a Case Officer/Incident Coordinator has been assigned, and provide the name and contact details of that person.
- In the event that the Classification Officer assigns the matter to an Incident Coordinator, he or she will conduct a site visit to verify the facts given by the complainant and to draft an inspection report. If the findings of the inspection report support the taking of an enforcement action, this will be referred to a case officer for further enforcement procedures.
- In the event that the Classification Officer assigns the matter to a Case Officer, he or she will investigate the matter to determine whether criminal and/or administrative and/or civil mechanisms should be applied.
- If enforcement action is taken, and a directive, notice, court order, or suspended sentence has been issued, the Incident Coordinator must monitor compliance therewith.

4.2.4 External non-compliance incidents (these are incidents that are reported to an authority that does not have the mandate to respond to the incident)

- The Classification Officer of the Receiving Authority determines the relevant Focal Point for the Responsible Authority and refers the case to the Focal Point.
- The Focal Point is responsible for ensuring that a process similar to the one set out in 4.2.1 is followed within their own institution, including the provision of feedback to the complainant.
- The Focal Point will ensure that the acknowledgement letter that is sent to the complainant is also sent to the Classification Officer of the Receiving Authority.

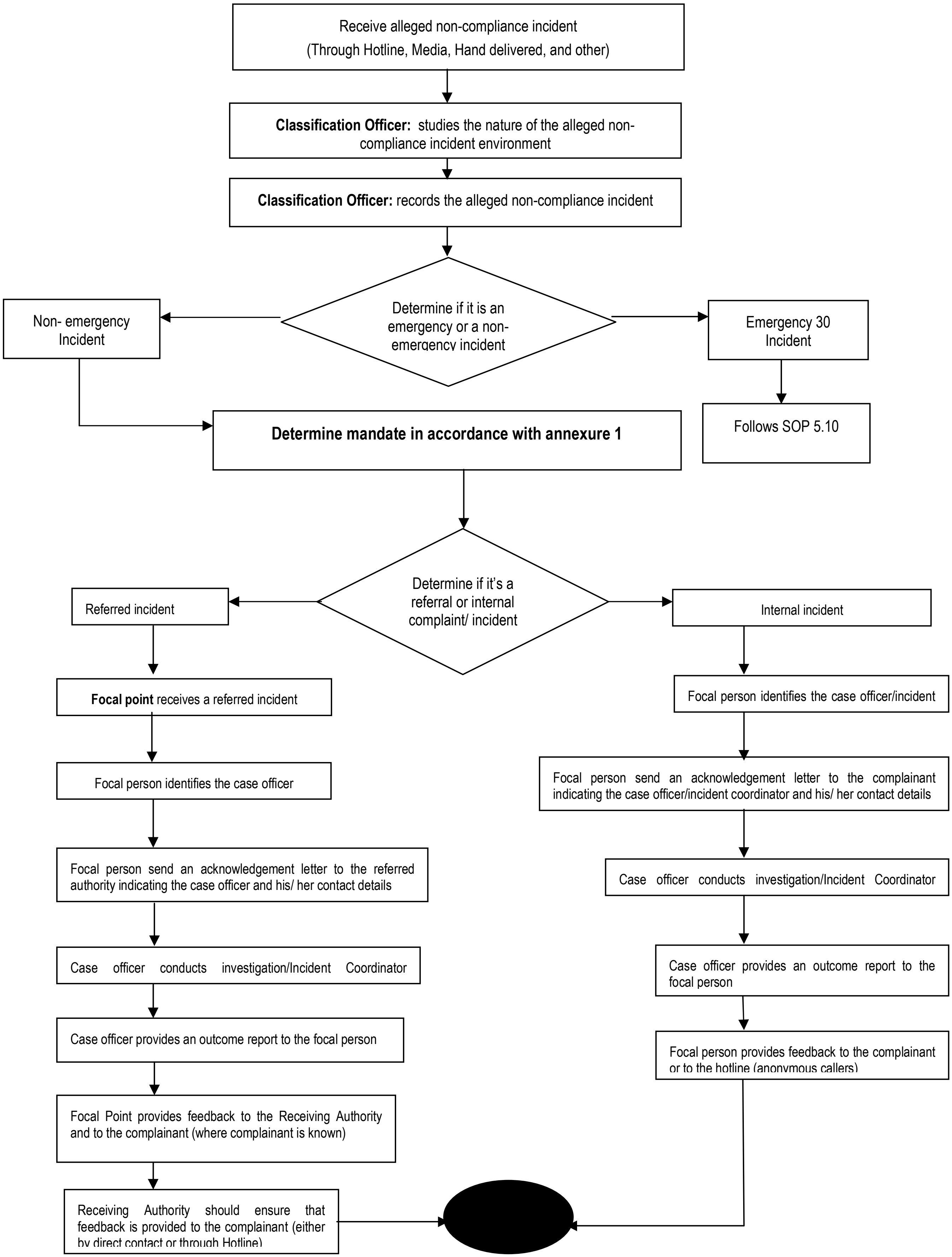
4.2.1 Provision of Feedback to the complainant

4.2.1 The Case Officer/Incident Coordinator should provide reasonable feedback to the complainant on the progress of the case on a regular basis, and at least:

- Every three months, irrespective of the progress made; and
- When any enforcement action is taken against the transgressor; and
- What the final outcome of the matter was.

4.2.2 In a case whereby the complainant is anonymous, feedback should be provided through the hotline

PROCEDURE DIAGRAM



ANNEXURE 1

Criteria For Determining Responsibility For Response To Reports Of Non-Compliance

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
Mining	Dust	*Regulation 63 and 64- Mineral and Petroleum Resources Development Regulations (Government Notice R527 in Government Gazette 26275 of 23 April 2004)	DME (DEA to send officer to assess incident – if necessary)	DEA Affected province Local authority	DME has the primary responsibility for the environmental management at mines. However, DEA and province need to be aware of reports received and referred to DME. This will particularly be the case when the EIA regulations start to apply to mining applications.
		*Part IV of the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965)	DME (DEA to send officer to assess incident – if necessary)	DEA	
		*Section 32 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)	DME (DEA to send officer to assess incident – if necessary)	DEA Affected province	
	Rehabilitation	*Sections 38-47 of the Mineral and Petroleum Resources Development 28 of 2002	DME	-	
		*Section 28 of the National Environmental Management Act, 1998 (Act No. 107 of 1998)	DME jointly with local authority	DEA Affected province	
		*Section 33 of the National Environmental Management: Air Quality Act, 2004 (Act no. 39 of 2004)			

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
	Illegal mining	*Section 5(4) of the Mineral and Petroleum Resources Development Act, 2002 (Act no. 28 of 2002); *Section 48 of the Protected Areas Act, 2003 (Act No. 57 of 2003) EIA regulations (DME is competent authority)			
	Mining authorisation process	*Chapter 4 of the Mineral and Petroleum Resources Development 28 of 2002			
	Noise	*Regulation 66 of the Mineral and Petroleum Resources Development Regulations (Government Notice R527 in Government Gazette 26275 of 23 April 2004) *Noise Control Regulations (GNR154 in GG No.13717 of 10 January 1992) in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) – provinces such as the Free State, Western Cape and Gauteng have adopted their own noise control regulations			

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
		*Section 34 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).			
Water quality, including sewage	Pollution of water resources (acid mine drainage, leachate from waste disposal sites, pollution from industrial processes)	*Sections 19 and 151 of the National Water Act, 1998 (Act No. 36 of 1998); *Regulations on the use of water and mining related activities aimed at the protection of water resources (Government Notice 704 in Government Gazette 20119 of 4 June 1999.)	DWA (DEA and Province send officer to assess incident – if necessary)	DEA DME (in relation to acid mine drainage) Affected province Local authority	DWA has the primary responsibility for water quality issues. However, water quality has broader impacts on the environment, of which both DEA and province need to be aware and to monitor for follow-up with DWA. Note that there may be a section 28 contravention (see below).
		*Section 28 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);	DWA (DEA and Province send officer to assess incident – if necessary)	DEA Affected province Local authority (in relation to water services)	
	Illegal use of water (including impacting on water course or wetland)	Section 4 of the National Water Act, 1998 (Act No. 36 of 1998) Water Services Act EIA regulations (various listed activities)	DWA (Province send officer to assess incident – if necessary)	DEA Affected province	
	Illegal dams (including	Section 22 and 151(1)(a) of the National Water Act,	DWAF	-	

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
	decommissioning of dams)	1998 (Act No. 107 of 1998) EIA regulations (listed activity)			
	Safety of dams	Regulations in terms of section 9C(6) of the Water Act relating to dams with a safety risk (Government Notice R1560 in Government Gazette 10366 of 25 July 1986.) and section 151(1)(k) of the National Water Act 36 of 1998.	DWA jointly with local authority	DEA Affected province	
	Sewage spills	*Sections 19 and 151 of the National Water Act 36 of 1998; Section 78 of the Water Services Act, 1997 (Act No. 108 of 1997). EIA regulations (certain activities related to sewage)			
Marine and coastal issues	Oil spillage	Section 2 of the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981); Chapter 8 of NEMICMA	DEA: Marine and Coastal Management Branch	Affected province	
	Sewage outfalls	Section 69 of NEMICMA	DEA: MCM		
	Maritime ecosystem within coastal zone	Chapter 7 of NEMICMA EIA regulations (certain listed activities)	DEA: MCM DEA: MCM	Affected province	
	Access to coastal	Sections 13 and 59 of NEMICMA	DEA: MCM		

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
	areas				
	Fisheries & fishing rights (quotas)	Section 18 and 13 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).	DFFA	-	
	Mariculture			-	
Biodiversity and Conservation	Alien and Invasive species	Chapter 5 Parts 1 and 2 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);	DEA: Biodiversity and Conservation Branch jointly with DFFA	Affected province	
		Section 5 of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983).	DWA (within declared forest) Affected province (outside declared forests)	DEA	
	Destruction of sensitive ecosystems / indigenous vegetation	National Forest Act National Environmental Biodiversity Act EIA regulations (various listed activities)	DEA	Affected province	
	Canned hunting	National Environmental: Biodiversity Act, 2004 (Act No. 10 of 2004) Threatened or Protected Species Regulations R152 GG 29657 of 23 February 2007	DEA and province (depending on whether national or provincial conservation area)	DEA Affected province	
	Threatened or protected species (trade, relocation, poaching etc.)	Section 57 of the National Environmental: Biodiversity Act, 2004 (Act No. 10 of 2004) Threatened or Protected Species	DEA DEA (national parks) Province	Affected province	

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
		Regulations R152 GG 29657 of 23 February 2007	(provincial parks) Local authority (municipal parks) Management authorities (world heritage sites)		
	Destruction of biomes	Section 52-55 of the National Environmental: Biodiversity Act, 2004 (Act No. 10 of 2004);			
	Nature conservation (declaration of areas, developments, access by public, etc.)	National Environmental Protected Areas Act, 2003 (Act No. 57 of 2003) and Regulations for the proper administration of national parks, world heritage sites and special nature reserves GNR 1060 in GG 28181 of 28 October, 2006; Various provincial nature conservation ordinances and acts.	DEA	Affected province	
	Culling of game (e.g. elephants)	Draft norms and standards for elephant management			
Related to agriculture	Use of pesticides	The Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).	DFFA (DEA send officer to assess incident – if necessary)	DEA Affected province	
	Land erosion (degradation)	Sections 6-8 of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) EIA regulations (certain listed activities that result in this)	DFFA (Province send officer to assess incident – if necessary) DWA jointly with province	Affected province	

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
			Local authority		
	Extraction of peat	National Water Act Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA) EIA regulations	Affected province	DFFA Affected province	
	Smell	Section 35 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);	Affected province	DFFA Local authority	
	Slaughter of animals / concentration of livestock	Animal Diseases Act Meat Safety Act EIA regulations			
	Disposal of organic organs	Sections13,20 of the Animal Health Act, 2002 (Act No. 7 of 2002) Animal Diseases Act Meat Safety Act			
Labour issues	Worker's safety (chemicals, protective clothing)	Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and all relevant regulations promulgated under this Act.	Labour (DEA and Province send officer to assess incident if environmental damage has resulted and if necessary)	DEA Province	DEA and environmental provincial department will only get involved in the investigation if there is a risk to the environment.
	Injuries and loss of life at work place	*Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)			

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
Handling of hazardous substances	Transportation of hazardous materials	*Section 54 of the National Road Traffic Act, 1996 (Act No. 93 of 1996): and *Incorporation of standard specifications into the National Road Traffic Regulations (Published under Government Notice R1249 in Government Gazette 22872 of 30 November 2001) Hazardous Substances Act EIA regulations (certain listed activities)	Department of Transport (DEA and Province send officer to assess incident – if necessary)	DEA and Province	
	Storage of hazardous substances	Hazardous Substances Act EIA regulations (certain listed activities)	Health Province (in circumstances in which EIA is required)	DEA and Province	
EIA authorisations issued by DEA	GMO's	*Section 24C(2) of of the National Environmental Management Act, 1998 (Act No.107 of 1998); *Section 22 of the Environment Conservation Act, 1989 (Act No. 73 of 1989); and EIA Regulations GNR 1182,1183 and 1184 in GG No.18261 of 5 September;	DEA	Province	The principle is that the department issuing an authorisation should take primary responsibility for its compliance monitoring and enforcement.
	Inter-provincial impact				
	Developments undertaken by statutory bodies / state owned enterprises				
	Developments of national priority				
EIA authorisations issued	Residential developments	*Section 24F of the National	Province	-	As above.

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
by province	Mixed land-use development	Environmental Management Act, 1998 (Act No. 107 of 1998); and IEM Regulations GNR385 in GG No.28753 of 21 April 2006;			
	Filling stations				
	Transportation routes and roads				
	Communication infrastructure				
	Sports tracks, playing fields, spectator facilities				
	Runways / airfields / waterways (if state-owned enterprise then DEA to be responsible)				
	Off Road Vehicles				
Air pollution and permits	Dust/particulates, dust, smoke (municipality)	*Part IV of the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965); *Sections 32 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);	Local authority jointly with DEA DEA	Affected province. If also EIA contravention, request to province whether wants to do joint enforcement. Affected province	In anticipation of implementation of AQA. Also in recognition of EIA authorisation that may also be required or contravened.
	Scheduled processes	Part II of the Atmospheric		If also EIA contraventi	

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
		Pollution Prevention Act, 1965 (Act No. 45 of 1965); EIA regulations (certain listed activities)	Local authority	on, request to province whether wants to do joint enforcement. DEA Affected province	
	Listed activities	Sections 21 & 22 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004); (not yet in operation)			
Waste management, permits, licences and NEMA's Section 28	Hazardous waste management, treatment and disposal Medical waste Incinerators Incident of national priority Inter-provincial impact Entities with operations in more that one province Multinational company State-owned entities	Section 28 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989); National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) Various municipal bylaws EIA regulations Waste Tyre Regulations in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989)	DEA jointly with province where an EIA authorisation is required	Affected province(s) Local authority	Contraventions of NEMA's Section 28 falls within the shared jurisdiction in terms of the Constitution.

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
	General waste management, treatment and disposal Disposal of abattoir waste Incident of provincial priority Affects more that one municipality Entities with operations in more than one municipality (s.28) Affect provincial conservation area		Province (jointly with DEA in relation to waste permit)	Affected local authority	
	Illegal dumping – Hazardous and general waste Operation confined to one municipality (s.28) Air pollution (e.g. dust) associated with waste sites Noise pollution associated with waste sites		Local government	Province – may requested to assist in responding to complaint/incident	Local matters should be dealt with by local government, and is important preparation for the EMI roll-out in municipalities.

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
	Public nuisance (e.g. smell)				
The incident is reportable in terms of international agreements e.g. Basel Convention		For example: CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora; Ramsar Convention Convention on Wetlands of Inter-national Importance espe-cially as Waterfowl Habitat; CBD Convention on Biological Diversity; Bonn Convention (CMS) Convention on the Conservation of Migratory Species of Wild Animals; World Heritage Convention Convention concerning the protection of the world cultural and natural heritage; UNFCCC United Nations Framework Convention on Climate Change;	DEA	- Province DWA	Some provinces have done substantial work in relation to this convention

Complaint / Incident	Nature of complaint / Incident and or media affected	Legal mandate	Primarily responsibility to respond to complaint / incident and to co-ordinate investigation	Notice to	Comment
		Basel Convention Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; Rotterdam (PIC) Convention on Prior Informed Consent; Stockholm Convention on POPs Persistent Organic Pollutants; Montreal Protocol Protocol for the Protection of the Ozone Layer; Antarctic Treaty; UNCLOS United Nations Law of the Sea Convention; CCAMLR Convention on the Conservation of Antarctic Marine Living Resources; ICRW International Convention for the Regulation of Whaling;			

ANNEXURE 2

Schedule 4 of the Constitution sets out those functional areas of concurrent national and provincial legislative competence while schedule 5 deals with functional areas which are of exclusive provincial competence. Part B of both these schedules lists matters that fall within the responsibility of local government.

Schedule 4: (concurrent national and provincial competence)

Part A:

- Administration of indigenous forests
- Agriculture
- Environment
- Nature Conservation (excluding national parks, national botanical gardens and marine resources)
- Pollution Control
- Soil conservation

Part B: (local authority matters)

- Air pollution
- Stormwater management systems in built up areas

Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems

Schedule 5 (exclusive provincial competence)

Part A:

- Abattoirs

Part B (local authority matters):

- Cleansing
- Control of public nuisances
- Noise pollution
- Municipal abattoirs
- Refuse removal, refuse dumps and solid waste disposal

ENTERING A FACILITY ON A ROUTINE INSPECTION

1 OBJECTIVE

To facilitate the entry of EMIs, including their equipment and/or vehicles, to an inspection site for a routine inspection. This SOP applies to all routine inspections.

2 PROCEDURE

2.1 Decide on the number of people you need for the inspection.

2.2 Contact the facility in advance to arrange for the inspection (unless this may compromise the inspection) and obtain the following important information and arrangements:

- Obtain the normal operating hours of the facility
- Get the names and contact details for key management representatives for the facility
- Find out what safety and personal protective equipment (PPE) requirements are at the site
- Be informed about entry procedures and requirements, for example safety inductions and vehicle safety/security restrictions.
- Arrange a date and time that is mutually convenient to the EMI and the facility
- Arrange to be met at the entrance if it is necessary
- Arrange to have someone escort you around the site
- You may inform the facility representative if the type of equipment you will bring onsite to prevent security delays.

2.3 Note that an EMI has the lawful mandate to enter the premises at any reasonable hour, and therefore these requirements and constraints may not be used as a reason to deny entry!

2.4 Arrival At The Site

2.4.1 As you approach the site:

- Observe the surrounding environment and the site:
  - Observe the topographical slope of the site
  - Are there any water courses close to the site or site boundary
  - Is there visible effluent or water discharge from the site
  - Are there visible emissions particulate or gaseous emissions from the site
  - Is there visible windblown litter from the site
  - Is there any visible waste disposal that may be associated with the site
  - Is noise from the site audible
  - Is the site close to residential areas that may be affected by atmospheric emissions, dust, noise or odours from the site.
- Observe activities that are noticeable from the outside of the site
- Take note of any issues of potential significance that you have observed while approaching the site. Use these notes to inform or update your inspection plan.
- If you have noted something of immediate concern in so far as it concerns either non-compliance with your mandated legislation or a potentially significant adverse effect on the environment which may be ceased or hidden before you have completed the facility's entrance procedures and the opening meeting, then you may have to postpone the opening meeting and site induction in order to gather evidence related to your observations.

2.5 Entering The Site

2.5.1 Ensure that you have the following documents when entering an inspection site:

- Your EMI Card
- Your letter of designation

2.5.2 Ensure that you have the correct PPE, and as a minimum on industrial sites ensure that you have:

- Shoes with reinforced toe caps (commonly referred to as safety shoes)
- Ear plugs
- Clear safety goggles
- Basic dust mask
- A helmet
- A reflective vest
- Do not wear loose fitting clothing that may be caught in machinery

2.5.3 Ensure that you have the contact details of the facility's management representative that you have made arrangements with.

2.5.4 Contact the representative immediately; this may save you a lot of time when clearing through security.

2.5.5 If required, present your EMI card and/or letter of designation to security or the receiving person and explain the reason for your visit.

2.5.6 You may be required to declare all your equipment to security. This is a standard procedure at many facilities. Ensure that you keep the declaration record to prevent delays when exiting the site with your equipment.

2.5.7 Note that you may need to attend a health and safety and induction. It is important to understand the potential health and safety risks as well as emergency procedures at the inspection site.

2.6 Opening Meeting

2.6.1 The opening meeting is required to outline the scope of the inspection and related activities. You must commence with an opening meeting as soon as it is practically possible once you are on the site.

2.6.2 The meeting should be formal, chaired by the inspection team leader and records of attendance must be kept.

2.6.3 During the opening meeting you must:

- Formally introduce the inspection team and have the site/facility's representatives introduce themselves.
- Formulate an attendance register and take minutes for a written record or summary of the items discussed and agreed during the meeting.
- Explain the legal mandate for conducting the inspection
- Confirm matters relating to confidentiality in terms of commercially sensitive/ proprietary information
- Explain the aim of the inspection and the roles of each team member
- Identify the person(s) from management of the site responsible for arrangements and for the EMI's safety on the site, and confirm relevant work safety, emergency and security procedures for the inspection team;
- Clarify communication channels – who does the EMI need to speak to and how does the EMI contact them? Make a note of contact details such as cell phone number and email address.
- Inform the management that you will use the following means of documenting the inspection and findings:
  - o By taking photographs.
  - o By requesting photocopies of important documents and records.
  - o By interviewing people on the site and recording these discussions in writing or electronic recording such as by dictaphone or camera.
- If it is necessary, confirm the language that he/she intends using to communicate with during the inspection.
- Ask the management to describe the activities that are undertaken at the site and to provide a site plan/description. If a site plan is not provided then sketch one with their help.
- Request documents and records that you have identified as necessary for your inspection

2.7 Denial Of Entry

2.7.1 An EMI has the lawful mandate to enter the premises at any reasonable hour to conduct an inspection. In the event that you are denied entry first ensure that you have taken all reasonable steps to obtain access to the site for your inspection by checking through the 'denial of entry checklist and test' below.

2.7.2 If entry has been denied then refer to your supervisor for further instructions.

Denial of Entry -When Have You Been Denied Entry?

When a facility's representative informs you that you are denied entry it is an obvious denial. However, sometimes that denial is implied and not explicitly stated, and the EMI should ensure that he/she acted reasonably before drawing a conclusion:

Denial of Entry Checklist

1. Did you identify yourself (by showing your EMI ID card) to a person-in-charge?
2. Did you explain the legal basis for your inspection?
3. Did you explain the scope of your inspection?
4. Did you visit the facility at a reasonable hour? (i.e. regular business hours, operating hours, or hours when the issues of compliance are best observed?)
5. Did you enter through the main gate or office?
6. Did you locate the person-in-charge as soon as you arrived?
7. If applicable, did you present the necessary written notices?

Once you have satisfied these first seven requirements in a patient, professional, and friendly attitude, document accordingly in your inspection logbook/notes. Should all the above-mentioned requirements have been met and the inspection effort is still frustrated, consider the Denial of Entry Test and record the basis upon which denial is assumed.

Denial of Entry Test

1. **Refusal upon entry** - Were you denied consent upon entry? ((In this context, consent can be defined as the intentional relinquishing of the right of privacy that has not resulted from fear, ignorance, or trickery).
2. **Unreasonable delays** - Were unreasonable delays required by the person-in-charge? What the EMI considers unreason-able must be communicated to the person-in-charge prior to starting the clock. (e.g. "I have been waiting 30 minutes. My time is limited and at most I can wait another half hour. If I can not begin by then, I will have to consider that I have been denied entry to conduct the inspection.")
3. **Obstruction** - Were conditions, which were clearly understood in the opening meeting or prior arrangements, altered by the facility or person-in-charge, to the extent that it compromised your ability to conduct, document or complete your inspection?
4. **Safety threats** - Was your safety deliberately threatened in any way? That includes verbal threats or suggestions that harm might come to you that is not accidental (refusing to secure a guard dog is an example of entry denial by not removing a threat to your personal safety.) Failure to shut down a routine plant operation is not denial, even if the operation makes conducting the inspection difficult.

If you are aggressively rejected, try one last time cautiously. Never allow facility behaviour to prevent you from being fair and always hold the higher moral ground. You may always maintain your poise by leaving and seeking legal authority to regain control.

HOT TIPS

LANGUAGE OPENS DOORS!

We have the privilege of living in a country with 11 official languages, but few of us will be able to speak more than two or three of these. When going to a site, the security personnel are likely to speak the "local" language as a home language, so try and include an EMI on the team who can speak this local tongue. Otherwise, knowing just the basic greetings will show you are taking effort and improve your access experience.

HAVE SAFETY FIRST` AS YOUR MOTTO:

- ensure that you have a proper site induction and listen carefully if there is a safety video
- remember - wearing PPE will not automatically make you safe
- always evaluate your environment for hazards, reading signs and proceeding cautiously.

USE YOUR COMMON SENSE!

Every site has its hazards, from tripping over rocks in the veld, to corrosive acids at an industrial site. There is no substitute for good, plain common sense when approaching a new situation. Read the warning signs around you, look at the area and if you feel uncomfortable or at risk, then rather come back again later with someone who is familiar with such situations.

GATHERING OF EVIDENCE DURING AN INSPECTION

1 OBJECTIVE

The purpose of this document is to provide a procedure to facilitate the gathering, handling and securing of evidence during a routine inspection, with a view to obtaining and maintaining evidence which is relevant and defensible.

2 DEFINITIONS

Chain of custody: “Chain of custody" refers to the documentation or paper trail showing the sequential transfer of custody of documents, samples, photographs et cetera.
Evidence: Evidence consists of all information obtained in an inspection as a means of ascertaining the compliance status of a facility.
Transient Evidence: Evidence that might be expected to degrade or disappear within a short time frame for example pools of liquid from a spill, volatile liquids, or articles that are on fire.

3 LEGAL BACKGROUND

In terms of section 31K(5) of NEMA an EMI may, while carrying out a routine inspection, seize anything in or on any, including but not limited to, business or residential premises, land, vehicle, vessel, aircraft, pack-animal, container, bag, box or item that may be used as evidence in the prosecution of any person for an offence in terms of NEMA or any of the SEMAs. Note that this power is therefore triggered when there is a reasonable suspicion that a criminal offence has been committed, and that in such a case the EMI may seize “anything” that can be used as evidence in such a prosecution. In this regard therefore refer to the relevant parts of SOP 6.2 dealing with search and seizure and to SOP 5.3 on the issuing of the notification card.

In addition, in terms of section 31K(7), an EMI may during such an inspection, exercise all the powers mentioned in section 31H. Note that in this instance the powers are not linked to a suspected criminal offence, but are general powers of the EMI during any inspection. Section 31H provides that:

Where there is a reasonable suspicion that an act or omission constituted -

- an offence in terms of NEMA or the SEMAs (including regulations promulgated under it);
- a breach of such law; or
- a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;

  an EMI may:

  - question a person in connection with such an act or omission;
  - issue a written notice to a person who refuses to answer such questions, requiring that person to answer questions put to him or her (this is further described in section 31H(2) and (3));
  - inspect, or question a person about, any document, book or record or any written or electronic information which may be relevant for that purpose;
  - copy, or make extracts from, any such document, book or record or any written or electronic information, or remove such document, book, record or written or electronic information in order to make copies or extracts;
  - require a person to produce or deliver to a place specified by the inspector, any such document, book or record or any written or electronic information for inspection;
  - inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on a reasonable suspicion, may have been used in such an act or omission.

In addition an EMI may inspect, or question a person about, any document, book or record or any written or electronic information to which NEMA or a SEMA relates (in this particular case not limited to the designation of the EMI), and may then:

- copy, or make extracts from, any such document, book or record or any written or electronic information, or remove such document, book, record or written or electronic information in order to make copies or extracts;
- require a person to produce or deliver to a place specified by the inspector, any such document, book or record or any written or electronic information;

An EMI may also:

- take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection;
- dig or bore into the soil;
- take samples;
- remove any waste or other matter deposited or discharged in contravention of the relevant law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or
- carry out any other prescribed duty not inconsistent NEMA or any other duty that may be prescribed in terms of a SEMA.

All of the above powers must of course be executed within the mandate and according to the designation of the EMI.

4 PROCEDURE

4.1 Planning and Preparation

It is assumed that while planning your inspection you will:

4.1.1 Identify the relevant compliance criteria for the facility being inspected and that you have:

- Determined the nature and scope of the facilities activities.
- Obtained all relevant environmental authorisations issued to the facility and made an inventory of the conditions thereto.
- Determined what records the facility is required to maintain onsite and/or submit to authorities.
- Obtained copies of all relevant documents and reports that have been submitted the regulating authorities.

4.1.2 Produce an inspection plan which includes:

- A list of documents/records that should be available onsite that will be relevant to the inspection.
- A list of relevant criteria for the inspection which includes but is not necessarily limited to:
  - Conditions of EAs and/or licences that the site must adhere to.
  - Legislated requirements relevant to the facilities activities
- A site-specific health and safety plan.
- A list of the members of the inspection team
- Identification of the nature of samples which may reasonably be expected to form part of the evidence collected (e.g. hazardous waste, ground water samples, etc)
- A sampling plan with a list of sampling equipment required based on the above, your sampling plan must include as a minimum:
  - Equipment required for extraction of samples
  - Sample containers suited to the expected samples
  - A list of sampling documentation: Sample labels, chain of custody forms, sample log book (unless logged in the inspection book)
  - Appropriate sample seals
  - Sample preservation equipment
  - PPE required for sampling and handling of samples
- Samplings equipment must be cleaned/sterilised and calibrated (where necessary) before going to the scene

- A list of equipment required for documenting evidence (such as cameras, dictaphones/voice recorders, etc)
- Chain of custody forms
- Prepare for interviewing facility representatives – draft a list of matters to be covered during such an interview

4.2 Arrival at the facility

4.2.1 Upon arriving at the facility it may become evident that a transgression has occurred or is in progress, and which may require your immediate attention. This is particularly relevant in cases where evidence is transient or where the transgression may be quickly stopped and/hidden. In such a situation the EMI must postpone the opening meeting and proceed directly to the area of concern and commence with the inspection and evidence gathering.

4.2.2 Should you be denied entry to the facility be sure to document this as per SOP 5.1: Entering a Facility on a Routine Inspection.

4.3 Opening Meeting

4.3.1 An attendance register for the opening meeting must be filled and signed by all attendees

4.3.2 A summary of the opening meeting discussions and agreements must be recorded.

4.3.3 A list of all documents requested and all documents received must be logged

4.3.4 Any information relevant to the inspection obtained during the interview through discussions or interviews must be recorded. This information must be supported with documents and records wherever possible.

4.4 Interviewing Facility Representatives

4.4.1 Use an office or venue that is free from disturbances;

4.4.2 Put your cell-phone off or on silent mode;

4.4.3 Ensure that at least one of your colleagues is present;

4.4.4 Introduce yourself and likewise allow the interviewee to introduce himself/herself:

4.4.5 Ensure that you document:

- the name of the interviewee
- the person's area of responsibility and any further relevant information required to identity of the interviewee.
- Time, date and place of interview;

4.4.6 Explain the purpose of the interview;

4.4.7 Explain your powers in terms of section 31H, read with section 31K(7), to the interviewee in simple terms;

4.4.8 Provide the interviewee the opportunity to read the relevant provisions of the legislation if he/she wishes to do so;

4.4.9 Try to create an atmosphere in which will make the interviewee comfortable and encouraged to share information;

4.4.10 Proceed logically and in line with your preparation;

4.4.11 Be methodical and precise;

4.4.12 Be courteous yet firm and in control of the process;

4.4.13 Record all information substantially and accurately;

4.4.14 Ensure that all aspects have been covered before ending the interview.

4.4.15 For general guidelines on effective interviewing techniques, refer to SOP 6.3: Interviewing of Witnesses and Suspects.

4.5 Questioning on possible non-compliance

4.5.1 Exercise extreme caution before using your powers in terms of section 31H(1)(b), read with section 31H(2) and (3), which empowers the EMI to issue a notice obliging a person to answer questions about an offence or other non-compliance, even though such answers might incriminate the person. Such answers may not be used against that person in subsequent criminal proceedings, and in that way protects the person's right against self-incrimination. In practice however the answers might lead you to other documentary or real evidence. In such a case there is a real danger that a court might find that evidence uncovered because of self-incriminating answers, will also be inadmissible in court.

4.5.2 Try and avoid using this procedure where there is any possibility that the person might be criminally prosecuted, and before utilising these powers in such a situation, ensure that there is no alternative method (such as a proper search) to obtain the same result. The procedure is however ideal if you are questioning low level employees, who while possibly incriminating themselves through the answers, might provide you with evidence against high-level employees. Prosecutors will often then use section 204 of the CPA and use the low-level employee as a witness against the high level employee, rather than charging the low-level employee.

4.6 Copying and Reviewing of Documents and Electronic Information

4.6.1 Documents, books, records, and any written or electronic information may be inspected and copied, or may be removed to be copied, as is set out above in the legal background. This may be done where such items:

- may be relevant in connection with any act or omission in respect of which there is a reasonable suspicion that it might constitute an offence; or
- any such item to which NEMA or the SEMAs (including regulations promulgated under it), relates

4.6.2 Provide a receipt for any such item that is removed.

4.6.3 Return the article within a reasonable period, or where necessary to be retained for court purposes, on conclusion of the case unless of course such item was forfeited to the state by the court.

4.6.4 Make printouts of relevant documents from computers.

4.6.5 If there is however a strong possibility that the electronic evidence may be required for court purposes later, all computers, hard drives or similar devices must be handled as other seized evidence, sealed and marked and handed to an expert to retrieve documents and other information.

4.7 Photographing Evidence

The purpose of a photograph is to produce an accurate visual depiction of articles, events and patterns at the inspection, and more specifically at the site of non-compliance. This can later be used as evidence in court. The prescriptions here are therefore identical to how a crime scene will be managed, as there is the possibility that such a matter might land up in court.

4.7.1 Preparation

- Ensure that the batteries are adequately charged.
- If disposable batteries are used, ensure that you have sufficient spare batteries
- Ensure that the memory card in your camera has had all previous photos downloaded and removed before going to the site.
- Ensure that the memory card you are using is of sufficient capacity to allow you to take as many photos as you require.
- Ensure that your camera is set to record a date stamp on each photo.
- Ensure that your camera's date and time settings are accurate.
- Ensure that our camera's flash is working and adequate for taking pictures in low light conditions
- Take markers (e.g. traffic cones or differently coloured small flags) with you

4.7.2 Photographic technique

- Document what you are photographing in your pocketbook.
- Ensure that a progression of overall, medium and close-up views of the scene and evidence is established.
  - Take an initial overview shot(s) show a wide area that includes the subject and a fixed landmark to establish location and help the viewer understand where the subject is located. The overview shot(s) should cover the entire scene to bring out the relationships between objects and their location on the site.
  - Mark all the evidence/locations where evidence was found with clear distinguishable markers (e.g traffic cones or marked flags) so that the position of all exhibits can be seen in relation to the rest of the scene, and take another overview shot(s).
  - Take a subject shot (or mid range shot) that shows the important object(s) and its immediate surroundings or the special area of an event that the photographer wants to bring to the attention of the viewer.
  - The close-up shot shows unique details of the object or event that makes it unique and identifiable, such as close-up photographs of evidence uncovered.
- Take photographs from eye-level, when feasible, to represent a scene as it would be observed by normal view.
- Use a recognisable and relevant scale device to indicate size when applicable, (e.g. a coin or a ruler) this will give the viewer a reference to understand the size of the photographed object.
- When a scale device is used, first take a photograph without the inclusion of this device, to show that nothing of importance is covered by the device.
- Be observant of and photograph areas adjacent to the crime scene - points of entry, exits, windows, attics, etc. This might become relevant at a later stage.
- Where aerial photography is undertaken be aware that the angle of the camera and curvature of the earth may require the photograph to be geo-referenced before it can be used to measure items.

4.7.3 Securing photographic evidence

- All the photographs must be downloaded from the camera as soon as is practically possible.
- Do not alter photographs in any way.
- Save the originals in a non-editable format.
- All the photographs must be written to at least two non-editable mediums, such as a non rewritable recordable CD.
- One copy must be sealed in an evidence bag and the second copy can be used for investigative purposes.
- The CD in the evidence bag must be labelled in accordance with the requirements for chain of custody, handed into the SAP 13 and kept accordingly.
- Where it might be helpful to alter photo's to improve quality or enlarge a part of the photograph (e.g. zoom, contrast, brightness), this must be done using a copy, and the original photographs must always be available for comparison and corroboration.
- The EMI responsible for photographing and/or videotaping the scene must provide an affidavit on oath reflecting the fact that he/she photographed and/or videotaped the scene, and downloaded and safeguarded the evidence as set out above.

4.7.4 <u>Compile a photo album</u>

- Show the scene as it was first observed by the EMI
- Follow that with the photograph of the overview of the scene
- Thereafter, the photographs can follow the sequence of the discovery of the objects
- The final photographs should again be those taken from a distance, to show the numbered stakes or beacons in relation to each other;
- Fix only one photograph per page in order that they can be easily referred to and shown individually in court;

- Head the photographs with numbers only: Photograph No. 1 and consecutive numbers thereafter
- No other annotations referring to objects in the photograph may be made on the page - this allows the photograph to be used in court without any “hints” being present to suggest what appears in the photograph
- The cover of the photograph album should be headed: Photograph Album No. 1 and reflect the date, time and place where the photograph album was compiled, and the name and signature of the person who compiled the album;
- The key to the photograph album should be headed: Key to Photograph Album No. 1.
- This is followed by a list of the photographs in numerical order, with a brief description of what appears in each photograph. The date, time and place of the crime scene visit are then reflected at the end of the key, followed by the name and signature of the person who compiled the key.

HINT

Photography is a skill. Get in touch with your local SAPS Criminal Record Centre that has trained and skilled photographers, and they can assist you in this regard.

4.8 Sampling as Evidence

4.8.1 Samples should be taken when:

- Analysis is required to determine the composition of a substance
- Analysis is required to confirm the composition of a substance when there is a suspicion that the integrity of existing data is questionable
- Data is needed to document an event, discharge or release;

4.8.2 Taking a representative sample

- Representative sampling ensures that a sample or group of samples accurately reflects the concentration of the contaminant(s), or characteristics of substances of concern, at a given time and location.
- Obtaining representative samples for transient evidence requires that you apply basic logic:
  - A visual assessment of the area and items to be sampled will often indicate where the substance of concern is at its purest.
  - Avoid, if it is possible, samples that have been mixed or contaminated
  - If it is practical, take at least three samples.
  - Ensure that the samples have been documented adequately
- Non-transient samples allow for more time and effort to be spent in determining suitable sample positions, sample technique and number of samples required:
  - Visually assess the area of interest to determine the extent of contaminated area
  - Where there is contamination over a wide area a sampling plan must be set out determining how many samples must be taken and in which positions
  - Avoid, if it is possible, samples that have been mixed or contaminated
  - Ensure that the samples have been documented adequately
- All samples must be sealed and labelled immediately

4.8.3 Sampling Equipment

- Ensure that your sampling equipment is clean (and if possible sterilised for biological samples)
- To prevent contamination across samples the following precautions must be taken:
  - Sampling equipment must be cleaned after each sample is taken
  - Disposable equipment and equipment which cannot be thoroughly cleaned (for example gloves) must be attached to their respective samples to show that they have been re-used and thus potentially caused cross contamination

4.8.4 Documenting Samples

- Every sample must be labelled for unique identification
- The following information must be documented:
  - Inspection code
  - Sample Number or code (as designated in the sampling plan).
  - Sample location
  - Date & Time of sampling
  - Sample type (i.e. composite, grab sample etc)
  - Field sampler's name & signature
  - Field sample custodian's name and signature
  - Sample preservation Requirements
  - Types of analyses to be performed
- It may be impractical to document all of this information on the sample label, however the sample label as a minimum have a sample code, date and time sampling, and a the inspection code.
- The area being sampled must be sketched out
- The location each sample must be captured both in writing (i.e. narrative) and on a sketch of the site
- The sampling procedure must be photographed (refer to photographic technique above)
- Every sample must be captured on a chain of custody form

4.9 Handling and Chain of Custody

4.9.1 Evidence handling

- Refer to SOP 6:2 Search and Seizure for the procedure on the handling of seized items.
- All samples that require preservation must be subjected to the required conditions of preservation as soon as is practically possible
- Chain of custody must be established for all samples and evidence
- All evidence and samples must remain in the custody of a designated person(s) throughout the period on the crime scene and during transfer to the evidence locker.

4.9.2 Establishing chain of custody

- The person, or designated person in a group, must record the information for each article of evidence on its respective chain of custody form, including the date and time.
- Every transfer of custody must be recorded and signed by both the relenting and receiving parties. The time and date must be accurately captured.
- Any article of evidence which is not in the immediate possession of the custodian must be in a secured place to which access is controlled and recorded.
- Instructions for sample preservation must be handed over when custody is transferred.

ISSUING OF NOTIFICATION CARD

1 OBJECTIVE

The purpose of this SOP is to establish a procedure to be followed by an EMI conducting a compliance monitoring activity and encountering circumstances that trigger a reasonable suspicion of a criminal offence in terms of NEMA OR A SEMA. The SOP aims to ensure that evidence gathered in such a situation is legally obtained and admissible in subsequent criminal proceedings.

2 BACKGROUND

The function of an Environmental Management Inspector (EMI) is to monitor compliance with; and enforce legislation within his or her mandate. Generally speaking, environment officials responsible for compliance monitoring focus on routine inspections and ascertaining compliance or non-compliance with legislation or permits, whereas officials responsible for enforcement only enter the picture when there is a reasonable suspicion of non-compliance amounting to a criminal offence.

<u>Grades of Environmental Management Inspectors</u>

Annexure A of the EMI Regulations provides for five grades of EMIs, each with their own set of powers in terms of NEMA and the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (CPA). The purpose of the ranking system was to tailor-make EMI powers to suit various job descriptions, responsibility and seniority.

Grade 4 EMIs are typically officials that are primarily involved in conducting compliance monitoring activities; and have therefore been given access to powers (e.g. section 31K – Routine Inspection) to enable them to carry out their duties effectively. However, NEMA further provides that Grade 4 EMIs may also exercise general powers set out in section 31H of NEMA on business, residential premises or land. Many of the powers included in section 31H of NEMA are “investigation” type powers that are triggered by a reasonable suspicion. NEMA therefore accords grade 4 EMIs certain evidence-gathering powers for the purposes of an investigation.

<u>Inspectors v Investigators</u>

The EMI Regulations provide for the designation of Grades 1, 2 and 3 EMIs who have powers that are suited to conducting criminal investigations. These grades of EMIs should possess skills necessary to gather evidence required for the purposes of an investigation e.g. search, seizure, arrest etc.

Due to the different skills, powers, procedures and objectives that are triggered by investigations and inspections, it is ideal to have two distinct components that deal with each type of activity separately. However, not all EMI institutions have the necessary staff, structure or resources to provide for this level of specialization and EMIs may find themselves fulfilling both functions.

3 PROCEDURE

3.1 In the event that a Grade 4 EMI who is conducting a compliance monitoring activity (e.g. a routine inspection) encounters circumstances in which he/she develops a reasonable suspicion of a criminal offence in terms of NEMA or SEMA, and is of the opinion that evidence exists that may be used in a criminal investigation, the following procedure will apply:

3.1.1 If the Grade 4 EMI works for an EMI Institution where there are designated Grade 1, 2 or 3 EMIs that are readily available to attend the relevant site, then the Grade 4 EMI shall:

- cease the inspection of the particular building, facility, land, area or article to which the reasonable suspicion relates;
- inform an appropriate representative of the facility that they cannot proceed with the inspection of the particular building, facility, land, area or article as they have developed a reasonable suspicion of an offence in terms of NEMA/SEMA; and will be calling a colleague who will proceed with an investigation;
- request as soon as reasonably possible a Grade 1, 2 or 3 EMI to attend the scene and proceed with the investigation process;
- take all reasonable measures to preserve the site until the arrival of the Grade 1, 2 or 3 EMI.

3.1.2 If the Grade 4 EMI works for an EMI Institution where there are designated Grade 1, 2 or 3 EMIs, but they are not available to attend the relevant site, the Grade 4 EMI may request the reasonable assistance of a Grade 1, 2 or 3 EMI from another EMI Institution that has the necessary jurisdiction, to assist in the investigation of the scene;

3.1.3 If the Grade 4 EMI:

- undertakes the procedure set out in 3.1.1 or 3.1.2 above and cannot obtain assistance after a reasonable effort to do so, or
- where there are no Grade 1, 2 or 3 EMIs designated in his/her institution, or
- where the Grade 4 EMI reasonably suspects that the delay caused by requesting assistance may cause evidence to be destroyed or lost, or
- where the evidence gathered will be used for administrative enforcement purposes only;

the Grade 4 EMI may proceed to gather evidence for the purposes of investigation by exercising the relevant “investigation” type powers referred to in section 31H.

3.1.4 In this event, the Grade 4 EMI shall, upon formulation of a reasonable suspicion of a criminal offence in terms of NEMA/SEMA, hand to a suitably authorised representative of the facility a Notification Card as per Annexure 1 of the SOP.

ANNEXURE 1

EMI Notification Card

Notice Of Reasonable Suspicion Of Suspected Non-Compliance Amounting To A Criminal Offence In Terms Of NEMA/SEMA

1. I am an Environmental Management Inspector currently undertaking an inspection of your facility. The purpose of this inspection is to assess compliance and non-compliance with environmental legislation within my mandate.

2. You are herby notified that in the performance of my duties, I have developed a reasonable suspicion that there exists non-compliance with the legislation which I am mandated to enforce. Such non-compliance amounts to a criminal offence in terms of NEMA and/or a SEMA.

3. All my actions from this point onward will be for the purposes of an investigation. I am therefore mandated to apply my aforesaid powers in the furtherance of an investigation, and you are furthermore notified that any items seized, any photographs or any samples taken, and any other evidence gathered form this point on may subsequently be used in a possible criminal investigation.

PROCEDURE FOR INSPECTION OF GENERAL LANDFILL SITES

1 OBJECTIVE

The purpose of this document is to provide a procedure to determine and report on the extent of compliance or non-compliance of a general landfill site with an EA issued in the terms of NEMA, or a Record of Decision issued in terms of the ECA, a waste licence issued in terms of NEMWA and the duty to care in terms of NEMA. This SOP is applicable to inspections of landfill operations. Compliance will be determined by way of interviews, document and records review and physical inspection of the site. Waste and water sampling may also be required.

2 DEFINITIONS

From the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008):

General Waste means waste that does not pose an immediate hazard or threat to health of to the environment, and includes –

- domestic waste;
- building and demolition waste;
- business waste; and
- inert waste;" [NEMWA]

Hazardous Waste means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment; [NEMWA]

Leachate: Landfill leachate is liquid that moves through or drains from a landfill. This liquid may either exist already in the landfill from waste disposed, or it may be created after rainwater mixes with the waste. Modern landfills are often designed to prevent liquid from leaching out and entering the environment; however, if not properly managed, the leachate is at risk of polluting groundwater, or discharging down slope of the site.

Waste means any substance, whether or not that substance can be reduced, re-used, recycled and recovered –

- that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- which the generator has no further use of for the purposes of production;
- that must be treated or disposed of; or
- that is identified as a waste by the Minister by notice in the Gazette, and includes waste generated by the mining, medical or other sector, but –
  - a by-product is not considered waste; and
  - any portion of waste, once re-used, recycled and recovered, ceases to be waste;" [NEMWA]

Waste Disposal Facility means any site or premises used for the accumulation of waste with the purpose of disposing of that waste at that site or on that premises; [NEMWA]

3 PROCEDURE

3.1 Planning and Preparation

3.1.1 Obtain the waste disposal site's licence (licence in terms of ECA or NEMWA) and the EA from the regulating authority, or request it from the site. Note that for licences issued under NEMWA, an environmental authorisation will not have been required.

3.1.2 A desktop assessment must be undertaken of the waste disposal site licence and the EA as well as any information available on the site to:

- Determine the nature and cope of the authorised/licenced activities for the site.
- Determine the conditions stipulated in the EA and the licence
- Determine what records the site is required to maintain onsite and/or submit to authorities.

3.1.3 Produce an inspection list which includes:

- All documents that must be made available onsite for the inspection.
- All conditions of authorisation or licence that must be inspected against.
- A pre-inspection meeting/telephone conference with the site management should then be arranged to confirm:
  - the scope of the inspection,
  - the inspection criteria,
  - the date, venue and duration of the inspection
  - an indication of the composition of the inspection team
  - a tentative inspection schedule indicating areas to be visited and timeframes
  - co-ordination of activities with operations and staff availability, and
  - to understand the processes on site and the extent of the PPE required, the availability of PPE and any relevant safety induction procedures.

3.1.4 An inspection plan must be developed based on the pre-inspection meeting and/or discussions. The plan must include:

- A site-specific health and safety plan.
- An updated inspection list that details the inspection criteria
- A list of the members of the inspection team
- A list of sampling equipment required
- A list of equipment required for documenting the inspection (such as digital cameras, log book, dictaphones, GPS etc)
- Legislation relevant to the inspection which may need to be referenced while conducting the inspection

3.2 Arrival at Site

3.2.1 Refer to SOP 5.1: Entering a Facility on a Routine Inspection.

3.3 Opening Meeting

3.3.1 Convene an introductory/opening meeting during which the EMI must:

- Formally introduce the inspection team and have the facility's representatives introduce themselves.
- Formulate an attendance register and take minutes for a written record or summary of the items discussed and agreed during the meeting.
- Explain the legal mandate for conducting the inspection
- Explain the aim of the inspection and the roles of each team member
- Identify the person(s) from management of the facilityresponsible for arrangements and for the EMI's safety on the site
- Clarify communication channels – who does the EMI need to speak to and how does the EMI contact them? Make a note of contact details such as cell phone number and email address.
- Inform the facility management that you will use the following means of documenting the inspection and findings:
  - By taking photographs.
  - By requesting photocopies of important documents and records.
  - By interviewing people on the site and recording these discussions in writing or electronic recording such as by dictaphone or camera.
  - If it is necessary, confirm the language that he/she intends using to communicate with during the inspection.
  - Ask the management to describe the activities that are undertaken at the site and to provide a site plan/description. If a site plan is not provided then sketch one with their help.
- The EMI must request the following documents and records:
  - A site plan
  - The waste licence for the site
  - The ROD or EA if the site commenced before NEMWA
  - internal and external audit reports

- operational plan, including any EMP
- emergency incidents plan and incident reports (e.g. fire, spills)
- monitoring committee minutes (if there is a mentoring committee
- register of complaints
- monitoring data or reports, including surface water, groundwater, air, dust, odours and noise
- The access register, which should ideally contain names, dates, registration numbers vehicles entering the site.
- the disposal register which should ideally contain: waste loads, mass delivered, waste descriptions, interception/rejection of unpermitted wastes.

3.3.2 Peruse through the documents provided and update your inspection list to ensure that you have covered all the conditions that must be inspected.

3.4 Document Review

3.4.1 It is advisable to split the inspection team into a document review team and an operations review team. If this is not possible then begin by reviewing the site documents and records against the conditions that must be complied to.

3.4.2 If limited time is available then prioritise which documents and records must be reviewed.

3.4.3 Systematically check the documents and records against the conditions of the site licences and EA.

3.4.4 Check the records of waste accepted versus the waste that the site is permitted to accept.

3.4.5 Check storm water and groundwater monitoring records versus the conditions in the licences and EA.

3.4.6 Check the findings and recommendations of any environmental or engineering audits that have been undertaken on the site.

3.4.7 Review the complaints register and the monitoring committee minutes.

3.4.8 Request copies of all important compliance documents and records that you do not have access to other than at the site.

3.5 Inspecting The Site

3.5.1 Ensure that you have your PPE on.

3.5.2 It is generally advisable to begin the inspection from the point at which waste enters the facility.

3.5.3 You must inspect the site against the conditions of the licence and the EA. The following requirements must be inspected in addition to the conditions of the licence and EA in cognizance of the general duty of care and ensure that the site is managed in an environmentally sound manner.

3.5.4 Access control:

- check signage against the requirements of the licence and EA, and that important information is displayed such as
  - Access restriction
  - Safety requirements
  - Emergency telephone numbers
  - What types of waste may be disposed of and what types of waste are prohibited
- check for a gate at the access road and see if it is lockable for after hours
- check for a perimeter fence and see what condition it is in and if there are signs that unauthorized people or animals have been getting through
- check for a guard-house and see if there is a security guard/gatekeeper present
- ask the guard how access is controlled and note his/her responses
- check for a record book of access to the site
- If there is a weighbridge, see if it is operational and when last it was calibrated for accuracy

- see if there are weighbridge records and list the information being kept (e.g. vehicle registration, driver name, date and time of entry, vehicle entry and exit weights, type of waste delivered)

3.5.5 Operations:

- check for a supervisor and ask what qualifications or experience they have to ensure that the landfill is operated in an environmentally sound manner
- check the condition of the surface of the access road, to see if it will be safe in wet weather and wide enough for two large trucks to pass each other safely
- check for personal facilities, such as drinking water and a clean, working toilet
- check the landfilling operations to see if the waste is being spread, compacted and covered daily
- check the slopes of the landfill cells for stability and any signs of slips or erosion
- check the site in general for any signs of significant erosion, particularly on roads and in water channels
- check the workshop areas, including fuel storage containers, looking for signs of spillage and note if the area is paved and bunded. Note the capacity of the storage containers to see if an EA is required.
- look for wash bays and note where wash water is directed, and whether it is captured or treated and released.
- check for cover stockpiles noting if there are exposed dry surfaces which may result in wind blown dust
- check for possible hazardous waste types by looking for certain container types (e.g. 44 gallon metal drums and 25 litre chemical tubs), animal waste or medical waste
- see if putrescible waste (animal waste or food waste) is being trenched and/or covered immediately
- check rehabilitated areas and note if there is invasive alien plants, erosion, or waste reappearing at surface
- note any recycling operations including green waste for composting, source separated materials (glass, paper, metal, etc) and how these sites are managed.

3.5.6 Storm water and Leachate:

- see if dirty and clean storm water is being separated and where the clean storm water is being channelled, noting any blocked channels or erosion
- check the dirty storm water pond, noting if the pond is lined, any signs of leaking or overflowing, the fencing and signage, and check for 0.5m freeboard in the pond.
- If the dirty storm water is discharged, check the discharge point into the environment, note the river condition up and downstream of the discharge point and find out what monitoring is done and how samples are taken
- see if the leachate dam is lined, if it is leaking or overflowing and note the access control and signage
- find out what leachate treatment system is being used and check for odours and algal growth, noting if there is a discharge point into the environment, including a look for signs of plant stress in this region and find out what monitoring is done.

3.5.7 Groundwater

- Contamination of ground water is generally difficult to inspect. However, check that the facility has boreholes for monitoring groundwater and compare the results to the requirements of the licences and EA.
- Take special note of section 19 (Prevention and remedying effects of pollution), section 21 (Water use listings), and Section 22 (Permissible water use) of the NWA.

3.5.8 General Issues to look out for:

- see if waste has been burnt and note what types of waste are being burnt (tyres, wires, plants, etc) and look for signs of recent burning such as fresh ash or smouldering

- check for windblown or other litter and see how far it extends from the landfill, if it is being caught in fences or going into a river or wetland and if litter is creating a traffic hazard on nearby roads
- check for invasive alien vegetation, noting the extent of invasion and the species and whether control (chopping, poisoning, etc.) is taking place
- check for pests like rats and see if any stray animals (cats, dogs) or any livestock are present (goats, pigs)
- check for waste salvagers (pickers), noting if they are formalised or being managed (e.g. wearing reflective vests, working a safe distance from machinery, limited numbers) and also noting if they are living on or next to the site

3.5.9 Take special note of the principles in Section 2 of NEMA, particularly 4(a)(iv), and the duty of care in Section 28 of NEMA, Also take special note of the general duty in Section 16(1) of NEMWA, unauthorised disposal in Section 26(1) of NEMWA and licensing in Chapter 5 (Sections 43-59) NEMWA.

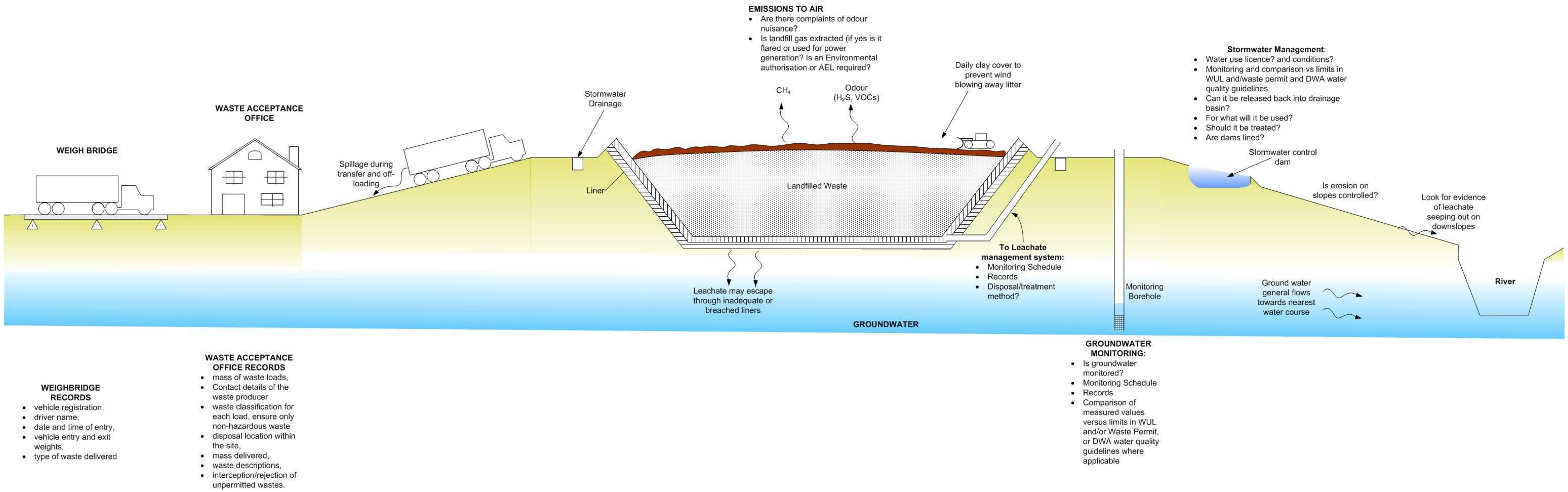
3.6 Conclusion of inspection and Reporting of the findings

3.6.1 Once the inspection has been completed, and depending on the findings, the EMI may wish to conduct a closing meeting. At this meeting:

- Request the attendance of the responsible management personnel
- Thank everybody for their co-operation and assistance
- If appropriate, provide feedback on your concerns/findings, however it is generally recommended that feedback be given in the form of an inspection report after findings have been confirmed.
- Inform the management if any further records or documents are required and by when.
- Confirm any further steps, if any.

3.6.2 Refer to SOP 5.11: Procedure for Drafting of Inspection Reports.

PROCEDURE DIAGRAM



PROCEDURE FOR INSPECTION OF HAZARDOUS LANDFILL SITES

1 OBJECTIVE

The purpose of this document is to provide a procedure to determine and report on the extent of compliance or non-compliance of a hazardous landfill site with an EA issued in the terms of NEMA, or a Record of Decision issued in terms of the ECA, a waste licence issued in terms of NEMWA and the duty of care in terms of NEMA. This SOP is applicable to inspections of hazardous waste landfill operations. Compliance will be determined by way of interviews, document and records review and physical inspection of the site. Waste and water sampling may also be required.

2 DEFINITIONS

From the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008):

General Waste means waste that does not pose an immediate hazard or threat to health of to the environment, and includes –

- domestic waste;
- building and demolition waste;
- business waste; and
- inert waste;" [NEMWA]

Hazardous Waste means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment; [NEMWA]

Leachate: Landfill leachate is liquid that moves through or drains from a landfill. This liquid may either exist already in the landfill from waste disposed, or it may be created after rainwater mixes with the waste. Modern landfills are often designed to prevent liquid from leaching out and entering the environment; however, if not properly managed, the leachate is at risk of polluting groundwater, or discharging down slope of the site.

Waste means any substance, whether or not that substance can be reduced, re-used, recycled and recovered –

- that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- which the generator has no further use of for the purposes of production;
- that must be treated or disposed of; or
- that is identified as a waste by the Minister by notice in the Gazette, and includes waste generated by the mining, medical or other sector, but –
  - a by-product is not considered waste; and
  - any portion of waste, once re-used, recycled and recovered, ceases to be waste;" [NEMWA]

Waste Disposal Facility means any site or premises used for the accumulation of waste with the purpose of disposing of that waste at that site or on that premises; [NEMWA]

3 PROCEDURE

3.1 Planning and Preparation

3.1.1 Obtain the waste disposal site's licence (licence in terms of ECA or NEMWA) and the EA from the regulating authority, or request it from the site. Note that for licences issued under NEMWA, an environmental authorisation will not have been required.

3.1.2 A desktop assessment must be undertaken of the waste disposal site licence and the EA as well as any information available on the site to:

- Determine the nature and cope of the authorised/licenced activities for the site.
- Determine the conditions stipulated in the EA and the licence
- Determine what records the site is required to maintain onsite and/or submit to authorities.

3.1.3 Produce an inspection list which includes:

- All documents that must be made available onsite for the inspection.
- All conditions of the EA and/or licence that must be inspected against.
- A pre-inspection meeting/telephone conference with the site management should then be arranged to confirm:
  - the scope of the inspection,
  - inspection criteria,
  - the date, venue and duration of the inspection,
  - an indication of the make-up of the inspection team
  - a tentative inspection schedule indicating areas to be visited and timing,
  - co-ordination of activities with operations and staff availability, and
  - to understand the processes on site and the extent of the PPE required, the availability of PPE and any relevant safety induction procedures.

3.1.4 An inspection plan must be developed based on the pre-inspection meeting and/or discussions. The plan must include:

- A site-specific health and safety plan.
- An updated inspection list, which details the inspection criteria
- A list of the members of the inspection team
- A list of sampling equipment required
- A list of equipment required for documenting the inspection (such as digital cameras, log book, dictaphones, GPS etc)
- Legislation relevant to the inspection which may need to be referenced while conducting the inspection

3.2 Arrival at Site

3.2.1 Refer to SOP 5.1: Entering a Facility on a Routine Inspection.

3.3 Opening Meeting

3.3.1 Convene an introductory/opening meeting during which the EMI must:

- Formally introduce the inspection team and have the facility's representatives introduce themselves.
- Formulate an attendance register and take minutes for a written record or summary of the items discussed and agreed to during the meeting.
- Explain the legal mandate for conducting the inspection
- Explain the aim of the inspection and the roles of each team member
- Identify the person(s) from management of the site responsible for arrangements and for the EMI's safety on the site
- Clarify communication channels – who does the EMI need to speak to and how does the EMI contact them? Make a note of contact details such as cell phone number and email address.
- Inform the management that you will use the following means of documenting the inspection and findings:
  - By taking photographs.
  - By requesting photocopies of important documents and records.
  - By interviewing people on the site and recording these discussions in writing or electronic recording such as by dictaphone or camera.
- If it is necessary, confirm the language that he/she intends using to communicate with during the inspection.
- Ask the management to describe the activities that are undertaken at the site and to provide a site plan/description. If a site plan is not provided then sketch one with their help.

3.3.2 The EMI must request the following documents and records:

- A site plan
- The waste licence for the site
- The ROD or EA if the site commenced before NEMWA
- internal and external audit reports

- operational plan, including EMP
- emergency incidents plan and incident reports (e.g. fire, spills)
- monitoring committee minutes (if there is a mentoring committee
- register of complaints
- monitoring data or reports, including surface water, groundwater, air, dust, odours and noise
- The access register that should ideally contain names, dates, registration numbers vehicles entering the site.
- the disposal register which should contain:
  - mass of waste loads,
  - Contact details of the waste producer
  - waste classification for each load,
  - waste hazard ratings for each load,
  - disposal location within the site,
  - mass delivered,
  - waste descriptions,
  - interception/rejection of unpermitted wastes.

3.3.3 Peruse through the documents provided and update your inspection list to ensure that you have covered all the conditions that must be inspected.

3.4 Document Review

3.4.1 It is advisable to split the inspection team into a documents review team and an operations review team. If this is not possible then begin by reviewing the site documents and records against the conditions that must be complied to.

3.4.2 If limited time is available then prioritize which documents and records must be reviewed.

3.4.3 Systematically check the documents and records versus the conditions of the site licences and EA.

3.4.4 Check the records of waste accepted versus the waste that the site permitted to accept.

3.4.5 Check storm water and groundwater monitoring records versus the condition in the licences and EA.

3.4.6 Check the findings and recommendations of any environmental or engineering audits that have been undertaken on the site.

3.4.7 Review the complaints register and the monitoring committee minutes

3.4.8 Request copies of all important compliance documents and records that you do not have access to other than at the site.

3.5 Inspecting the Site

3.5.1 Ensure that you have your PPE on.

3.5.2 It is generally advisable to begin the inspection from the point at which waste enters the facility.

3.5.3 You must inspect the site against the conditions of the licence and the EA. The following requirements must be inspected in addition to the conditions of the licence and EA, in cognizance of the general duty of care and ensure that the site is managed in an environmentally sound manner.

3.5.4 Access control:

- check signage against the requirements of the licence and EA, and that important information is displayed, such as
  - Access restriction
  - Safety requirements
  - Emergency telephone numbers
  - What types of waste may be disposed of and what types of waste are prohibited
  - check for a gate at the access road and see if it is lockable for after hours
  - check for a perimeter fence and see what condition it is in and if there are signs that unauthorized people or animals have been getting through

- check for a guard-house and see if there is a security guard/gatekeeper present
- ask the guard how access is controlled and note his/her responses
- check for a record book of access to the site
- If there is a weighbridge, see if it is operational and when last it was calibrated for accuracy
- see if there are weighbridge records and list the information being kept (e.g. vehicle registration, driver name, date and time of entry, vehicle entry and exit weights, type of waste delivered)

3.5.5 Operations:

- check for a supervisor and ask what qualifications or experience they have to ensure that the landfill is operated in an environmentally sound manner
- check the condition of the surface of the access road, to see if it will be safe in wet weather and wide enough for two large trucks to pass each other safely
- check for personal facilities, such as drinking water and a clean, working toilet
- check the landfilling operations to see if the waste is being spread, compacted and covered daily
- check the slopes of the landfill cells for stability and any signs of slips or erosion
- check the site in general for any signs of significant erosion, particularly on roads and in water channels
- check the workshop areas, including fuel storage containers, looking for signs of spillage and note if the area is paved and bunded. Note the capacity of the storage containers to see if an EA is required.
- look for wash bays and note where wash water is directed, and whether it is captured or treated and released.
- check for cover stockpiles noting if there are exposed dry surfaces which may result in wind blown dust
- check rehabilitated areas and note if there is invasive alien plants, erosion, or waste reappearing at surface
- If waste is encapsulated on the site then check that there are no signs of leakage or damage to the integrity of the encapsulating material (usually concrete).

3.5.6 <u>Storm water and Leachate:</u>

- see if dirty and clean storm water is being separated and where the clean storm water is being channelled, noting any blocked channels or erosion
- check the dirty storm water pond, noting if the pond is lined, any signs of leaking or overflowing, the fencing and signage, and check for 0.5m freeboard in the pond.
- If the dirty storm water is discharged check the discharge point into the environment, note the river condition up and downstream of the discharge point and find out what monitoring is done and how samples are taken
- see if the leachate dam is lined, if it is leaking or overflowing and note the access control and signage
- find out what leachate treatment system is being used and check for odours and algal growth, noting if there is a discharge point into the environment, including a look for signs of plant stress in this region and find out what monitoring is done.

3.5.7 <u>Groundwater:</u>

- Contamination of ground water is generally difficult to inspect. However, check that the facility has boreholes for monitoring groundwater and compare the results to the requirements of the licences and EA.
- Take special note of section 19 (Prevention and remedying effects of pollution), section 21 (Water use listings), and Section 22 (Permissible water use) of the NWA.

3.5.8 <u>Emergency Response</u>

- Hazardous waste present various risks depending on the nature of the waste, these are for example:
  - Explosive waste

- Toxic waste
- Flammable waste
- Corrosive waste
- Infectious waste
- Reactive wastes

3.5.9 Ensure that the site has appropriate emergency response procedures, tools and training to attend to risks or emergencies that may arise from the various classes of waste that are handled, stored, treated and disposed on the site.

3.5.10 If an emergency incident has occurred onsite ensure that it has been reported and refer to SOP 5.10: Procedure for Follow-up Inspections Subsequent to Emergency Incidents.

3.5.11 <u>General Issues to look out for:</u>

Take special note of the principles in Section 2 of NEMA, particularly 4(a)(iv), and the duty of care in Section 28 of NEMA, Also take special note of the general duty in Section 16(1) of NEMWA, unauthorised disposal in Section 26(1) of NEMWA and licensing in Chapter 5 (Sections 43-59) NEMWA.

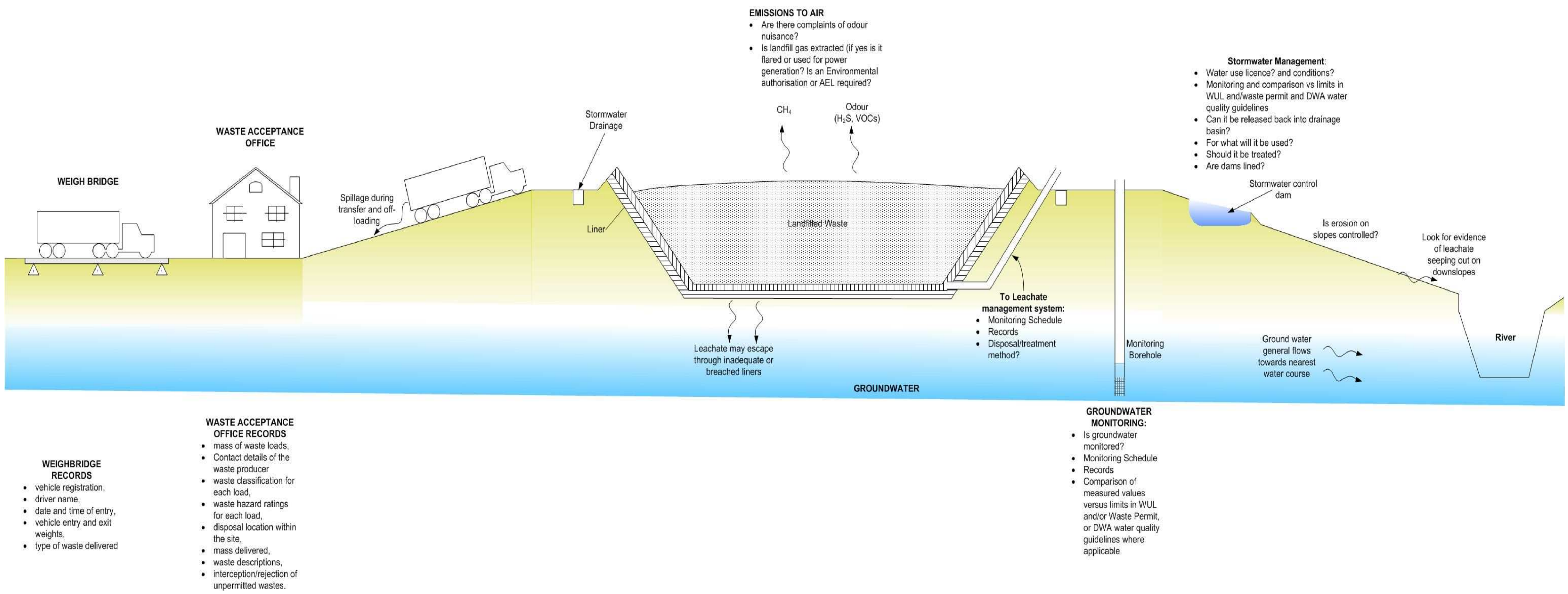
3.6 Conclusion of Inspection and Reporting of the Findings

3.6.1 Once the inspection has been completed, and depending on the findings, the EMI may wish to conduct a closing meeting. At this meeting:

- Request the attendance of the responsible management personnel
- Thank everybody for their co-operation and assistance
- If appropriate, provide feedback on your concerns/findings, however it is generally recommended that feedback be given in the form of an inspection report after findings have been confirmed.
- Inform the management if any further records or documents are required and by when.
- Confirm any further steps, if any.

3.6.2 Refer to SOP 5.11: Procedure for Drafting of Inspection Reports.

PROCEDURE DIAGRAM



PROCEDURE FOR INSPECTION OF WASTEWATER TREATMENT WORKS

1 OBJECTIVE

To determine the extent of compliance at a wastewater treatment works ("WWTW"), with a NEMA EA, an ECA ROD, or a NWA water use licence, as well as compliance in general with the duty of care as contemplated in NEMA and prevention of pollution as contemplated in the NWA. This SOP applies to all engineered and constructed works for the treatment of wastewater or effluent, including municipal or private sewage treatment, but excludes domestic or small-scale private treatment.

2 DEFINITIONS

Sludge: Sludge is the residual, semi-solid material left from industrial, or wastewater treatment processes.

offensive odour: means any smell which is considered to be malodorous or a nuisance to a reasonable person; [NEMAQA Section 1]

3 PROCEDURE

3.1 Planning And Preparation

3.1.1 Obtain a copy of the WUL from the regulating authority and the EA from the designated competent authority for that area.

3.1.2 A desktop assessment must be undertaken of the EA and WUL to:

- Determine the nature and scope of the activities that have been authorised, and in particular how and where the site discharges waste and fluids
- Determine the conditions of authorisation and formulate an inspection checklist from these
- Review the authorised EMP and ensure that all the commitments and monitoring requirements in the EMP are included in your checklist
- Determine what documents and records are required to evaluate the EA (e.g. Regulations, EMP, licenses, etc) and which of these should available on the site and which should have been submitted to an authority
- Determine what monitoring records the site must have
- Develop an understanding of the activities and size of the operation to determine how many inspectors will be required, given the time available

3.1.3 Arrange a pre-inspection meeting/telephone call with the site management to:

- Inform them of the anticipated scope of the inspection
- Inform them of the inspection criteria if this will assist in planning and preparation
- Inform them of the date and expected duration of the inspection (ideally try to arrange a date and time that is mutually convenient to the EMI and the facility)
- Inform them of the number of inspectors that you expect to attend the inspection
- Confirm health and safety requirements (for example what PPE may be required) and whether an induction is required and how long it will take
- Obtain the concept design drawings that explain the process step-by-step
- Get an understanding of normal operating hours and security requirements
- Inform them of an approximate inspection schedule giving times and areas to be visited if this will assist in planning and preparation for the inspection
- Request documents and records in advance (in particular water and effluent discharge records, and waste disposal records) which will inform your inspection plan and preparation. In particular:

  - Incoming volumes of wastewater
  - Volumes of treated water discharged
  - Volumes of untreated water/wastewater discharged
  - Quality of treated water discharged
  - Quality of untreated water discharged
  - Water quality upstream and downstream of the plant/discharge point where treated and/or untreated water is discharged into a watercourse.
  - Mass/volume of sludge generated and disposed (and records of disposal indicating where the sludge is disposed)
  - Mass/volume of any other process waste material generated and disposed (and records of disposal indicating where the waste material is disposed)
  - Confirmation that the disposal sites used are appropriately permitted sites
- Ensure co-ordination of activities with operations and staff availability.

3.1.4 Update your inspection plan and timing based on the above.

3.1.5 Update your health and safety plan based on the above.

3.2 Arrival At The Site

3.2.1 Refer to SOP 5.1: Entering a Facility on a Routine Inspection.

3.2.2 In particular take note of the slope of terrain around the facility, and of watercourses and wetlands in the vicinity of the site.

3.2.3 It is advisable to do a preliminary visual inspection of watercourses or wetlands downstream of the works in order to establish any obvious evidence of pollution that may be associated with the WWTW.

3.3 Opening Meeting

3.3.1 Convene an introductory/opening meeting during which the EMI must:

- Formally introduce the inspection team and have the facility's representatives introduce themselves.
- Formulate an attendance register and take minutes for a written record or summary of the items discussed and agreed during the meeting.
- Explain the legal mandate for conducting the inspection
- Explain the aim of the inspection and the roles of each team member
- Identify the person(s) from management of the site responsible for arrangements and for the EMI's safety on the site
- Clarify communication channels – who does the EMI need to speak to and how does the EMI contact them? Make a note of contact details such as cell phone number and email address.
- Inform the management that you will use the following means of documenting the inspection and findings:
  - By taking photographs.
  - By requesting photocopies of important documents and records.
  - By interviewing people on the site and recording these discussions in writing or electronic recording such as by dictaphone or camera.
- If it is necessary, confirm the language that he/she intends using to communicate with during the inspection.
- Ask the management to describe the activities that are undertaken at the site and to provide a site plan/description. If a site plan is not provided then sketch one with their help.
- Ask the management for a process description and flow diagram indicating the various processes at the plant and related discharges, if you have not already ascertained these.

3.3.2 The EMI must request the following documents and records:

- The WUL for the site and the EA (you must compare the documents and ensure that you have an current copy for your inspection)
- Internal and external environmental audit reports (these may be legal compliance audits, audits against the conditions of authorisation etc)
- Operational plans, including any EMPs
- Procedures for planned and unplanned shut-downs (these may be for maintenance, unplanned plant downtime due to equipment failure)
- Emergency incidents plan and incident reports (e.g. Spills, unplanned discharges especially of non-conforming effluent or treated water or raw water)
- Monitoring committee minutes (if there is a mentoring committee)
- Register of complaints
- Monitoring data and records, if these were not obtained prior to the site visit, namely:
  - Incoming volumes of wastewater
  - Volumes of treated water discharged
  - Volumes of untreated water/wastewater discharged
  - Quality of treated water discharged
  - Quality of untreated water discharged
  - Water quality upstream and downstream of the plant/discharge point where treated and/or untreated water is discharged into a water course.
  - Mass/volume of sludge generated and disposed (and records of disposal indicating where the sludge is disposed)
  - Mass/volume of any other process waste material generated and disposed (and records of disposal indicating where the waste material is disposed)
  - Confirmation that the disposal sites used are appropriately permitted sites

3.3.3 Browse through the documents provided and update your inspection list to ensure that you have covered all the conditions that must be inspected

3.3.4 Refer to SOP 5.9 Inspection of Compliance with the Conditions of Environmental Authorisations.

3.4 <u>Document Review</u>

3.4.1 It is advisable to split the inspection team into a document review team and an operations review team. If this is not possible then begin by reviewing the site's documents and records against the conditions that must be complied with.

3.4.2 If limited time is available then prioritise which documents and records must be reviewed.

3.4.3 Systematically check the documents and records against the conditions of the site licences and EA.

3.4.4 Check the records of volume of wastewater treated versus that which is authorised and versus the design capacity of plant.

3.4.5 Check the records of treated water discharge quality and volume versus those authorised.

3.4.6 Check records of solid waste and/or sludge generated versus disposal records. Ensure that the masses generated balance with those disposed of.

3.4.7 Check that the records confirm that the wastes are disposed to appropriately licensed disposal sites. Note that the waste may in some cases be disposed to fertiliser processes.

3.4.8 Check the findings and recommendations of any environmental or engineering audits that have been undertaken on the site. Engineering audits/inspections are generally undertaken to confirm that the plant is in good working order and being operated correctly.

3.4.9 Review the complaints register and the monitoring committee minutes, and responses or commitments made in response to these.

3.4.10 Request copies of all important compliance documents and records which you do not have access to other than at the site.

3.5 Site Inspection

3.5.1 Wastewater operations:

- It is generally advisable to follow the flow of the process. Work through the inspection list systematically attending to each condition of the environmental approvals
- Inspect each point of discharge, note any evidence of residue, eutrophication or impact on vegetation and fauna which may indicate potentially unacceptable discharge.
- Interview operators and other personnel to ascertain if there are discharges of untreated wastewater or water of unacceptable quality
- Inspect the waste storage areas and ensure that:
  - The storage area is impermeable and does not allow leakage to surface or groundwater
  - The storage area is protected for the ingress of rain water which may consequently become contaminated
  - Waste is not stored or disposed of outside the designed area
- Inspect the condition of containment facilities; ensure there are no cracks and leaks.
- Inspect the condition of the canals and channels, look for blockages signs of overflow.
- Inspect the tanks and/or ponds on the site for signs of leakage or overflow.
- Confirm that there are adequate measures for containing leaks and spills from machinery and during plant maintenance.

3.5.2 General operations:

- Check the access road to see what condition the surface is in, if it will be safe in wet weather, an unsafe access road will increase the likelihood of incidents resulting spills from vehicles delivering wastewater/sewage to be treated, or removing sludges and solid waste.

3.5.3 Stormwater:

- Confirm that there is separation of clean and dirty water on the site – i.e. there is no storm water flowing into the works which can be avoided, and there is no leakage of dirty water to storm water run-off areas and channels
- Confirm that potentially contaminated storm water is captured and tested before release, verify this by interviewing the responsible employees and checking the records

NOTE

Take note of the following legislation:

- Section 19 (Pollution Prevention), Section 21 (Water Use), Section 22 (Permissible water use) of the NWA
- Section 28 NEMA (General Duty of Care)
- Section 35 NEMAQA, (Control of Offensive Odours)

3.6 Conclusion of Inspection and Reporting of the Findings

3.6.1 Once the inspection has been completed, and depending on the findings, the EMI may wish to conduct a closing meeting. At this meeting:

- Request the attendance of the responsible management personnel
- Thank everybody for their co-operation and assistance
- If appropriate, provide feedback on your concerns/findings, however it is generally recommended that feedback be given in the form of an inspection report after findings have been confirmed.
- Inform the management if any further records or documents are required and by when.
- Confirm any further steps, if any.

3.6.2 Refer to SOP 5.11: Procedure for Drafting of Inspection Reports.

HOT TIPS

ASK AND ASK AGAIN!

Staff of industrial facilities often use jargon and acronyms to explain their processes, assuming you will understand them. Do not be afraid to ask a question more than once and to specifically request them to explain the technical terms to you.

WORK UPWIND!

At WWTW and other waste management facilities, odours can be quite unpleasant and can distract you from the job at hand. Often a simple solution is to walk on the upwind side of the plant or pond, which will allow you to breathe more easily, but also reduce the chances of splashes, dust or `steaming` vapours getting to you or your equipment.

PROCEDURE DIAGRAM

CESSES
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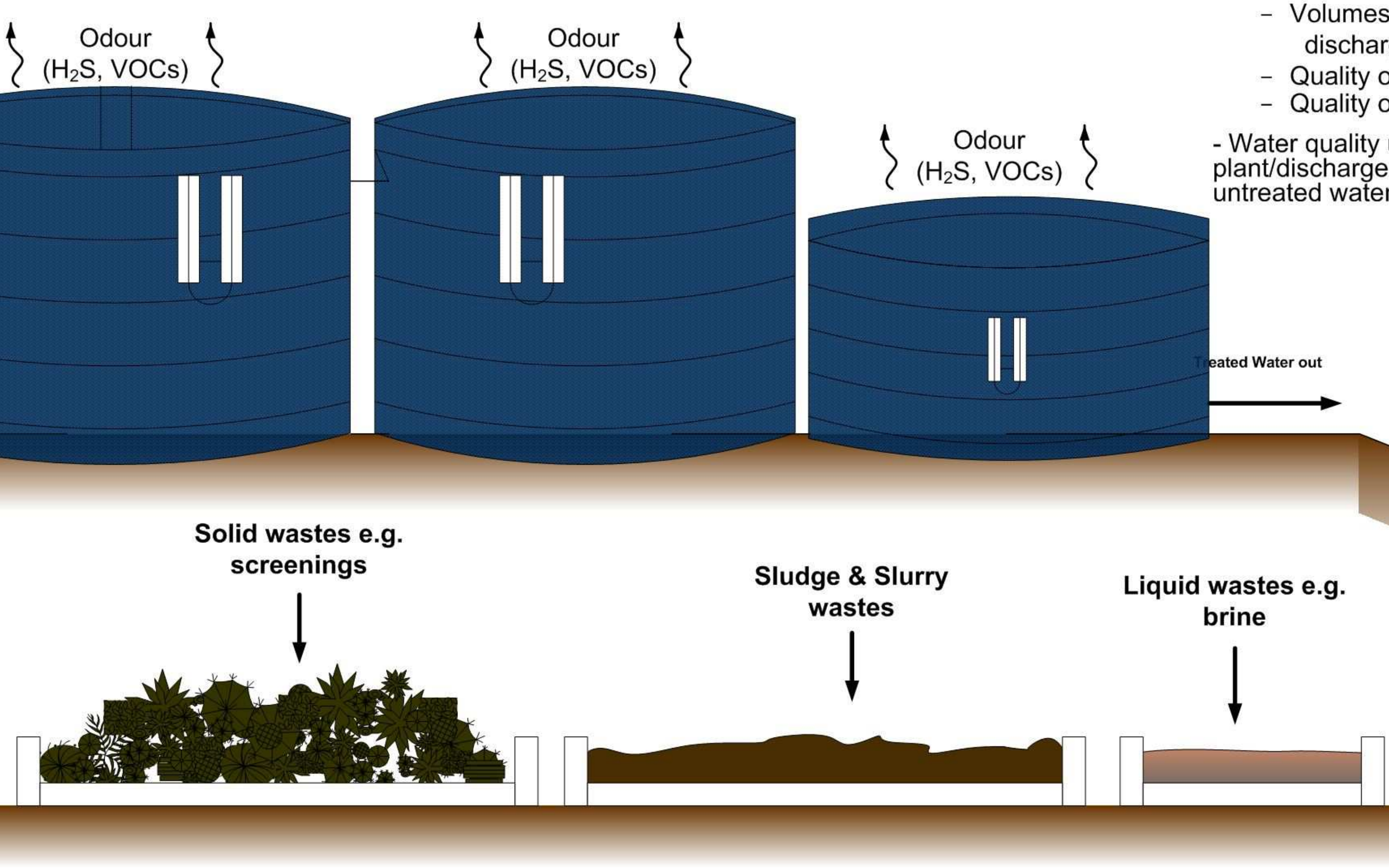
case basis)

EMISSIONS TO AIR
- Are there complaints of odour nuisance?

Treated Water
-Monitored?
-Discharged? to
- Volumes
- Volumes
discharg
- Quality o
- Quality o

- Water quality r
plant/discharge
untreated water



Solids/ Sludges / Brine
- Disposal?
- Mass/volume of sludge generated and disposed (and records of disposal indicating where the sludge is disposed)
- Mass/volume of any other process waste material generated and disposed (and records of disposal indicating where the waste material is disposed)
- Confirmation that the disposal sites used are appropriately permitted sites

- Check Storage conditions and management of wastes.
- is the waste Treated/ recycled? Is a waste licence required? What are the conditions in the waste licence for facilities constructed after promulgation of the Waste Act.

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PROCEDURE FOR INSPECTION OF COMPLIANCE WITH CONDITIONS OF ENVIRONMENTAL AUTHORISATIONS

1 OBJECTIVE

This procedure is to determine compliance with a NEMA EA or ECA ROD. This SOP applies to all routine inspections undertaken in terms of NEMA Section 31K. Activities on the site will be assessed against all the conditions of the relevant EA. Compliance will be determined by way of interviews, document review and physical inspection of the site.

2 DEFINITIONS

HASP: Site specific Health and Safety Plan

Site: the area to be visited to determine compliance with the relevant EA

Site management: the person(s) in charge and responsible for the persons working on the site

3 Procedure

3.1 Planning

3.1.1 A desktop assessment must be undertaken of the EA to:

- Determine what documents are required to evaluate the EA (e.g. regulations, EMP, licenses, etc)
- Determine which requirements of the EA are administrative and can be audited in office by checking documents such as permits
- Decide which areas of the site require inspection
- Understand the activities and size of the operation to determine how many EMIs will be required, given the time available.

3.1.2 Have a pre-inspection meeting/telephone call with the site management to confirm:

- The scope of the inspection
- The date and duration of the inspection
- The names of the EMIs and other parties responsible on site
- An inspection schedule giving times and places to be visited
- Co-ordination of activities with operations and staff availability
- PPE requirements and safety induction procedures.

3.1.3 Create a health and safety plan.

3.1.4 Create an inspection plan that includes:

- The route to and from the site including transport arrangements
- The inspection route on the site, including key questions at each point
- The required PPE (Note 1.1: Code of Conduct)
- Other equipment, such as samplers, monitoring equipment, measuring tapes, dictaphones, cell phones and cameras.

3.2 Inspection

3.2.1 Arrive at the site in time to complete any safety induction process well in advance of the first appointment. Refer to SOP 5.1: Entering a facility on a routine inspection.

3.2.2 Convene an opening meeting during which the EMI should:

- Circulate an attendance register
- Ensure a round of introductions
- Take minutes
- Take note of the SOP 5.2: Gathering of Evidence during an Inspection
- Identify the person(s) from site management for your safety on site
- Clarify communication channels – who do you need to speak to and how do you contact them?
- Confirm the language that you intend using
- Explain the purpose of the inspection and define the roles of the various parties
- Describe requirements that you have to complete the inspection
- Ask about the history of the facility, including previous inspections
- Explain which records/documents/permits/authorisations are required for the document review part of the inspection and request these
- If samples will be taken, explain this and advise if there is anything that may be required from site management to assist with this, and ensure you will have the permission to remove the samples from the site
- Address any last minute changes to the agreed inspection schedule

3.2.3 Commence the document review, ensuring that the EA conditions are systematically checked against the documentation produced.

3.2.4 Note SOP 5.2: Gathering of Evidence During an Inspection, especially in the event that resistance to the production of any required documentation is encountered. Note SOP 4.5: Handling of Confidential Information.

3.2.5 The document review must then be completed, with any non-compliance being noted. The EMI must do an "on the spot" assessment of how serious the non-compliance is.

3.2.6 If any non-compliance is so serious as to merit involvement of more senior staff, note SOP 5.3: Issuing of a Notification Card. If the documentation is found to be inadequate, those persons assigned responsibility for managing the inspection and the site management must be informed. A decision should be made as to whether the inspection should be continued or suspended until documentation concerns are resolved.

3.2.7 The physical inspection of the facility must then be commenced, and the EMI must ensure that the EA conditions are systematically checked against physical observations and activities on the site. Remember:

- To take the required PPE. Refer to SOP 4.1: Procedure for the Use and Handling of Personal Protective Equipment
- To take the required sampling/monitoring/measuring equipment
- To reference the HASP and ensure that arrangements have been made for additional site supplied PPE

3.2.8 If during the physical inspection any non-compliance is so serious as to merit involvement of more senior staff, note SOP 5.3: Issuing of a Notification Card.

3.2.9 Be polite but firm and do not allow yourself to be rushed. Conduct the inspection at your own pace. Stick to the time schedule.

3.2.10 Insist on seeing all areas that have been identified as relevant, even if it appears that there is no activity. Remember that activities in a maintenance/shut down cycle may differ substantially from normal or emergency operations, and the inspection should take this into account.

3.2.11 If hostility is encountered on site, refer to SOP 4.4 Hostile People and Situations.

3.2.12 Detailed notes of any observations must be made, and there must be cross-referencing of the findings with the EA conditions.

3.2.13 Remember that both compliance and non-compliance must be noted.

3.2.14 Remember that when a non-compliance has been observed, there must be a description as to where and when it was observed. Photographs of each non-compliance must be taken. Look for and describe any distinguishing feature that may be obvious and the time and date of the occurrence. Example: Smoke stack for boiler with maintenance reference number 98044657vcg emitting dark black smoke at 10:09 am on 03/08/09."

3.3 <u>Conclusion of inspection and reporting of the findings</u>

3.3.1 Once the audit has been completed, and depending on the findings, you may wish to conduct a closing meeting. At this meeting:

- Request the attendance of management
- Thank everybody for their co-operation and assistance
- If appropriate, provide feedback on your findings, including observations that were uncertain and items that cannot be clearly stated as compliant/non-compliant
- Outline any further steps.

3.3.2 Refer to SOP 5.11: Procedure for Drafting of Inspection Reports.

ENFORCEMENT OF CHAPTER 8 OF THE ICM ACT: MARINE AND POLLUTION CONTROL

1 OBJECTIVE

To inform the enforcement official, including EMIs, of the procedure to be complied with where enforcement actions can be taken in the event of non-compliance with provisions dealing with marine and pollution control in the ICM Act. These enforcement actions include administrative, criminal or civil enforcement actions. This procedure should therefore be read and applied with the other standard operating procedures, and in particular, the Enforcement Guidelines, Criminal Procedure and Administrative Enforcement Procedure.

2 DEFINITIONS

AG fine: An admission of guilt fine
ICM Act: The National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)
Manual: Enforcement Manual for the Integrated Coastal Management Act
Transgressor: The person who failed to comply with the relevant legislation

3 BACKGROUND

Chapter 8 deals with marine and coastal pollution control and primarily deals with the management of land-based waste affecting the coastal environment. It regulates the discharge of effluent into coastal waters (which include estuaries), prohibits incineration or dumping at sea and regulates the issuing of dumping permits for certain listed materials. These provisions incorporate the London Dumping Convention (The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters), and the 1996 Protocol to the Convention, into our domestic legislation.

4 PROCEDURE

4.1 General

4.1.1 Determine whether the transgressor is an organ of state.

4.1.2 If so, refer to 2.2: Procedure for Dealing with Non-Compliant Organs of State

4.1.3 If not, decide on the appropriate enforcement measure, or measures, in the circumstances according to the general and specific options discussed below. The decision on which of the available option, or options, must be taken should be guided by 2.1: Enforcement Guidelines and the additional guidelines provided for in the manual, including those on the suitability of admission of guilt fines.

HOT TIP
Where more than one action, or type of action, is available, they can be used simultaneously or a combination of actions could be used, e.g. where effluent is discharged in contravention of the provisions of Chapter 8, a NEMA Section 31L Compliance Notice and an ICM Act Section 59 Coastal Protection Notice, can be issued simultaneously. In addition, a criminal investigation can also be launched for the same transgression. If the transgression also has a significant detrimental effect on the environment, a NEMA Section 28 Directive can also be issued, and more than likely also an ECA Section 31 A directive – or they can be combined into one document.

4.2 General Administrative Enforcement Options

4.2.1 If the activity or failure to take action has resulted, or can potentially result in the environment being seriously damaged, endangered or detrimentally affected, a Section 31A ECA Directive can be issued. See 6.9: Administrative Enforcement for the required steps.

4.2.2 If the person caused, is causing or may cause significant pollution or degradation of the environment, and failed to take reasonable measures to either prevent such pollution or degradation from occurring, continuing or recurring, or to minimise and rectify such pollution or degradation, a Section 28 NEMA Directive can be issued (also see section 58 of the ICM Act in this regard). A combined S31A ECA directive and S28 NEMA directive could also be issued. See the 6.9: Administrative Enforcement SOP for the procedure to be followed for the issuing of these directives.

4.2.3 If a person fails to comply with any provision in Chapter 8, or fails to comply with any of the conditions of a permit issued in terms of Chapter 8, a Section 31L NEMA Compliance Notice can be issued. Refer to 6.9: Administrative Enforcement for the required steps to be taken in these instances.

NOTE:
If the transgression also resulted in an "emergency incident" as defined in section 30 of NEMA, refer to and follow SOP 5.10: Procedure Subsequent to Reporting of Emergency Incidents.

4.3 General Criminal Enforcement Options

4.3.1 Where the transgressor unlawfully, and intentionally or negligently, committed an act or failed to take any actions which then -

- causes significant or is likely to cause significant pollution or degradation of the environment; or which
- detrimentally affects or is likely to affect the environment in a significant manner,

such a person is guilty of a criminal offence, being the contravention of section 28(14), read with section 28(15), of NEMA, and on conviction, can be sentenced to a maximum fine of R1 million and/or imprisonment not exceeding one year.

HOT TIP
The advantage of a conviction on this count is that this contravention is listed on Schedule 3 of NEMA, and the ancillary orders in terms of section 34(1)-(4) of NEMA will therefore be available on conviction. No offences under the ICM Act are currently listed under Schedule 3, although one can expect them to be included in the near future.

4.3.2 Also refer to the contravention of sections 79(1)(f) to (i) in so far as they may be applicable to permits issued under Chapter 8. All of these refer to fraudulent or dishonest conduct, and include:

- Altering any authorisation;
- Fabricating or forging any document for the purposes of passing it off as an authorisation;
- Passing, using, altering or possessing any altered or false document purporting to be an authorisation;
- Making any false statement or report for the purpose of obtaining or objecting to an authorisation.

4.4 Civil Enforcement

4.4.1 The use of an interdict to force a person to do something, or to refrain from doing something, is only available as a last resort. See 6.9: Administrative Enforcement for the requirements and steps to be followed in applying for an interdict.

4.5 Non-compliance with Specific Provisions in Chapter 8 of the ICM Act

4.5.1 Discharging effluent originating from a source on land into coastal waters (which includes internal waters, territorial waters and estuaries) without an authorisation or permit in contravention of section 69:

- Section 79(1)(a) provides that this is a category 1 criminal offence. Depending on the circumstances, issue either an AG-fine or open an enquiry or case docket, in accordance with 2.1: Enforcement Guidelines, and the additional guidelines provided for in the manual.
- Where such discharge resulted in an adverse or potentially adverse effect on the coastal environment, and where it is necessary to either instruct the transgressor to take certain steps, and/or investigate and evaluate the impact of the activity and/or to stop or postpone the activity for a period to allow for an investigation to be carried out, issue a Section 59 Coastal Protection Notice in accordance with SOP 6.9: Administrative Enforcement.
- Where such discharge resulted in an adverse effect on the environment because of the condition of a structure (such as a defective pipeline), or the discharge was done via a structure that was constructed or upgraded in contravention of the ICM Act or any other law, issue a Section 60 Repair or Removal Notice according to 6.9: Administrative Enforcement.

NOTE

The above will also apply to other provisions in section 69. Section 69(6)(c) determines that a person who discharges effluent in coastal waters “must discharge effluent subject to any condition contained in the relevant authorisation” and section 69(6)(d) determines that a person who discharges effluent into coastal waters “must comply with any applicable waste standards or water management practices prescribed under this Act or under section 29 of the National Water Act or any Act of Parliament specifically dealing with waste, unless the conditions of the relevant authorisation provide otherwise”. Non-compliance with these provisions will therefore also be a criminal offence, and can trigger the administrative enforcement actions described directly above.

HOT TIP

Although dealing with fresh water resources, the National Water Act, 1998 (Act No. 36 of 1998) can also apply in certain instances. A “water resource” in terms of that Act includes an estuary, and the enforcement tools in that Act can therefore be used where effluent is discharged into an estuary. Both the directives in section 19 and 20 (which can be issued by the catchment management agency) can therefore be utilised in such a case, and pollution of an estuary by effluent will be a criminal contravention of section 151(1)(i) and (j). In addition, the discharging of waste into a water resource through “a pipe, canal, sewer, sea outfall or other conduit”, is a section 21 water use which requires a water use licence (unless there is a general authorisation allowing such use).

4.5.2 Incineration at sea of any waste or other material within the coastal waters or the exclusive economic zone, or aboard a South African vessel, in contravention of section 70:

- Section 79(1)(b) provides that this is a category 1 criminal offence. Issue either an AG-fine or open an enquiry or case docket. The decision on the appropriate step must be based on 2.1: Enforcement Guidelines, and the additional guidelines provided in the manual.
- Where such incineration resulted in an adverse or potentially adverse effect on the coastal environment, and it is necessary to either instruct the transgressor to take certain steps, and/or investigate and evaluate the impact of the activity and/or to stop or postpone the activity for a period to allow for an investigation to be carried out, issue a Section 59 Coastal Protection Notice in accordance with SOP 6.9 Administrative Enforcement.

HOT TIP

All South African legislation also applies within the territorial waters, as is determined in the Maritime Zones Act, 1994 (Act No.15 of 1994). Depending on the transgression, the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965) and/or the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) might also be applicable. In addition, section 4 of the Air Quality Act determines that that Act also applies in the exclusive economic zone and the continental shelf.

4.5.3 Loading, importing or exporting of waste or any other material to be dumped or incinerated at sea in contravention of section 70:

- Section 79(1)(c) provides that this is a category 1 criminal offence. Issue either an AG-fine or open an enquiry or case docket. The decision on the appropriate step must be based on 2.1: Enforcement Guidelines, and the additional guidelines provided in the manual.
- Where a person carries out such an activity, or intends to carry out such an activity, and it is having, or is likely to have an adverse effect on the coastal environment (e.g. loading the waste with the intention to dump at sea), and it also is necessary to instruct the transgressor to take certain steps, and/or investigate and evaluate the impact of the activity and/or to stop or postpone the activity for a period to allow for an investigation to be carried out, issue a Section 59 Coastal Protection Notice in accordance with SOP 6.9: Administrative Enforcement.

4.5.4 Dumping of waste or other material at sea in contravention of section 70. This includes dumping within the coastal waters or exclusive economic zone, or dumping from a South African vessel, aircraft, platform or other man made structure on the high seas:

- Section 79(1)(d) and (e) provides that this is a category 1 criminal offence. Issue either an AG-fine or open an enquiry or case docket. The decision on the appropriate step must be based on 2.1: Enforcement Guidelines and the additional guidelines provided in the manual.
- Where such dumping resulted, or could possibly result, in an adverse effect on the coastal environment, and it is necessary to instruct the transgressor to take certain steps, investigate and evaluate the impact of the activity or to stop or postpone the activity for a period to allow for an investigation to be carried out, issue a Section 59 Coastal Protection Notice according to 6.9 Administrative Enforcement.

- Where such dumping resulted in an adverse effect on the environment because of the existence or condition of a structure, or because it has been abandoned, issue a Section 60 Removal Notice according to 6.9: Administrative Enforcement.

NOTE

- The defense of necessity, as described in section 70(2), as well as the emergency procedure as set out in section 72, applies to dumping in emergency situations.
- See the definitions of “waste” and “dumping at sea” in section 1 of the ICM Act.

4.6 Failure to comply with the conditions of an authorisation

4.6.1 Contravening or failing to comply with a condition of an authorisation (which, according to section 1, includes a coastal waters discharge permit, a general authorisation and a dumping permit), is a category three offence, as is set out in section 79(3) of the ICM Act. Issue either an AG-fine or open an enquiry or case docket. The decision on the appropriate step must be based on 2.1: Enforcement Guidelines, and the additional guidelines provided in the manual.

4.6.2 Performing an activity for which the authorisation was issued, otherwise than in accordance with any conditions subject to which the authorisation was issued, is a category three offence, as is set out in section 79(3) of the ICM Act. Issue either an AG-fine or open an enquiry or case docket. The decision on the appropriate step must be based on 2.1: Enforcement Guidelines, and the additional guidelines provided in the manual.

4.6.3 Allowing any person to do, or omit to do, anything which is an offence in terms of the previous two offences, is a category three offence, as is set out in section 79(3) of the ICM Act. Note that this only applies to the holder of an authorisation. Issue either an AG-fine or open an enquiry or case docket. The decision on the appropriate step must be based on 2.1: Enforcement Guidelines, and the additional guidelines provided in the manual.

4.6.4 Where such failure to comply with conditions resulted, or could possibly result, in an adverse effect on the coastal environment, and it is necessary to instruct the transgressor to take certain steps, and/or investigate and evaluate the impact of the activity and/or to stop or postpone the activity for a period to allow for an investigation to be carried out, issue a Section 59 Coastal Protection Notice in accordance with SOP 6.9 Administrative Enforcement.

4.6.5 Where such failure to comply with conditions resulted in an adverse effect on the environment because of the existence or condition of a structure, or because it has been abandoned, issue a Section 60 Removal Notice in accordance with SOP 6.9 Administrative Enforcement.

NOTE

Failure to comply with any of the conditions of a permit issued in terms of Chapter 8, can result in the issuing of a Section 31L NEMA Compliance Notice, as described on 4.2.3 above. See the 6.9: Administrative Enforcement for the required steps.

4.7 Other applicable provisions

4.7.1 Failure to comply with a repair or removal notice issued in terms of section 60 is a category two offence, as is set out in section 79 of the ICM Act.

4.7.2 Failure to comply with a coastal protection notice issued in terms of section 59 is a category three offence, as is set out in section 79 of the ICM Act.

4.7.3 Section 79(4) of the ICM Act provides that a person who "contravenes any other provision of this Act" is guilty of a category three offence. This also applies to other provisions in Chapter 8 not dealt with above.

HOT TIP

As Chapter 8 deals with waste and pollution in the coastal environment, also refer to the following legislation when taking enforcement action:

- The Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986)
- The Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981)

These acts deal with the protection of the marine environment from pollution by oil and other substances. The authority tasked with the enforcement of these Acts is the South African Maritime Safety Authority ("SAMSA").

Also refer to the following legislation;

- The National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)
- The Hazardous Substances Act, 1973 (Act No. 15 of 1973)
- The Regulations on the Control of Vehicles in the Coastal Zone in GN 1399 of GG 22960 of 21 December 2001 (as amended), promulgated in terms of NEMA. These might be applicable where vehicles were used in the commission of the prohibited activity under the ICM Act.
- The Marine Living Resources Act, 1998 (Act No. 18 of 1998), and the regulations promulgated under this Act, either where it concerns any marine living resources, and especially where it concerns prohibited conduct within marine protected areas ("MPAs"), as is regulated by section 43 of that Act, and also contained in the various proclamations of MPAs.
- The provisions in section 24F of NEMA, in so far as it relates to activities requiring environmental authorisation. Some of these may be applicable due to the nature of the activity, others because of their presence in, or proximity to, the coastal zone.

PROCEDURE SUBSEQUENT TO REPORTING OF EMERGENCY INCIDENTS

1 OBJECTIVE

This SOP informs the relevant authority of the procedure to be complied with subsequent to an emergency incident being reported. This procedure applies to all emergency incidents reported to the relevant authority either as an alarm report or in terms of section 30 of NEMA in an alert report.

2 DEFINITIONS

S.30 Alert report: the report that must be submitted by the responsible person in terms of section 30(3) of NEMA.

Alarm report: a report that is received of a possible emergency incident other than from the responsible person in terms of section 30(3) of NEMA.

Emergency Incident: an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed;

Emergency Incident Report means the report submitted to the Incident Controller

National Incident Coordinator: Person appointed by the DG, DEA to coordinate emergency responses

Incident Controller: Person appointed by the lead Relevant Authority to act on behalf of the authority

On-site incident: an incident that occurs within the boundaries of a particular industry, business or other type of development.

Off-site incident: an incident that occurs within the general public domain

Relevant Authority: means -

- a municipality with jurisdiction over the area in which an incident occurs;
- a provincial head of department or any other provincial official designated for that purpose by the MEC in a province in which an incident occurs;
- the Director-General;
- any other Director-General of a national department.

Responsible Person: includes any person who -

- is responsible for the incident;
- owns any hazardous substance involved in the incident; or
- was in control of any hazardous substance involved in the incident at the time of the incident;

and where the incident occurred in the course of that person's employment, will include his/her employer

3 BACKGROUND

<u>Purpose</u>

The measures in section 30 of NEMA are largely reactive, seeking to reduce the extent of the impacts on the environment that have already occurred as a result of an incident. The proper management of information emanating from an emergency incident can however be used to proactively predict, prevent and better manage future emergency incidents.

What is an emergency incident?

Specific thresholds for determining when an incident qualifies as an emergency incident in terms of Section 30 of NEMA have not been provided in the legislation. According to the definition in NEMA an incident must satisfy the following cumulative requirements:

- It must be unexpected (not expected/surprising) sudden (without warning/abrupt) occurrence (of which major emissions, fires and explosions are three examples); and
- It must lead to serious danger to the public; or
- It must lead to potentially serious pollution (see definition below) of or detriment to the environment;
- Irrespective of whether the above effects are immediate or delayed.

"Pollution" is defined as any change to the environment (whether caused by substances, radioactive or other waves, noise, odours, dust or heat) having an adverse effect on human health or wellbeing, or on ecosystems or on useful materials. Note the wide definition of "environment", also in section 1 of NEMA.

If it transpires at any stage that the incident is not a NEMA emergency incident, the Incident Controller reports this to the National Incident Coordinator, who makes a final decision on the matter. The Incident Controller, with the permission of the National Incident Coordinator, closes the emergency incident record and sends the Responsible Person a notification indicating that the incident was not an emergency incident and that no further action is required in terms of Section 30 of NEMA.

Roles and Responsibilities

Due to a lack of clarity regarding the roles and responsibilities of the relevant authorities and overlapping legislation, emergency incidents are often met with either no response, or a duplicated response.

Firstly note the provisions in section 30(2) NEMA in this regard. The DG may only take steps in terms of section 30 NEMA where neither the municipal or provincial authority has done so. The provincial authority may only take steps where the municipality has not done so, and the DG of another national department may only do so if none of the other parties have done so. Where it is however necessary to do so, any of these may take the necessary steps if none of the other parties have yet done so. This means that in most cases the municipal authority might be the appointed lead Relevant Authority, but that the Incident Controller of the municipal authority will act in close cooperation with the National Incident Coordinator.

The application of other legislation or the responsibilities of other organs of state in the case of emergencies does not detract in any way from the Responsible Person's obligations in terms of NEMA. The National Incident Coordinator and Incident Controller will work closely with any such department or organ of state, and should, for example, not issue a directive in terms of section 30(6) NEMA without consultation with such parties. In some cases it might mean that another state department or organ of state will take the lead in the response to the emergency, and that the section 30 NEMA requirements will be an additional, but secondary, response to the emergency. An example of this would be a water pollution incident where the requirements of section 20 of the NWA must be complied with or an oil spill at sea, where SAMSA will take the lead in terms of the relevant legislation.

In the case of on-site incidents and depending on the size and nature of the company involved, the relevant company may have sufficient resources available on site for the incident to be managed without the need for external assistance from municipal emergency services. Off-site incidents are generally responded to by municipal emergency services that may, depending on the nature of the incident and the resources available within the municipality, require the use of private companies to assist in the containment and cleanup operations.

4 PROCEDURE

4.1 Receiving an Alarm or S.30 Alert Report

4.1.1 When an Alarm Report is received, and the reported incident was determined to be an emergency incident, or the Responsible Person has submitted a S.30 Alert Report to the Relevant Authorities, the National Incident Coordinator must ensure that all other relevant authorities and role players are notified, if not already notified in terms of SOP 4.6: Referral and Reporting Protocol.

4.1.2 The National Incident Coordinator identifies a lead Relevant Authority. The lead Relevant Authority immediately appoints an Incident Controller.

4.1.3 In the case of an Alarm Report, proceed to 4.2.

4.1.4 In the case of a S.30 Alert Report, proceed to 4.3.

4.2 Reacting to Alarm Reports

4.2.1 The Incident Controller determines whether a Responsible Person can be identified. If such a person can be identified, the Incident Controller immediately notifies such person of their obligation to submit an Alert Report.

4.2.2 If a S.30 Alert Report is then submitted, proceed to 4.3.

4.2.3 If the responsible person fails to submit a S.30 Alert Report, the Incident Controller must report this to the Incident Coordinator, who then can:

- Issue a section 31L NEMA compliance notice to the Responsible Person, and
- Launch a criminal investigation into the non compliance to section 30(3), a criminal contravention in terms of section 30(11)

Note that the directive in section 30(6) does not cover the non-compliance with section 30(3). The section 31L compliance notice must be issued according to SOP 6.9: Administrative Enforcement. The criminal measures must be determined according to the Enforcement Guidelines in SOP 2.1.

4.2.4 If however:

- there is an immediate risk of serious danger to the public or potentially serious detriment to the environment, or
- no responsible person can be identified, or
- there is uncertainty as to who the responsible person is

proceed to 4.9 below.

4.3 Initial Desktop Assessment of the S.30 Alert Report

4.3.1 The Incident Controller assesses the information in the S.30 Alert Report to ensure that the following aspects have been reported on satisfactorily and in sufficient detail:

- The nature of the incident;
- Any risks posed to public health, safety or property;
- The toxicity of substances or by-products released by the incident;
- Any steps that should be taken in order to avoid or minimise the effects of the incident to public health and the environment.

4.3.2 If any of these aspects have not been dealt with satisfactorily and in sufficient detail, the Incident Controller notifies the Responsible Person and requests additional information. If circumstances require it, this can be done verbally, but as soon as possible followed up with a written instruction confirming the verbal instruction.

4.3.3 If the initial evaluation indicates there is an immediate risk of serious danger to the public or potentially serious detriment to the environment and it is essential that the Relevant Authority must step in to contain and minimise the effects of the incident, undertake cleanup and remedy the affects, then proceed to 4.9 below. Depending on the urgency, this can be done either prior to, or following on, a site visit.

4.3.4 If the circumstances do not require the step in 4.3.3 above, proceed to 4.4

4.4 Duties of Responsible Person

4.4.1 Unless the Responsible Person has clearly indicated that they understand their responsibilities in terms of section 30(4) NEMA, the Incident Controller immediately notifies them that they are under an obligation to:

- Take all reasonable measures to contain and minimise the effects of the incident;
- Undertake cleanup procedures;
- Remedy the effects of the incident;
- Assess the immediate and long-term effects of the incident on the environment and public health

4.4.2 If circumstances require it, this can be done verbally, but must, as soon as possible, be followed up with a written instruction confirming such verbal communication. If there is any indication that the Responsible Person is not fulfilling these responsibilities, the Incident Controller must consider the issuing of a directive as is set out under 4.8 below.

4.4.3 A copy of the instruction must be forwarded to the National Incident Coordinator.

4.5 Detailed Assessment of the Alert Report

4.5.1 The Incident Controller must make a comprehensive assessment of the information in the Alert Report. This step involves any or all of the following, and may involve a site visit if necessary:

- Contacting the responsible person and all other relevant authorities and determining what steps have been taken already;
- Evaluating, the effect of steps already taken;
- Evaluating the size and nature of the incident;
- Evaluating the potential hazards of the incident
- Assessing the resources needed to contain, clean and remediate the site;
- Assessing, where applicable, the ability of the local authority to control the incident

4.5.2 A copy of the assessment must be forwarded to the National Incident Coordinator.

4.6 Notification of Emergency Incident Report

4.6.1 The Incident Controller sends the Responsible Person a notification indicating that the incident has been classified as emergency incident in terms of section 30 of NEMA and that a report is due within 14 days of the date of the incident. The request must stipulate that the report must contain all available information to enable an initial evaluation of the incident, including, but not limited to comprehensive information on:

- The nature of the incident;
- The substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects;
- Initial measures taken to minimise impacts;
- Causes of the incident, whether direct or indirect, including, but not limited to, equipment, technology, system, or management failure; and
- Measures taken and to be taken to avoid a recurrence of such an incident.

- Require acknowledgement of receipt of the above request and follow up if no such acknowledgement is received.

4.6.2 A copy of the request is forwarded to the National Incident Coordinator.

4.7 <u>Duties of the Incident Controller</u>

4.7.1 The Incident Controller then:

- arranges a site meeting with the Responsible Person and relevant authorities if it has not yet been done;
- agrees roles and responsibilities with other Relevant Authorities in so far as it has not yet been done;
- ensures that the relevant authority monitors the containment, cleanup and remediation of the incident.

4.8 <u>Issuing of Directives</u>

4.8.1 If at any stage the Responsible Person fails to fulfill his or her obligations as specified in 4.4 or 4.6 above, the Incident Controller, on behalf of the Relevant Authority, may direct that person to undertake specific measures within a specific time. This may only be done after consultation with the National Incident Coordinator, unless it is an urgent verbal directive. Prior to the decision, the relevant authority has regard to the following:

- the principles in section 2 of NEMA;
- the severity of any impact on the environment as a result of the incident and the costs of the measures being considered;
- any measures already taken or proposed by the person on whom the measures are to be imposed;
- the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;
- any other relevant factors.
- Such a directive:
  - due to the nature of the situation does not need to be preceded by a pre-directive, unless time allows for that;
  - must indicate that the above listed considerations have been taken into account;
  - may be given verbally, but such a verbal directive must be confirmed in writing at the earliest opportunity, and within 7 days

4.8.2 Where the Responsible Person fails to comply with the directive, the responsible authority may:

- follow the steps in 4.9 below and
- proceed with a criminal investigation, the outcome of which will be based on the Enforcement Policy: 2.1

Where the Responsible Person is an organ of state, follow only the steps in 4.9 below, and do not proceed with a criminal investigation (NEMA is not binding on the State as far as criminal liability is concerned).

4.8.3 The relevant authority must report the issuing of such a directive as prescribed in 4.10 below.

4.8.4 The attempted criminalisation of the non-compliance with a section 30(6) directive by section 30(11) is problematic, and it might be advisable to simultaneously issue a section 28(4) directive and/or a section 31L compliance notice according to the prescriptions in SOP 6.9: Administrative Enforcement.

4.9 Intervention by the Relevant Authority

4.9.1 Should-

- the Responsible Person fail to comply, or inadequately comply with a directive as set out in 4.8; or
- there be uncertainty as to who the responsible person is, as set out in 4.2; or
- there be an immediate risk of serious danger to the public or potentially serious detriment to the environment, as contemplated in 4.2 or 4.3

the Incident Controller, on behalf of the Relevant Authority, takes the measures it considers necessary to –

- contain and minimise the effects of the incident;
- undertake cleanup procedures; and
- remedy the effects of the incident

and claims reimbursement for all reasonable costs incurred from any Responsible Person jointly and severally, where such person(s) can be identified.

4.9.2 Where such steps have been taken, the Incident Controller addresses a letter of demand to the Responsible Person, if identified, claiming reimbursement, clearly specifying the cost in detail, as well as setting out why such cost were reasonable in the circumstances, and a reasonable timeframe for such payment. If no payment is made before the prescribed date, the matter is referred to the legal advisor of the Relevant Authority for referral to the Office of the State Attorney for recovery/collection. A Relevant Authority must then give notice as is prescribed in 4.10 below.

4.10 Reporting by the Relevant Authority

4.10.1 Where the Relevant Authority has issued a directive or has taken the necessary measures to contain, cleanup and remedy, the Incident Controller, as soon as reasonably practicable, prepares a comprehensive report on the incident, and makes it available through the most effective means reasonably available to –

- the Director-General (via the National Incident Coordinator);
- the South African Police Services and the relevant fire prevention service;
- the relevant provincial head of department or municipality; and
- all persons who may be affected by the incident.
- the public;

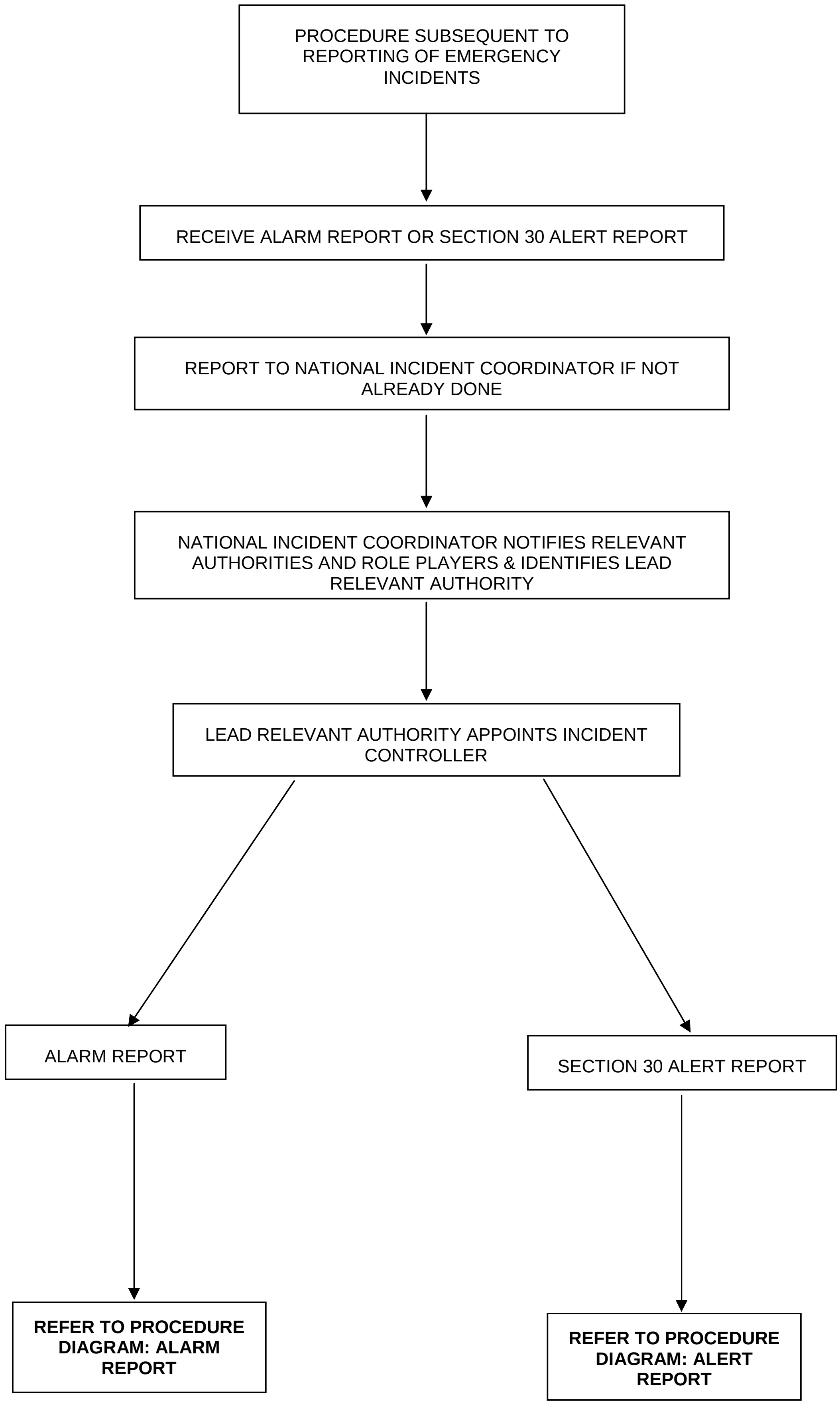
4.10.2 Communication with affected persons and the public can be via e-mail, letters, registered letters, newspapers, radio or other media, depending on the particular situation.

4.11 Reporting and Evaluation

4.11.1 At the conclusion of the matter, a comprehensive report on the incident must be submitted by the Incident Controller to the National Incident Coordinator, irrespective of whether a report as contemplated in 4.10 above was submitted during the incident or not.

4.11.2 The National Incident Coordinator is responsible for compiling an annual report on the handling of emergency incidents, with specific recommendations for more effective responses based on the reports received. Where necessary, this SOP must be amended accordingly.

PROCEDURE DIAGRAM



DRAFTING OF INSPECTION REPORTS

1 OBJECTIVE

The purpose of this document is to provide a procedure for the drafting of inspection reports. This applies to all inspections done in terms of section 31K of NEMA.

2 PROCEDURE

2.1 The EMI that led the inspection (EMI team leader) is responsible for the preparation and contents of the inspection report.

2.2 Make all the necessary preparations for the inspection.

- Take the inspection report template with and proceed with the inspection according to the items outlined therein.
- The EMI team leader can delegate aspects of the inspection to other team members
- Take a supply of A4 paper and clipboards to record details that can later be incorporated into the final inspection report
- Before writing the final report, ensure that all notes and details recorded by every team member have been incorporated.

2.3 Write the report as soon as practically possible after the inspection and refer back to the notes made in the pocketbook at the time of the inspection to refresh your memory.

2.4 The inspection report should provide a complete, accurate, concise and clear record of the inspection, and should include or refer to the following:

- The objectives of the inspection including the reference number of the EA
- The scope of the inspection, including the time period covered
- Identification of the EMI team leader and members of the inspection team
- Identities of the persons who accompanied the EMI team during the inspection
- The dates and places where the on-site inspection activities were conducted – where possible obtain or draft a map of the site
- The criteria for the inspection
- Whether it was with or without a warrant
- Whether anything was seized in terms of 31K(5) of NEMA – refer to SOP 6.2: Search and Seizure
- The inspection findings, including references to any photographs that were taken
- The inspection conclusions
- Recommendations

TIPS FOR WRITING INSPECTION REPORTS

1 Keep it simple:
- Use short, direct sentences
- Avoid complicated terms, if possible
- Define any complicated terms used that the reader of the report may not be familiar with

2 Keep it factual:
- Report your observations
- Include direct statements made to you that are relevant to the inspection findings
- Avoid opinions

3 Be as accurate as possible:
- Check every detail
- Compare with notes and checklists
- Use sketches, diagrams and photographs

2.5 The following annexures are attached:

- Annexure 1: General Inspection Report Template
- Annexure 2: EA Inspection Report Template
- Annexure 3: Inspection Report Evaluation Guide

ANNEXURE 1

Inspection Report

1 FACILITY INSPECTED	
Exact geographic location of the site	
Date of the inspection	
2 OBJECTIVES AND SCOPE OF INSPECTION	
Type of inspection	
Site or activity name	
Inspection scope, particularly identification of the organisational and functional units or processes inspected and the time period covered	

3 INSPECTION TEAM				
Team leader	**Name**	**Institution**	**Position**	**Contact details**
Team members	**Name**	**Institution**	**Position**	**Contact details**

4 FACILITY REPRESENTATIVES		
Name	**Position/title**	**Contact Details**

5 BACKGROUND TO INSPECTION	
History of the facility	
Brief description of the activities/operations, and process	
Compliance history, where applicable	
Ownership	
ISO 14001 Accreditation (where applicable)	
Dates, times and places where the on-site inspection activities were conducted	
Mandated legislation and permits	

6 OPENING MEETING		
Attendance register		
What was discussed		
Any specific arrangements made with the facility		

Describe if entry was granted or denied	
Problems/restrictions	
7 INSPECTION ACTIVITIES	
Team A:	
Team B:	
Documents Team	

8 **RECORDS REVIEWED AND GATHERED**	
Records reviewed	
Records copied and taken	
Where were the records kept, and who was in charge of them?	
What selection method was used to review records?	
9 SAMPLES AND MEASUREMENTS	
What samples were taken, where, when, and of what?	

Chain-of-custody documentation including reference to the time, method of packaging, preserving, transporting and receipt of samples at the lab	
Procedures used for the calibration of sampling and/or measurement equipment	

10 SUPPORTING DOCUMENTS AND PHOTOS

Notes	
Documents	
Photographs	
Notices	

11 FINDINGS OF NON-COMPLIANCE, IF ANY	
Legislation/authorisation condition	**Details of non-compliance**

12 OPERATORS' AWARENESS OF PERMITS AND PERMIT CONDITIONS	
Team A:	
Team B:	

13 GENERAL HOUSEKEEPING	

14 DOCUMENTATION SYSTEMS	
Documentation systems to support demonstration of compliance with legislation and permits	

15 SUMMARY OF INSPECTION PROCESS	
Uncertainties or obstacles encountered	
Have the inspection objectives been met within the scope of the inspection and in accordance with the inspection plan?	

16 CLOSING MEETING	
Who was present?	

What was discussed?	
Was further information requested, from whom and by what date?	
Any areas or aspects of the inspection plan/scope not covered or areas and aspects covered not within the inspection plan/scope, and reasons for the divergence	
17 FOLLOW-UP ACTIONS	
	LIST OUTSTANDING DOCS

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INSPECTION TEAM LEADER

DATE:

ANNEXURE 2

EA Inspection Report

1 FACILITY INSPECTED	
Exact geographic location of the site	
Date of the inspection	
Site or activity name	

2 OBJECTIVES AND SCOPE OF INSPECTION	
Type of inspection	*Compliance inspection to determine compliance with the Environment Conservation Act, 1989 (Act No. 73 of 1989) (ECA), and the National Environmental Management Act, 1998 (Act no. 107 of 1998) (NEMA), as well as authorisations issued in terms of such legislation.* *The methodology followed, as evident from the report, was to assess compliance with every condition in the applicable authorisations and with the relevant legislative provisions by way of interviews, document review and on-site observations.*
Inspection scope, particularly identification of the organisational and functional units or processes inspected and the time period covered	

3 INSPECTION TEAM				
Team leader	**Name**	**Institution**	**Position**	**Contact details**
Team members	**Annexure A**			

4 FACILITY REPRESENTATIVES		
Name	**Position/title**	**Contact Details**

5 OPENING MEETING	
Date, time and venue	
Attendance register	
Any specific arrangements made with the facility	
Describe if entry was granted or denied	
Problems/restrictions	

6 RECORDS REVIEWED AND GATHERED	
Records copied and taken	

7 SUPPORTING DOCUMENTS AND PHOTOS	
Documents	

Photographs	

8 CHECKLISTS

AUTHORITY BASED APPROACH REVIEW CHECKLIST

Elements	Details	Yes	No	N/A	Comments / Actions to be taken / Decisions Made
Environmental Authorisation or Record of Decision **(in terms of NEMA, Section 24 or ECA Section 22)** **General authorisation Requirements**	Verify the following details: Authorisation exists for all "listed activities" on site; Correct authorization, including any amendments thereto, has been issued;				
	Site location is correct;				
	Contact details of the proponent are correct;				
	The authorization validity period has expired.				
Standard Conditions	Verify the following: Registered interested and affected parties been made aware of the conditions of the environmental authorisation within one week of the proponent receiving the environmental authorisation				
	The conditions of the environmental authorisation are included in contracts entered into between the applicant and purchasers of property, contractors and subcontractors.				
	Has environmental damage been detected and remedied the satisfaction of the relevant authority.				

	The department has been notified within 30 days of a change in ownership / project developer and the conditions of the environmental authorisation have been made known and are binding to the new owner / developer				
	The authorisation has been withdrawn or suspended				
Elements	**Details**	**Yes**	**No**	**N/A**	**Comments / Actions to be taken / Decisions Made**
Project Specific Conditions	Verify that the General and Specific Requirements of the Authorisation stipulated have been implemented. This may include: Implementation of specific mitigation measures identified in the Scoping Report, Environmental Management Plan and / or Environmental Impact Report;				
	Implementation of Environmental Management Plans;				
	Appointment of Environmental Control Officers;				
	Development plans, rezoning, sub-divisions, buffer areas and approved phased development plans are being adhered to; and				

	Impacts (cumulative, direct and indirect) associated with the development are being managed in accordance with the approved EMP.				
Environmental Management Plan	Is there an approved EMP for the development?				
Elements	**Details**	**Yes**	**No**	**N/A**	**Comments / Actions to be taken / Decisions Made**
Environmental Management Plan cont.	Are the specific measures within the EMP for the following aspects being implemented on site: Wastewater or effluent management;				
	Non-hazardous solid waste management;				
	Hazardous solid waste management;				
	Buffer zones and no-go areas;				
	Gaseous emissions;				
	Soil conservation (erosion control);				
	Maximum development footprint;				
	Compilation and approval of Method Statements;				
	Noise management;				
	Management of hazardous substances;				
	Issuance and payment of fines for non-compliance;				

	Payment of fines for non-compliance				
Environmental Control Officer	If an ECO is required in terms of the authorisation, verify the following: Does the authorisation require an independent ECO?				
	Has an independent ECO been appointed?				
	Have the ECO audits been submitted at the correct intervals to the relevant authority for review?				
	Have EIA and EMP non-compliances noted in the ECO report been reported to the relevant authority?				
	Have EIA and EMP non-compliances noted in the ECO report been addressed within the relevant time period?				
Elements	**Details**	**Yes**	**No**	**N/A**	**Comments / Actions to be taken / Decisions Made**
Environmental Control Officer cont.	Has a retention fund to make provision for rehabilitation that may be required by the ECO been set aside?				
	Has the ECO been replaced within the relevant time period?				
	Are the actual ECO responsibilities consistent with the description of ECO responsibilities in the EMP?				
Additional Legal Requirements	Is there suspected non-compliance with other legislation?				

SELF REGULATORY APPROACH REVIEW CHECKLIST					
ENVIRONMENTAL MANAGEMENT SYSTEM					
Elements	**Details**	**Yes**	**No**	**N/A**	**Comments / Actions to be taken / Decision Made**
General	Is there a copy of the authorisation available on site?				
	Have all persons responsible for the implementation of the authorisation been provided with training on the requirements				
	Has somebody been appointed to manage compliance with the conditions of the authorisation?				
	Are the authorisation details correct with respect to the following:				
	Have the conditions of the environmental authorisation been included in an Environmental Management Plan or an Environmental Management Programme?				
	Is there a copy of the EMP available on site?				
	Has the authorisation been incorporated into the company Environmental Management System (EMS)?				
	Has the EMS been audited against the clauses of a standard e.g. ISO 14001?				
	Has an EMS implementation audit been conducted?				
	Are the commitments made within the EMP being implemented?				

	Are compliance reports being compiled and submitted to authorities in accordance with the required content and timeframe conditions for such reports in the conditions of the authorisation				

Elements	**Details**	**Yes**	**No**	**N/A**	**Comments / Actions to be taken / Decision Made**
Site audits	Has a site audit been undertaken to review all aspects of environmental management of the facility or operation?				
Legal compliance audits	Verify the following: Has a legal compliance audit been conducted?				
	Has a compliance audit been conducted against the conditions of the environmental authorisation?				
	Has a compliance audit with emission limits been conducted?				
	Has a compliance audit been conducted for discharge permits?				
	Has a compliance audit been conducted for any required operating licenses?				
Sector/issue specific audits	Have sector or issue-specific audits of environmental management and performance been conducted eg. waste disposal, energy use, cleaner production?				

COMMUNITY APPROACH REVIEW CHECKLIST					
Element	**Details**	**Yes**	**No**	**N/A**	**Comments / Actions to be taken / Decision Made**
Environmental Monitoring Committee	Verify the following: Are there authorisation conditions specific to the role of the EMC?				
	Has an EMC been established?				
	Has the budget and the necessary resources to implement the roles and responsibilities of an EMC been made available?				
	Have the personnel necessary to carry out the tasks of the EMC been appointed?				
	Has the EMC met at required intervals with formally recorded minutes?				
	Have the tasks detailed in the environmental authorisation for the EMC been implemented?				
	Have all complaints been recorded and addressed?				
	Are minutes of meetings circulated to all relevant parties?				
	Is the representation on the EMC unbiased and objective?				
	Are reports on the monitoring activities of the EMC circulated to all authorities in accordance with the content and timeframe requirements for such reports in the conditions of authorisation?				

FINDINGS OF NON-COMPLIANCE, IF ANY	
Legislative provision/authorisation condition	**Details of non-compliance**
Authorisations	

Environmentally harmful activities				
Activities/situations that have or may have a major detrimental environmental impact				

Other contraventions	
NEMA Section 34A(1) *Hindering or interfering with an EMI in the execution of that inspector's official duties; furnishing false or misleading information when complying with a request of an EMI; failing to comply with a request of an EMI.*	
DOCUMENTATION SYSTEMS	
Documentation systems to support demonstration of compliance with legislation and permits	

SUMMARY OF INSPECTION PROCESS	
Uncertainties or obstacles encountered	
Have the inspection objectives been met within the scope of the inspection and in accordance with the inspection plan?	

CLOSING MEETING			
Date, time and venue			
	Name	**Designation**	**Institution**

What was discussed?			
Was further information requested, from whom and by what date?			
OUTSTANDING ISSUES/FOLLOW-UP ACTIONS			

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INSPECTION TEAM LEADER

DATE:

ANNEXURE 3

Inspection Report Evaluation Guide

The contents and format of an inspection report can vary according to the type of inspection, the particular circumstances of the inspection and the individual writing style of the report writer. No matter what form the report is, however, the report and its attachments should answer the following questions:

Basic Inspection Information

- Who prepared the inspection report?
- Who signed the inspection report, and on what date?
- Who performed the inspection (all participants)?
- What is the name and location of the facility or site?
- What is the mailing address and telephone number of the facility or site?
- What is the name and title of the responsible official who was contacted?
- What was the reason for the inspection (for example, routine or response to a complaint)?

Entry and Opening Conference

- What are the facts about the entry (date, time, entry location, and team leader)?
- Were all team members properly identified?
- Were there any unusual circumstances concerning gaining consent to enter (for example, reluctance, attempts to limit the scope of the inspection, or attempts to place special requirements on inspectors)? How were such circumstances handled?
- Who was present at the opening conference?
- What topics were discussed at the opening conference?

Background of the Facility or Site

- What is the type of facility or site?
- What types of activities and operations take place at the facility or site?
- Who owns the facility or site (for example, a company, a closed corporation, an individual, a partnership, an organ of state or a nonprofit organization)?

- How many years has the facility been in existence?

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- How many employees work at the site?

- Have any major modifications been made at the facility? Are any modifications or expansions planned?

- At what level of capacity is the facility operating? For how many shifts does it operate, and how many hours per day and days per week? What relationship does this information have to the inspection that was performed?

- Which operations, processes, and activities at the facility were examined during the inspection?

- Which operations, processes, and activities at the facility were not examined?

<u>Inspection Activities</u>

Records Inspection

- Is there a general description of how records are kept at the facility?

- What was the purpose of reviewing records?

- What records of the facility were reviewed?

- Are photocopied records or data manually copied from records adequately identified and documented?

- How were the specific records selected for review (was an auditing technique used or were all records reviewed)?

- Were any suspected transgressions found? (Each should be fully documented, making sure that all the information required for the section set forth below on suspected transgressions is included.)

Physical Sampling

- What was the inspector's sampling plan for the facility or site?

- What physical samples were collected at the site?

- Are the sampling techniques used explained adequately?

- Are all samples clearly linked to an identification number, location, and purpose?

- Are sampling conditions and other physical aspects of the sample (for example, color, texture, and viscosity) described?

- Were any deviations from the sampling plan or SOPs explained and documented adequately?

- Are chain-of-custody procedures documented?

- Are the results of laboratory analysis presented clearly?

- How do the results of analysis of samples compare with limits set forth in the facility's permit?

Illustrations and Photographs

- Are photographs taken during the inspection included and properly documented?

- Is there some information about the inspection that could be made easier to understand through the inclusion of a diagram or sketch?

- If sketches, diagrams, or maps are used, is the scale or other relationship shown clearly?

Interviews

- What are the names and titles of officials of the facility and other personnel who were interviewed?

- Are their statements summarised clearly?

- What are the names and addresses of any other individuals who were interviewed or who were witnesses?

Closing Conference

- Does the report include documentation that required receipts for samples and documents were provided?

- Does the report note statements the inspector made to officials of the facility about compliance status, recommending actions to take, or other matters?

<u>Documentation of Suspected Transgressions</u>

The heart of the inspection report is really the documentation and substantiation of suspected transgressions, which allows the EMI to determine whether a transgression occurred, how and why it occurred, and its seriousness. This substantiating information includes all the evidence of various kinds that has been collected. In an actual inspection report, some of the questions on the preceding pages might be answered in the portion of the report that discusses the evidence collected and other particulars of each suspected transgression.

Documentation of Suspected Transgression

For each suspected transgression, the inspection report should answer the following questions:

- What requirement does the inspector suspect has been transgressed?

- What information proves that the cited requirement applies to the facility or site?

- According to the elements of the requirement, what information proves that the suspected transgression occurred?

- What sampling methods (if appropriate) were used to determine that the transgression occurred? Are any deviations from sampling methods adequately explained?

- What information shows that possible exemptions to the rule do not apply?

Cause of Transgression

Note: This information may be useful, even when it is not required, for such purposes as negotiating an appropriate remedy and planning of future inspections. Causal information must be stated carefully so that it does not provide the violator with an excuse for the transgression.

- What information documents the possible cause of the transgression (for example, direct observations of gauge readings, production logs, physical appearance of materials, or statements by facility personnel)?

- Is there any supporting information that confirms or disproves a possible claim of an upset or other exempt activity?

Other Mitigating and Aggravating Factors

The level of enforcement response is partly based on the seriousness of the transgression. The inspection report should therefore contain information that will support the appropriate determination of the seriousness and extent of the transgression.

- What is the seriousness of the transgression (for example, amount of emissions, length of time of excess emissions, nature of emissions, location of source, and perceived effect on the public)?
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- What harm resulted or could result from the transgression?

- What efforts did the facility make to correct the transgression?

- How difficult will it be to comply (considering such factors as availability of technology, cost of complying, and time required to correct the transgression)?

- What is the facility's past compliance history?

CONDUCTING SURVEILLANCE

1 OBJECTIVE

The objective is to prescribe how surveillance should be carried out, and it applies to all EMIs when planning and conducting surveillance operations.

2 BACKGROUND

Surveillance, derived from the French word “surveiller” meaning “to watch over”, is employed to identify and document activities through discreet tactics in order to satisfy the objectives of a project or specific operation. Each surveillance operation is unique and therefore no strict prescriptions can apply to when a certain information gathering technique should be employed.

The objectives of surveillance are:

- To identify and locate persons suspected of being involved in the commission of a crime;
- To detect the commission of a crime (illegal activities in progress);
- To verify information received;
- To collect information for the purposes of formulating an appropriate action;
- To familiarize personnel with the terrain, structures or general ‘lay of the land’ when planning interventions;
- To obtain the requisite information for the purposes of obtaining a search warrant; and,
- Safe-guarding and/or monitoring persons or premises in respect of which a lawful instruction (e.g. a directive or a compliance notice) may have been given regarding ceasing certain activities or taking certain steps to protect the environment.

The benefits of surveillance, over and above that of other investigative methods, are that:

- the observer is also the collector;
- information is actual and in real time;
- the information stays in the observer’s own hands;
- it is an ideal technique to obtain very reliable information.

3 SURVEILLANCE FOR EMIs

Surveillance is a specialized field of operation employed by various institutions as a means to gather information. In the context of an EMIs duties, the needs and techniques will differ from situation to situation depending on the type of work that is being undertaken. Surveillance can take place through a person’s unaided senses, or can be carried out, enhanced and recorded, by an array of devices, such as:

- Binoculars, telescopes, night vision equipment, and other magnification or light gathering devices;
- Listening devices or “bugs”;
- Video cameras and other audio-visual device imaging equipment;
- Satellites fitted with magnification or light/electromagnetic radiation gathering devices (e.g. Infra-red or ultra-violet sensors);
- Aircraft, balloons helicopters, and remote control vehicles;
- Documentation, records and computers;
- Tracking devices; and,

- Biometric identification systems, which use some characteristic unique to a person/organism to verify identity (for instance, DNA analysis, fingerprint scanner, or other pattern recognition).

4 PRIMARY CONSIDERATIONS BEFORE COMMENCING WITH SURVEILLANCE

4.1 Legislation

4.1.1 This discussion is not designed to discuss all the legislative procedures governing surveillance, but rather to remind EMIs to remain strictly within the bounds of the law. The primary principle in the context of surveillance that demands adherence is the individual's right to privacy as outlined in the Bill of Rights chapter of the Constitution of South Africa, 1996 (Act No. 108 of 1996).

4.1.2 The only provision in NEMA that deals with surveillance is Section 31H (1)(g), which empowers EMIs to take photographs or make audio-visual recordings. The photographs may be of "anything" or "any person", but must be relevant for the purpose of "an investigation". Note that the consent of the person being photographed or of whom an audio-visual recording is made is not required.

4.2 Selecting Suitable Staff

4.2.1 Not everyone is suited for observation, and staff ought to be selected for this purpose according to his or her individual strengths and talents. This may include:

- Resilience and the ability to react positively under stressful conditions;
- Inventiveness and resourcefulness;
- Patience and tenacity;
- An eye for detail and good general situational perception;
- Self-discipline; and,
- Proven ability to memorize details and keep accurate records.

4.3 Planning

4.3.1 Successful enforcement work relies heavily on pre-planning, which includes formulating a strategic plan of action, as well as putting in place contingency arrangements. Advance reconnaissance of the sites should be undertaken before surveillance can commence. If possible take photographs during advanced reconnaissance for planning purposes.

4.3.2 EMIs can employ the basis techniques described below, but should ideally receive advanced training in these techniques, and at the very least, join more experienced colleagues in their first efforts.

5 Surveillance Methods

Information gathering and surveillance for the EMI concerns two basic categories, namely:

5.1 Passive surveillance (Static or stationary surveillance)

- Observation posts;
- Remote video camera surveillance;
- Remote air sampling;
- Remote sampling in sewer systems;

5.2 Active surveillance (Mobile or moving surveillance)

- General mobile surveillance;
- Satellite Surveillance;
- Aircraft Surveillance;
- Ambient monitoring (air and water);

Surveillance

Active | **Static**

Mobile ← → **Physical**

Electronic | **Electronic**

(See 5.2 above) | (See 5.1 above)

The above graph reflects the methods of surveillance and how they connect and compliment each other.

5.3 Passive surveillance

5.3.1 This technique is applied in situations where the activities of the subject of surveillance only occur in one place. For instance, the subject's home, or place of work or leisure, may be placed under surveillance, as she/he needs to come from and go there on a regular basis. Another example is where the activities on premises are observed, such as factories, processing plants or business premises suspected of being used for illegal purposes. Static surveillance can be limited in application for if the dynamics of the situation should change suddenly, the observer's responding courses of action are limited.

5.3.2 Establishing an observation post (OP) is probably the example with which EMIs are most familiar. Bear in mind that OPs can also be moved, particularly where the OPs location has become known to outsiders. The site must allow the observers (as far as possible) constant and unrestricted visibility of the subject under surveillance for the duration of the procedure. Any restrictions of visibility must be recorded. The site must allow the observers constant and unrestricted access and the ability to vacate the post unobserved.

5.3.3 Remote video cameras are versatile and are useful in determining if certain types of activities are taking place when ground surveillance and observation posts are are not practical (e.g. monitoring emissions from a stack).

5.3.4 The most suitable static surveillance to monitoring emissions from a stack to determine if certain types of chemicals are being used, is remote air sampling. Most volatile and semi-volatile chemical compounds, when used in quantities or discharged at a facility, can be detected in the atmosphere. Today's air sampling devices will allow the investigator to set a timer, leave the area and return at a later time to retrieve the samples. A chemical analysis of the sample may reveal the presence of these compounds in minute concentrations. EMI's must however be weary of the fact that many variables may bring into question the validity of the sample results. Other nearby manufacturing facilities, vehicle traffic may contaminate the air sample to such an extent that it is no longer reliable.

HINT

The observers need to have a plausible ‘cover’ explanation for their presence at the site in the event that they are ‘discovered’ or asked by anyone. Ideally, there should be more than one observation post for the purposes of general efficacy and ultimately for evidentiary purposes. This is also good safety practice.

5.3.5 Keep detailed records (log): The observers must keep a constant log of all that is being observed. No detail is too small in this regard.

5.3.6 Pay attention to, and note descriptions of persons, weather conditions, types of vehicles, registration numbers, visitors, and accurate times. Remember that all details may eventually interlink to create a ‘watertight’ case.

5.3.7 Stationary observation as outlined above, allows for the taking of photographs. Telescopes and binoculars can further be used as observational aids and methods with which to collect information. If information is obtained by use of observational aids, then this fact must be recorded.

5.3.8 In many cases, observation post positions should not be abandoned until the case is complete. This is especially important when there is a high threat of detection or when the ground crew has been called in to assist. The person manning the observation post will be in the best position to direct the ground crew on site and point out any evidence that has been concealed or transgressors that have fled, etc.

5.4 Active Surveillance

5.4.1 As the term implies, mobile surveillance is conducted whilst the observer is moving. The subject under observation can be moving, or be stationary. This type of surveillance demands specific skills. There are numerous techniques that can only be developed through training and practice.

5.4.2 Moving surveillance can be conducted from vehicles of any description, for example cars, trucks, aircraft, and boats. Surveillance on foot is commonly conducted for the purposes of reconnoitering, or for following someone. Again, with safety in mind, and also for evidentiary purposes, surveillance on foot works best by deploying teams, but it can be done by single persons if the situation so dictates. These two types of surveillance are not mutually exclusive and they can be used in concert. Proper mobile surveillance is very labour intensive and requires highly trained staff.

5.4.3 During mobile surveillance, the subject is followed by foot, vehicle, aircraft or boat, and his/her movements, activities and actions are monitored from a distance. The purpose of this is to:

- Catch the suspect committing an offence;
- Gain more information about subject’s activities (places visited, vehicles used, persons contacted);
- Establish work or residential address.

5.5 Surveillance on Foot

5.5.1 During surveillance on foot the person conducting surveillance will be positioned:

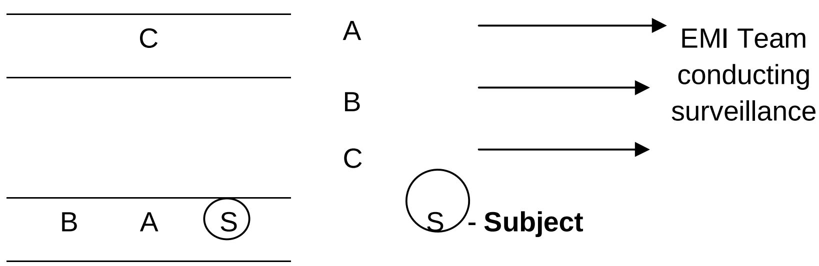
- Directly behind;
- Slightly behind;
- On the opposite side of the road or
- Combination.

5.5.2 The following distance will be dictated by:

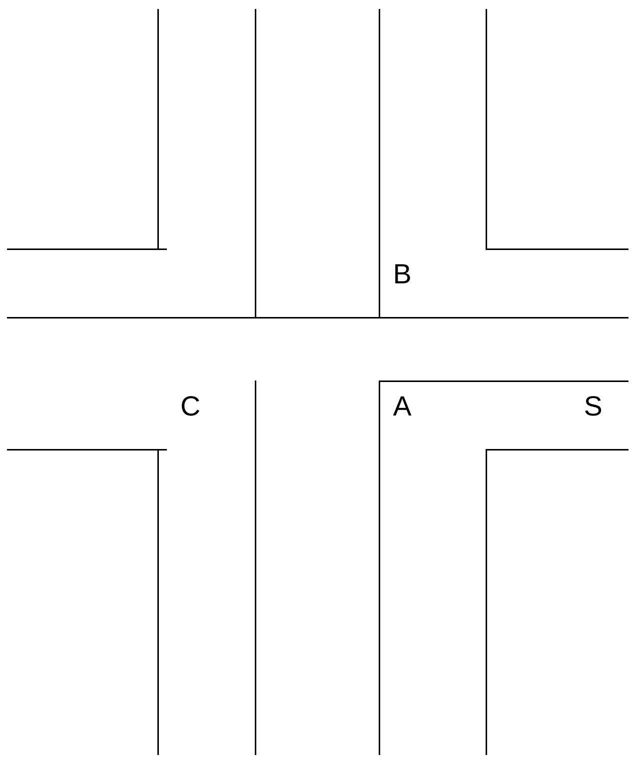
- Terrain;
- Amount of cover;
- Traffic obstacles.

Illustration:

A, B and C Team Surveillance on foot



OR



A, B and C presents the EMI team surveilling S on foot in both graphs. Note how A, B and C positions themselves in relation to S. If S becomes suspicious of any one of them they can easily drop of to be replaced by either of the remaining two EMI's.

5.6 Surveillance by vehicle

5.6.1 Surveillance by vehicle can be quite difficult, and often dangerous. In these situations ensure that:

- Only unmarked and inconspicuous vehicle are used;
- Work in teams of at least three vehicles;
- Keep a safe but manageable distance behind the subject and exchange positions with the other vehicles in the team regularly;
- To enable excellent vehicle surveillance, excellent communication between all members of the team is a must;

- Proper consideration is given to safety – reckless and high speed driving also occurs amongst normal road users;
- Where possible, obtain support from aerial surveillance that can assist in following a suspect and also warn in advance of traffic congestion, road closures or other obstacles (helicopters are a very popular option, but are noisy, and might alert a suspect to the fact that he/she is followed).

> **HINT**
>
> With modern technology it works much better to place a tracking device on the subject's vehicle. This enables tracking the vehicle and following from a safe distance without the risk of being discovered. A complete record of the route followed by the subject is also available for evidentiary purposes. Real vehicle surveillance without tracking must only be done when no other methods are available or viable.

5.6.2 Beware of counter surveillance methods when doing vehicle surveillance and being led into a trap.

5.7 Satellite Surveillance

5.7.1 Remote sensing, which is a growing field in environmental monitoring, is based on satellite surveillance of the earth. Photographs and digital images provided by satellites can reveal changes in the atmosphere, on land and in the marine environment. Satellites have internationally been useful for detecting large discharges of water pollutants and are often used to trigger inspections.

5.7.2 Most satellite images are usually too coarse to calculate the magnitude of the contravention. However, there are exceptions. The CSIR satellite centre has a satellite image database and maintains satellite imagery/information purchased by other government departments. The following images are available to all government departments and agencies through an information sharing agreement:

- High resolution Quickbird imagery with 60cm resolution.
- Spot 2 and Spot 4, with 20 metre multispectral and 10 metre panchromatic resolution. This data is acquired by the Department of Science and Technology and it is updated daily.

5.7.3 Other satellite information exists but is not generally used due to geographical coverage limitations, excessively course resolution and infrequent sampling.

5.8 Aircraft Surveillance

5.8.1 Aircraft overflights can, in many instances, be more effective than satellites for compliance monitoring. Airborne cameras can detect and record the densities, temperatures, and area of air and water discharges (many biological effects of pollution can also be detected from the air). However, most significantly, aircraft overflights can be used to observe and document the layout, storage, processing, discharge and disposal work practices at a facility.

5.8.2 Aircraft are further ideally used to measure ambient and source-specific conditions and can be used to take photographs of transgressions in progress (the South African Weather Service (SAWS) operates an airplane which is fitted to monitor ambient air quality).

5.8.3 The South African National Air Force also operates unmanned drone airplanes fitted with cameras that are used for surveillance over enemy lines by them. They can be approached to assist with surveillance in this regard and it can be used with great effect.

5.9 Ambient Monitoring (Air and Water)

5.9.1 Ambient monitoring surveillance includes any monitoring and analyses designed to detect pollutant levels in the ambient air, ground, or surface waters within the airshed or catchment of a targeted facility and may include data from other agencies involved in the monitoring or reporting non-compliance.

5.9.2 One problem with ambient monitoring is that in certain cases it may be difficult to demonstrate conclusively that the pollutants monitored originated from the suspect facility. In many instances, however, pollution from a specific facility has a characteristic chemical composition that serves to "fingerprint" them (trace element, isotope analysis, scanning electron microscopy and other forensic chemical techniques are particularly useful for linking pollution to a specific source). Ambient monitoring is also most useful when a source is the only significant polluter in the area.

6 OTHER MEANS FOR CONDUCTING SURVEILLANCE

6.1 Surveillance and counter-surveillance has become an industry in its own right. It is possible now for the person on the street to purchase surveillance equipment at specialist stores at the local shopping mall by mail order or on the internet. This means that the criminal element frequently has access to the same equipment and, in most instances, is better equipped than the authorities. They have money to spend. Always bear in mind that the criminal elements in society do not play ‘by the rules or within the ambit of the law’. There are also many experts available on the free market that will sell their knowledge to the highest bidder without any conscience.

6.2 Again, it must be reiterated that not all means of surveillance may be sanctioned in law, or certain types of surveillance may only be conducted by specialist units, and then only under appropriate official authority. Ultimately, for the purposes of presenting evidence, the EMI will have to show proof of the fact that such evidence was lawfully acquired.

6.3 Technical and mechanical means of surveillance include satellite imagery, listening devices, night-sight equipment, tape-recorders, closed-circuit television, photographic equipment and video monitoring equipment.

6.4 In terms of section 31H (1) (g) of NEMA, EMI’s are empowered to take photographs or make audiovisual recordings of anything or any person relevant for the purposes of an investigation. It is important to note that ‘audio-visual’ recordings include recordings that have an audio and/or a visual component. Thus EMI’s are permitted to make visual recordings without sound and sound recordings without visuals.

NOTE

Being effective at conducting surveillance requires skill and experience. Join more experienced colleagues in your first efforts. Acquire training and develop skills through practice. This is a very effective method of gathering reliable evidence and catching perpetrators in the act.

SEARCH AND SEIZURE

1 OBJECTIVE

This prescribes the procedure to be followed when searching any premises, vehicle or vessel and when seizing evidentiary material during such a search. It applies to both search and seizure with, or without, a warrant. This procedure must be read with, and applied in reference to, SOP 6.5: Crime Scene Management and Collection and Handling of Evidence.

NOTE

- This SOP should be read with SOP 6.5: Crime Scene Management and Collection and Handling of Evidence
- Keep in mind that there are very specific procedures on search and seizure of vessels when applying the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which fall outside the scope of the powers of EMIs in terms of NEMA

2 DEFINITIONS

Abandoned items: Any item that is under suspicion of having been acquired unlawfully or that has been found under circumstances giving rise to the suspicion that it may have been used in the commission of an offence and which has been abandoned by the person(s) using it.
Forfeited items: Any item that was used in the commission of an offence and tendered as evidence in court and which the court has declared forfeited to the state or a particular organisation.
Live specimens: Means any live biological specimen, animal, bird or plant that requires due care and attention for its survival and welfare,
Perishable items: Any biological material that is liable to rapid decay.

3 INTRODUCTION

The purpose of search and seizure is to discover, locate and to secure material evidence in order to prove that a crime was committed. The powers of search and seizure are invasive and far-reaching and a proper balance must be maintained between respecting the privacy and dignity of persons and bringing criminals to justice. Search and seizure may only be conducted within the strict parameters of the empowering legislation, namely those provisions in respect of search and seizure granted to EMIs in NEMA, which incorporate certain provisions in the CPA. Section 19 of the CPA makes it clear that the provisions of that Act do not derogate from any power conferred by another law to enter, search or seize. Powers to seize are limited to the property, goods or articles which have bearing on criminal activities and which can afford proof of a crime.

4 POWERS OF EMIs

4.1 The powers of search and seizure are subject to the EMIs' mandate under section 31D of NEMA and sections 30 to 34 of CPA with regards to disposal of those items seized.

4.2 Relevant provisions in NEMA dealing with EMIs' powers to search and seize are:

4.2.1 <u>Section 31I(2):</u> An EMI may request the person who was in control of the item immediately before the seizure, to take it to a place designated by the inspector, and if the person refuses to take the item to the designated place, the EMI may do so.

4.2.2 <u>Section 31I(3): in order to safeguard a vehicle, vessel or aircraft that has been seized, the EMI may immobilise it by removing a part.</u>

4.2.3 Section 31I(4): An item seized in terms of section 31I, including a part of a vehicle, vessel or aircraft must be kept in such a way that it is secured against damage.

4.2.4 Section 31J(1): EMIs may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal, on reasonable suspicion that that vehicle, vessel, aircraft or pack-animal-

(a) is being or has been used, or contains or conveys anything which is being or has been used, to commit-

(i) an offence in terms of the law for which that inspector has been designated in terms of section 31D; or

(ii) a breach of such law or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or

(b) contains or conveys a thing which may serve as evidence of such offence or breach.

4.2.5 Section 31J(2): EMIs may, without a warrant, seize anything contained in or on any vehicle, vessel, aircraft or pack-animal that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.

4.2.6 Section 31J(4): EMIs may, for the purpose of implementing subsection (1), at any time, and without a warrant-

4.2.7 (a) order the driver of a vehicle or vessel to stop, or the pilot of an aircraft to land; or

4.2.8 (b) if necessary and possible, force the driver or pilot to stop or land, as the case may be.

4.3 Sections that facilitate exercise of powers above are:

4.3.1 Section 31J(3): This states that the provisions of section 31I apply to anything seized in terms of subsection (2) of section 31J, subject to such modifications as the context may require.

4.3.2 Section 31J(5): EMIs may exercise on or in respect of the vehicle, vessel or aircraft ordered to land or stop in terms of section 31J(4) any of the powers mentioned in section 31H.

4.3.3 Section 31J(6): In order to carry out search and seizure EMIs may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13 (8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint.

5 POWER TO SEIZE DURING A ROUTINE INSPECTION

5.1 Section 31K(1)(a) and (b) provide that EMIs may, without a warrant, enter and inspect buildings, land or premises to ascertain compliance with the legislation in terms of which such EMI has been designated or to ascertain compliance with a term or condition of a permit, authorisation or other instrument issued in terms of such legislation.

5.2 As regards residential premises, in terms of section 31K(2)(a) and (b) of NEMA an EMI requires a warrant to carry out the same procedures as above.

5.3 Section 31K(4) provides that EMI’s may enter and inspect residential premises where the person in control of the premises consents to the entry and inspection. In addition, where there is a delay in applying for a warrant and this will defeat the purpose for which an EMI needs to enter the residential premises, the EMI may enter such premises without a warrant for the abovementioned purpose.

5.4 Section 31K (5) read with 31K(6) and 31H provides that while carrying out a routine inspection, an EMI may seize anything in or on any business or residential premises or land, that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.

5.5 NOTE: Also refer to SOP 5.2: Gathering of Evidence During an Inspection.

6 OBTAINING A SEARCH WARRANT

6.1 <u>To search residential premises for the purpose of conducting an inspection in terms of NEMA</u>

This must be obtained to enter and inspect residential premises in terms of section 31K(2). Section 31K(3) provides that such a warrant has to be issued by a magistrate on written application by an EMI, setting out under oath or affirmation in an affidavit that it is necessary to enter and inspect the specified residential premises for the purposes of ascertaining compliance with the legislation for which that inspector has been designated.

6.2 <u>To search premises in terms of the CPA for the purpose of obtaining evidence</u>

Such a search warrant must be obtained in terms of section 21 of the CPA to enter and inspect any premises for the purpose of obtaining evidence, in all cases where a warrant is required. A magistrate (or judge, but in practice it is usually a magistrate) may issue this based on an affidavit by the EMI that setting out that such an article is in possession or under control or on a person at any premises within that magistrate's jurisdiction. A magistrate (or judge) can also issue such a search warrant during criminal proceedings

NOTE

While certain senior police officials also have the power to issue a search warrant, it is advisable to approach a magistrate whenever practically possible. In the case of an after hours application, you might have to approach the SAPS however.

6.3 <u>General prescriptions for an affidavit in a search warrant application</u>

6.3.1 The affidavit must be clear, concise and complete.

6.3.2 Try to draft a document that any EMI could read and have no doubt about where to search and what to seize.

6.3.3 If a rural property, include driving directions from nearest city or town;

6.3.4 Describe as precisely as possible the actual items you hope to find, and add the phrase "together with fruits and instrumentalities of the crime and all other property constituting evidence of the crime" as a catch-all provision.

6.3.5 Do not hide anything relevant: Be absolutely candid.

6.3.6 Do not try to write persuasively or add editorial comments about what you think: Just state the facts.

6.3.7 Describe the sources of all factual information (who saw it, who said it, who told them about it); and,

6.3.8 If you are relying on an informer, depending on the category of informer, exercise extreme caution as to what details you disclose. Frequently an affidavit will simply include the phrase "as a result of reliable information received from an official "informer" and this will suffice. The important point to remember is that you, the EMI, will sign the affidavit under oath or affirmation. By implication the EMI will be held responsible for having instituted the search.

6.3.9 The search warrant must mention to whom it is issued and all the persons who can be present and partake in the search. In addition, the warrant must clearly state what is being searched for as well as what exhibits can be seized.

6.3.10 A search warrant can only be executed during daylight (between sun-up and sun-down) unless it specifically is ordered by the issuing magistrate that it can be executed during the night.

7 PLANNING THE SEARCH

7.1 Never work alone - select your search team carefully. It should consist of:

- The EMI;
- Sufficient other EMIs for searching and security;
- At least one female EMI;
- Photographer and/or video photographer;
- Where relevant, a computer expert;
- Specialist personnel, such as hazmat (hazardous materials) personnel or wildlife handlers where necessary; and,
- An interpreter (if necessary).

7.2 Where possible, plan the search beforehand and have a pre-search planning meeting to discuss and agree on the following issues:

- Team organisation: Assign specific tasks to specific members e.g. security, search, seizure, interview and logging tasks;
- Entry procedures and conduct of team;
- Allow all members to read the search warrant affidavit and attachments;
- Limits on scope and area of search;
- Brief members on plain-view seizure;
- Request each team member that leads a search team in a different area to make a rough drawing of the area searched indicating places where exhibits are found;
- Whether subjects must be interviewed during the search;
- Dealing with uncooperative persons;
- Handling of wildlife or hazardous materials,
- Where scientific samples will be taken, ensure all lab protocols for sample collection are understood by those who will be taking them;
- Media/defense lawyer inquiry protocols;
- What the team members should do when their tasks are completed.

7.3 Make arrangements beforehand for the proper care of live specimens and the preserving of perishable items if you envisage that such items will be encountered.

8 WHEN EXECUTING THE WARRANT:

8.1 Announce yourself and show your EMI identity cards.

8.2 Explain what you are there to do and hand over a copy of the warrant.

8.3 Request co-operation from all present.

8.4 Carry out the search in the presence of the occupier of the premises.

8.5 If no occupier is present, do it in the presence of someone linked to the occupier, e.g. another resident.

8.6 If no occupier or other person is present, ensure that the search is thoroughly documented via photographs and/or video.

8.7 Male EMIs may not search a room in the presence of a female occupant, unless a fellow EMI, preferably female, is present.

8.8 Particularly when searching residential premises, consider asking the occupier to collect all cash and jewellery and put it on the kitchen table (or a similar place). Make a list of these and photograph it. See to it that a team member takes responsibility for these items during the search. At the conclusion of the search, request the occupier to confirm before two officials that none of these has been removed.

8.9 Locate all weapons, ensure that they are safe.

8.10 Put one EMI in charge of collecting and logging in evidence found by other searchers, and prepare a receipt for each and every item.

8.11 Each EMI must record all findings in his or her EMI pocketbook.

8.12 If you have the equipment, photograph or videotape the search. Assume that everything you do or say during the search will be recorded and played back in court.

8.13 If defence lawyers arrive during the search, give them a copy of the warrant and if they have any questions, refer them to the prosecutor.

8.14 Do not allow defence lawyers to interfere in the search – they are only allowed to observe.

8.15 If a defence lawyer tries in any way to interfere with the search, warn him/her that hindering or interfering with an EMI in the execution of their duties is an offence in terms of section 34A of NEMA.

8.16 At the end of the search provide a receipt to the occupier resident for all items seized (or leave it on the premises). Try to obtain a signature from the occupier for any items seized and removed from the premises. If they do not want to comply, note that on the list of items seized and get a colleague confirm that by signature on the list of items seized.

8.17 Follow proper procedures for safekeeping and storage of all evidence seized.

8.18 Keep the chain of custody short and secure by limiting the amount of persons involved in the handling of seized evidence to the minimum.

8.19 Do not make any statements to the media at this stage: Refer them to your communications officer/media liaison officer.

9 SEARCHING A PERSON

9.1 Only search a person of the same gender.

9.2 Keep control of the arrested person (position and movement) at all times.

9.3 Inform the arrested person of your intention to search him/her.

9.4 Hold the arrested person with one hand and search with the other.

9.5 Be alert for any suspicious movements by the arrested person.

9.6 If you discover that the arrested person is armed, immediately alert the rest of your team (Shout: GUN! or KNIFE!).

9.7 Be extremely thorough in your search, especially if the arrested person is armed.

9.8 Be constantly aware and extremely cautious about the position of all weapons – your own and that of the arrested person.

9.9 Ensure that seized arms are safe: Remove magazines and/or rounds, and hand over to the designated EMI for safekeeping.

9.10 Record all information relating to the above in your pocketbook as soon as possible.

10 SEIZURE, AND CARE OF SEIZED ARTICLES:

10.1 Keep in mind that the reason why items are seized is to provide material proof that an offence was committed by the accused.

10.2 <u>Seizing items:</u>

- Handle every article in such a way that fingerprints are kept intact, where necessary, by using rubber gloves in handling the item
- Keep an accurate and detailed written record of all articles or specimens seized.
- Take and keep a photographic record of all items seized, including a photograph of where the item was found, as well as a clear photograph(s) of the items seized, and including close-up photographs where appropriate.
- All items must, as soon as practically possible, be marked/labelled with a distinctive and unique number. Where at all possible, SAPS forensic bags, or DEA bags and tamperproof, uniquely numbered seals must be used for this.

- Note the markings or numbers in your pocketbook, later also to be included in your statement.

10.3 Handling of seized items:

- Seized items must be registered with the SAPS into their SAPS 13 Exhibit Register (Section 23(1) of the CPA).
- Note the SAPS 13 number in your pocketbook, later also to be included in your statement.
- Note the SAPS 13 number on the tag, label or bag that was used to secure the evidence.
- Where the item is required for further investigation, or the SAPS do not have the appropriate facilities to store such items, it may be handed back to the EMI on a SAP 136;
- The provisions of section 30-34 of the CPA, subject to such modifications as the context may require, applies to the disposal of items seized under NEMA;
- Seized items must be given a distinctive identification mark and retained in SAPS custody, or other arrangements must be made “as the circumstances require” (Section 30 of the CPA), which can include the EMI taking custody of the items.
- Where items are handed back to the EMI, such items must be kept secure under lock and key: Ensure that there is absolutely no chance that such items can be tampered with, and that you can show in court that such items were kept in a secure manner.
- Where no criminal proceedings are instituted or where a seized item is not required for criminal proceedings, it may be returned to the person from whom it was seized, provided that such a person may lawfully possess such an item, or to another person who may lawfully possess it (see section 31 of the CPA).
- Where criminal proceedings are instituted and the accused pays the admission of guilt fine, the position is identical to the above.
- If no person can lawfully possess such an article, it is forfeited to the state.
- Prior to the trial, enquire from the prosecutor whether such item is necessary for purposes of the trial. If so, the prosecutor will assist with such item being transferred to the court for purposes of trial in terms of section 33 of the CPA.
- The magistrate or judge, at the conclusion of the trial, can make an order as to the forfeiture of the article in terms of section 34D of NEMA, or the disposal of the article in terms of section 34 of the CPA.
- In the case of seized vehicles, vessels or aircraft, the owner or agent of the owner can apply to the court in terms of section 34Ffor the release of such items on the provision of security determined by the court.

10.4 Seized Live Specimens

- Pending institution or resolution of criminal proceedings, a seized live specimen must be deposited with a suitable institution, rescue centre, or facility, which is able and willing to house and properly care for it, as is provided for by section 34E of NEMA.
- Such live specimens must however be first be entered into the SAP13 register, and then handed back on a SAP 136.
- All species must be photographed in sufficient detail to ensure that it will be possible to make an identification based on the photographs.
- All species must be identified by an expert as soon as possible. The ideal position is that an expert will be present during the search and identify the species immediately after seizure.

- Where possible, such identification must be done in the presence of the accused.
- Where live specimens are deposited with an institution, centre or facility, ensure that they are kept separately from any other animals at the facility.
- Issue an instruction in writing to such an institution, instructing them to contact the Investigating Officer in the event of death, illness, escape or any other relevant event concerning such specimens, as well as a clear instruction that such specimens are to serve as exhibits in a prosecution and may under no circumstances be removed without the express written permission of the Investigating Officer or a court order;
- Place a signed copy of the instruction under the B-clip of your docket
- Conduct regular follow-up visits to ensure that they are kept secure and adequately cared for.

10.5 <u>Seized Perishables</u>

- Perishable items may be disposed of “in such manner as the circumstances may require” (Section 30 of the CPA).
- All such items must first be entered into the SAP13 register, and then either kept by the SAPS or handed back to the EMI on a SAP 136 for storage or disposal.
- All seized perishables must be photographed in sufficient detail to ensure that it will be possible to identify the substance, or in the case of dead animals or plants, or products thereof, to make an identification based on the photographs.
- Where there is a need for analysis or identification, this must be done by an expert as soon as possible.
- Where the perishables are dead animals or plants, or products thereof, the ideal position is that an expert will be present during the search and identify the species immediately after seizure.
- Where possible, such identification must be done in the presence of the accused.
- Ideally perishables should be stored in a proper and secure facility until such time as the court case is disposed of.
- Storage must be in a secure facility with limited and controlled access.
- If it is not practical to store perishables, it must be properly documented, photographed and analysed/identified as prescribed above prior to disposal.
- The disposal of such items must also be properly documented and the process of disposal photographed.
- Where a large quantity of perishable items is seized, and it is impractical to retain all the items, a random and representative sample of such items must be retained for court purposes. As a general rule this should be 10% of the total, but not less than 3 and not more than 30, depending however on the size of the items.

10.6 <u>Abandoned items</u>

- Abandoned items must be seized and handled according to the same procedure as described above – it is possible that evidence obtained later might link such items to a specific offence, in which case it will serve as evidence in such a case.
- If it is clear that there is no possibility that the abandoned items may later be required for purposes of investigation or prosecution, it can be disposed of as allowed by section 30 of the CPA.

10.7 <u>Seizing biological samples for possible DNA identification</u>

- An expert should preferably do this, but where this is not possible, refer to SOP 6.5: Crime Scene Management and Collection and Handling of Evidence.

10.8 Seizing samples for chemical analysis

- An expert should preferably do this, but where this is not possible, refer to SOP 6.5: Crime Scene Management and Collection and Handling of Evidence.

10.9 Seizing electronic Information

- Computers, hard drives or similar devices must be handled as other seized evidence, sealed and marked and handed to an expert to retrieve documents and other information.

11 FORFEITED ITEMS

11.1 Ensure that at the conclusion of the case you direct the prosecutor to any specific provisions on forfeiture in NEMA or other relevant legislation.

11.2 Section 34D of NEMA provides for forfeiture of any item, including, but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose or in connection with the commission of the offence;

11.3 This provision applies to convictions of offences under NEMA and the SEMAs (after the amendment by Act, 2009 (Act No. 14 of 2009), including regulations promulgated under these), where items were seized in terms of the provisions in NEMA.

11.4 Section 34D(3) provides that the Minister must ensure that any forfeited specimen (not defined in NEMA, but defined in NEMBA) is:

- repatriated to the country of export or origin at the expense of the convicted person; or
- deposited at an appropriate institution, collection or museum (but the convicted person may not benefit from such a deposit); or
- disposed of it in any other appropriate manner.

11.5 Be aware of appeal periods in cases where items have been forfeited to your department or organisation. Do not use or dispose of such articles until the period has ended, or until a possible appeal has been finalised.

SOME TIPS ON SEARCHING TECHNIQUES

<u>The wheel search pattern</u>

- In this technique, the investigators start at the most important point of the crime scene and move to the outside. This technique is suitable for outdoor situations.
- The disadvantages of this technique are that the crime scene becomes trampled as the investigators move into the centre to begin the search and that it requires a fairly large team. There is also a possibility that clues could be overlooked as the investigator increases the size of the search area.

<u>The spiral search pattern</u>

- According to this technique, the investigator starts at an outside point and works towards the central point, which may be the carcass of an animal that has been shot illegally, in ever decreasing circles, until he reaches the central point.
- This method is effective in small areas but its effectiveness diminishes as the area grows bigger and the chances of overlooking physical clues are increased.
- This method is also preferred in outdoor environments and can be executed by a single investigator.
- The advantages of this method are that it only requires one investigator and the central point of the crime scene is less disturbed in the process.
- The disadvantages are that it is time consuming, and where only one investigator is involved, physical evidence may be overlooked.

<u>The zone search pattern</u>

- In this method, the crime scene is divided into various sectors or zones and each zone is allocated to an investigator. Once all investigators are finished with their zones, they are rotated. Investigators can employ their own techniques in their specific zones.

<u>The strip-search technique</u>

- In this technique, the crime scene is divided into strips or narrow lanes and each lane is allocated to an investigator/s.
- This method can be employed indoors or outdoors and is a simple and thorough method suitable for one or more investigators. This method becomes difficult in rugged outdoor terrain where boundaries are difficult to determine.

<u>The grid search technique</u>

- This is an extension of the strip-search pattern mentioned above and involves dividing the scene into both horizontal and vertical strips/lanes and employs more than one investigator.
- The advantage of this technique is that it is very methodical and comprehensive. However, it is time-consuming and requires a team of investigators.

INTERVIEWING OF WITNESSES AND SUSPECTS

1 OBJECTIVE

This procedure empowers the EMI to successfully interview witnesses and suspects. It applies to all interviews with witnesses and suspects, but **not to interrogation of arrested persons**.

NOTE
Where a suspect has been arrested, use the standard SAPS prescribed form [G.P.-S 002-0542 SAPS 3M(m)] to obtain a warning statement. These should be available at all police stations.

2 BACKGROUND

The concepts of interviewing and interrogation must not be confused with one another. Interviewing is a process of information gathering and entails the questioning of a witness or suspect in a non-aggressive manner to ascertain what that witness or suspect knows about the matter under investigation. Interrogation is an aggressive form of questioning and reserved for questioning suspects or accused persons within the limits set by the Constitution.

3 INTRODUCTION TO INTERVIEWING

3.1 <u>The Peace Guidelines</u>

3.1.1 Interviewing is the first phase of communication in which information is obtained from a witness or suspect. A well-planned and carefully conducted interview is essential to be able to obtain accurate and reliable information.

HOT TIP: APPLY THE PEACE GUIDELINES

P	**-**	Prepare and Plan for the interview
E	**-**	Explain and Engage
A	**-**	Account Clarification and Challenge
C	**-**	Closure
E	**-**	Evaluation

3.1.2 Prepare and Plan

- Draft a list of objectives or issues you need clarified before the interview (where possible), but do not pre-draft questionnaires before an interview
- Select a suitable, private venue to conduct the interview
- Put cell phones off where possible
- Prepare all documentation that you wish to question the witness on and possibly want to have introduced as exhibits

3.1.3 Explain and Engage

- Show the witness/suspect your EMI identity card.

- Explain to the witness and/or suspect who you are, what you do and what the purpose of the interview is.
- If the person being interviewed is a possible suspect, warn him of his rights as stipulated in the Constitution before the interview commences.
- Only commence with the interview once the steps as set out above have been carried out.

3.1.4 Account Clarification and Challenge

- Your aim is to establish the truth. Essential stages of obtaining an accurate and reliable account are:
  - Obtaining the witness's or suspect's own account;
  - Expanding their account;
  - Clarifying their account;
  - Challenging their account where necessary.

3.1.5 Closure

- Conclude the interview with concluding questions to provide an opportunity to the witness/suspect to add or elaborate, and ensure that all relevant knowledge has been extracted from the witness/suspect.

3.1.6 Evaluation

- Read through your notes made during the interview
- Refer back to your list of issues and objectives
- Evaluate the interview by ensuring all aspects have been covered.
- Assess the information obtained against information and facts already in your possession.
- Clarify all outstanding issues.

HOT TIP: DEVELOP THE FOLLOWING BASIC INTERVIEWING SKILLS

Do not only pretend to listen: Really pay attention to, and concentrate on, what is being said. Show the witness/suspect that you are really listening by being sincere and attentive;

Listen for hidden motives: Evaluate what is being said in context;

Take time: If you rush the process, you are bound to lose information;

Practice self-discipline: Avoid becoming annoyed, exercise patience and do not display emotions;

Repeat questions: Repeat the same question, in slightly different terms, later in the interview and see if the answers correspond.

4 The interview

4.1 Starting the Interview

4.1.1 Create an atmosphere in which the witness/suspect will want to talk, by putting him/her at his/her ease and talking about general matters before getting to the interview in question.

4.1.2 Start the interview by asking non-threatening questions. Using an offensive interviewing style early in the process might lead to the witness or suspect refusing to co-operate and sometimes even refusing to answer questions.

4.2 Conducting the Interview

4.2.1 Do the basics right:

- Ask questions that will cover the whole subject;
- Be specific with your questions;
- Avoid giving opinions on matters;
- Finalise each aspect of the investigation before moving to the next aspect of the investigation.

4.2.2 Avoid interrupting the witness/suspect:

- Do not interrupt the witness/suspect during the initial stage of interviewing – doing that will mean that the memory recovery process is also interrupted;
- Interrupting the witness/suspect causes that person to concentrate on the interviewer (external source) rather than on the incident that occurred;
- Give the witness/suspect adequate chance to respond to questions, otherwise they will give sketchy and insufficient information, and tend to give only short answers.

4.2.3 Avoid using excessive use of the question/answer style:

- If the witness/suspect continues talking, allow this and do not ask too many questions, otherwise they might not recall the whole incident, and only give short, direct answers.
- Allow the witness/suspect to elaborate – it might be the source of unexpected and valuable information.

4.2.4 Avoid inconsequential order of questions:

- Formulate your questions based on the version of the incident as given by the witness/suspect;
- You can refer back to your list of objectives or issues at the end of the interview, but rather adapt the interview to conform to the memory of the witness during the interview;
- Listen carefully to the replies to your questions, be attentive to his or her reactions to the questions and follow up on aspects that come to light in the answers;
- Make short notes in respect of ambiguities;
- Once the witness's/suspect's version has been completed, short questions may be put to the witness/suspect to clarify ambiguities or inconsistencies.
- Verify that you have covered all the issues by checking your list of objectives, but only at the conclusion of the interview.

4.2.5 Avoid negative phraseology:

- Do not put questions in the negative (for example: "Can you not …….?"). This will more than often result in a negative answer;
- Negatively phrased questions may create the impression that the interviewer does not believe that the witness/suspect is able to answer the questions.
- Phrase the question positively (for example: "At what time did you...?").

4.2.6 Avoid questions consisting of non-neutral words (for example: "Did the person have black hair?"). This will invite a yes or a no as an answer. Ask an open-ended question consisting of neutral words (for example: "Describe the person's hair").

4.2.7 Avoid using jargon and highly technical terminology that is not readily understood by a lay person - take the education level of the witness/suspect into consideration during the interviewing process.

4.2.8 Focus on the time lapse between the answer given by the witness/suspect and the posing of the next question. By giving the witness/suspect enough time to think, it will encourage the witness/suspect to talk more and elaborate on answers to questions.

4.2.9 Always try to avoid distractions that might break the witness's/suspect's concentration during interviewing, for example, taking phone calls, or allowing people to enter the room and interrupt you while you are busy with the witness/suspect.

4.2.10 Do not upset the witness/suspect with remarks weighted with prejudice. This might upset the witness/suspect and will strain the relationship between you and the witness/suspect.

4.2.11 Follow up on all clues – potential clues must not be left as an open hypothesis. For example, when a witness/suspect provides you with a certain fact, ascertain how the witness came to know this information. Was it his/her own observation? Something somebody said? A deduction from witnessing certain conduct?

4.3 <u>The Poor Interviewer</u>

4.3.1 Avoid behaviour typical of a poor interviewer. A poor interviewer-

- has wandering eyes (instead of looking the witness/suspect in the eyes) and poor posture (slouching);
- jumps to conclusions instead of listening to the witness/suspect;
- changes the subject;
- gives no response;
- concentrates on questions rather than listening to, and following up on, the answers;
- interrupts the witness.

4.4 <u>Formulation Of Questions</u>

4.4.1 Use HOW, WHY, WHEN, WHERE, WHAT and WHO as often as possible as prefaces to questions:

- "Can you explain to me why you did that?"
- "Can you describe to me what happened?"

Other ways to formulate questions follow below:

4.4.2 Open-ended questions:

- Open-ended questions are productive questions and will encourage a witness/suspect to talk freely, for e.g. "What did you see when you arrived there?"

4.4.3 Interrogative questions:

- How did you get up there?
- Why did you go there?
- When did you go there?
- Where did you go?
- What were you doing up there?
- Who did you find up there?

4.4.4 Invitational:

- "Explain to me ………..."; "Tell me what happened ………..."; "Describe to me ……………."

4.4.5 Ask searching questions to obtain further information e.g.

- When incorrect information is given;
- When the meaning of a word is not clear;
- When there is a lack of response by the witness;

- When there is insufficient response;
- When the response is not applicable to the question.
  "What do you mean by that?"
  "Did you notice the medical waste dumped on the south side of the landfill site?"

4.5 Suggested Interviewing Techniques

4.5.1 Elaboration:

- How do you feel about ………………?
- Tell me more about …………………..?

4.5.2 Explanations:

- Request a witness/suspect to explain what they mean by a specific phrase or word.

4.5.3 Rephrasing:

- Use your own words to explain what the witness/suspect has told you to ensure you understand what has been said. Rephrase what the witness/suspect reported to you: "So you are telling me that ....?".

4.5.4 Reflection:

- Reflect the emotional context back to the witness/suspect. For example: "You feel ashamed in talking about this, I understand".

4.5.5 Confrontation:

- Confront the witness/suspect in a tactful manner if contradictory facts or versions are provided: For example: "I do not understand what you are telling me"

4.5.6 Closing questions:

- It is advisable to ask closing questions with short answers at the end of the interview:
  "Is there anything else you want to tell me that we have not covered during the interview?"
  "Have we covered everything?"
  "Do you want to ask me anything?"

4.5.7 Acceptance questions (supposition questioning):

- As a general rule, ask questions based on the version provided by the witness/suspects and not on the facts to your disposal
- Questions can however also be pre-empted with a statement that indicates that you already have knowledge of certain facts and events. This is especially useful when interviewing a suspect.
- Tip: When interviewing a suspect take along a lot of documents and statements, even if these documents and statements have no bearing on the present case, and refer to these during the interview. The might create the impression that you have a lot of evidential material causing the suspect to rather reveal the truth.

4.5.8 Sometimes just remain silent for a few seconds:

- If the interviewer remains silent the witness /suspect will more than likely elaborate further on the subject that has just been discussed.

4.5.9 Use repetition:

- The interviewer should repeat the last words of the witness's answer and urge the witness/suspect to continue with his report.

4.6 The Cognitive Interview

4.6.1 The cognitive interview is aimed at prompting the memory of the witness.

4.6.2 Planning for a Cognitive Interview:

- Ensure that the witness/suspect is relaxed and feel valued, for example by thanking the suspect for his/her co-operation or a witness for the information he/she has given thus far. Small talk might help to remove emotional barriers and make the person feel comfortable.

4.6.3 Applying the Cognitive Interview:

- Get the witness/suspect to reconstruct circumstances by making use of sensory memories (sight, hearing, feeling, taste and smell). As questions such as: “What did you see? Did you hear anything? What did it feel like? Could you smell anything?

4.6.4 Get the witness/suspect to report everything- even the smallest detail might prove to be important.

4.6.5 Get the witness/suspect to recount the events in different order:

- Reverse the order of the stated facts from the end to the beginning and ask the witness to tell anything that might have been omitted previously.

4.6.6 Get the witness to report the events from a different perspective:

- Remove the anxiety from the situation by obtaining a more objective perspective, for example by removing the witness from the place where the incident took place.

4.7 <u>The Uncooperative Witness/Suspect</u>

4.7.1 Section 31H (2) and (3) of NEMA

Exercise extreme caution before using your powers in terms of section 31H(1)(b), read with section 31H(2) and (3), which empowers the EMI to issue a notice obliging a person to answer questions about an offence or other non-compliance, even though such answers might incriminate the person. Such answers may not be used against that person in subsequent criminal proceedings, and in that way protects the person’s right against self-incrimination. In practice however the answers might also lead to other documentary or real evidence. In such a case there is a real danger that a court might find that evidence uncovered, because of self-incriminating answers, will also be inadmissible in court. The procedure can be however be useful if you are questioning low level employees, who while possibly incriminating themselves through the answers, might provide you with evidence against high-level employees. Prosecutors will often then use section 204 of the CPA and use the low-level employee as a witness against the high level employee, rather than charging the low-level employee.

- Try and avoid using this procedure where there is any possibility that the person might be criminally prosecuted, and before utilising these powers in such a situation, ensure that there is no alternative method (such as a proper search) to obtain the same result.
- Wherever practically possible, first consult with your legal advisor and with the prosecution authority before utilising this procedure.

4.8 <u>Section 205 of the CPA</u>

The procedure in section 205 of the CPA is to force persons with information or evidence about crimes that have been committed and who are unwilling to divulge such information, to provide such information under oath. A magistrate, on application by the prosecution authority, may issue a subpoena to such a person to appear in front of the magistrate on a particular date, and to answer questions put to him/her by the prosecutor under oath. The notice also provides the uncooperative witness with the opportunity to provide such information by way of affidavit prior to the determined date. If the prosecution is satisfied with the information provided in the affidavit, the witness does not need to appear in front of the magistrate.

This procedure is often used to obtain personal information such as telephone records and bank statements from service providers, but is very useful whenever a potential witness is uncooperative.

When confronted by a cooperative witness:

- Inform the witness about the provisions in section 205 of the CPA.
- If the witness still refuses to provide a statement, approach the prosecutor with a request to make a section 205 application to the magistrate.
- Provide the prosecutor with an affidavit setting out your reasons for such a request.

ARREST

1 OBJECTIVE

This procedure equips the EMI, as a peace officer, with the necessary knowledge to be able to carry out a lawful arrest of a suspect. It applies to all arrests made by EMIs.

2 DEFINITIONS

Peace Officer: A peace officer, *inter alia*, includes any police official and other persons appointed as such in terms of section 334(1) of the CPA. Appointments in terms of section 334(1) are done in the Government Gazette, and relevant examples of such appointments are provincial nature conservation enforcement officials and enforcement officials from municipalities, but note that such appointments are only to enforce particular legislation, and powers may be limited as well. Legislation can also provide that certain persons are deemed to be peace officers for the purpose of enforcing that legislation, in which case they have the powers of a peace officer. The CPA provides, *inter alia*, that peace officers have the power to arrest with or without a warrant (section 43 and 40 of the CPA respectively) and to issue J534 fines (section 56 of the CPA).

3 BACKGROUND

One of the most drastic infringements of a person's rights is an arrest and subsequent incarceration. The Constitution and the CPA govern the guidelines for the arrest of a person.

<u>Powers of Arrest</u>

The CPA authorises peace officers to arrest in certain circumstances. While there is some provision for a normal citizen to arrest (section 42 of the CPA), EMIs are mandated to enforce particular legislation based on the powers granted to them in NEMA, and in addition to these powers, also need to be appointed as peace officers.

<u>The Object Of Arrest</u>

The object of an arrest is to secure the attendance of a person at a trial if the person is to be prosecuted for the alleged commission of a criminal offence. A person may not be arrested in order to punish, scare or harass him/her or to persuade him/her to implicate others or provide evidence in an investigation.

<u>Exceptions to the General Rule</u>

As an EMI you may however also affect an arrest for the following reasons:

- conducting further investigation and the failure to arrest would be detrimental to the investigation in that the suspect may flee;
- where a person who committed an offence fails to provide name and / or address, or provides a possibly false name and/or address (see section 41 of the CPA);
- in order to prevent the commission of an offence;
- in order to protect a suspect;
- in order to stop the commission of an offence.

4 PROCEDURE

4.1 <u>The Requirements Of A Lawful Arrest</u>

4.1.1 To affect a lawful arrest:

- You must be a designated peace officer, (which in terms of Section 31H(5) of NEMA all EMIs now are), and carry out the arrest according to the powers assigned to you in the legislation;
- Exercise physical control over the person you are arresting;
- Inform the arrested person of the reason for his/her arrest and of their Constitutional rights;
- Take the arrested person to the nearest SAPS community centre as soon as possible.

4.2 <u>Arrest With Or Without A Warrant Of Arrest</u>

4.2.1 Arrest with a warrant is governed by section 43 of the CPA and it clearly stipulates the grounds for arrest with a warrant. A magistrate can issue a warrant of arrest based on a written application of a prosecutor (or a commissioned officer of the police):

- Compile a statement containing all the relevant facts in the case and in support of the intended arrest.
- The statement must set out:
  - the offence alleged to have been committed; and
  - allege that the offence was committed within the area of jurisdiction of the magistrate, or that the person in respect of whom the application is made, is known, or on reasonable grounds suspected, to be within the area of jurisdiction; and
  - that there is a reasonable suspicion based on information under oath that the person committed the alleged offence.
- Present this affidavit together with the case docket to the public prosecutor.
- The prosecutor ensures that a prima facie case exists, and that there is adequate motivation for obtaining a warrant, and then the application is presented to the magistrate.
- The warrant of arrest stays valid until the suspect has been arrested, or until it is cancelled by the magistrate who issued it.
- A person can be arrested based on a faxed copy of a warrant (section 45 of the CPA).
- If the suspect is arrested, ensure that both the docket and the warrant of arrest are presented to the prosecutor.
- The magistrate will cancel the warrant of arrest once the suspect appears in front of him/her.

4.2.2 Arrest without a warrant of arrest is governed by sections 40 and 41 of the CPA, which also clearly stipulates the grounds, and circumstances of arrest without a warrant of arrest. A peace officer may, inter alia, without a warrant arrest a person:

- Who commits or attempts to commit any offence in his/her presence; or
- Whom he/she reasonably suspects of having committed an offence referred to in Schedule 1 of the CPA; or
- Who wilfully obstructs him/her in the execution of his/her duty.

4.2.3 Note that due to the inclusion in Schedule 1 of any offence for which the accused may on conviction be sentenced to more than 6 months imprisonment without the option of a fine, this will include almost all offences under NEMA, the SEMAs and regulations published under it. There are however exceptions such as the contravention of section 31A of ECA, which read with section 29(3), only allow for a maximum imprisonment of 3 months.

4.3 Execution Of An Arrest

4.3.1 Unless the person who is to be arrested submits to custody, touch the person, preferably on the shoulder, or if the circumstances so require, forcibly confine his or her person (see section 39 of the CPA).

4.3.2 Amount of Force which May be Used in Effecting Arrest

- Use the minimum force necessary to arrest and detain the person, when it is necessary to use force to arrest a person. There is no justification for beating, kicking or ill-treating an arrested person, but be as firm as the situation may require.
- Section 49 of the CPA allows you to use such force that may be reasonable necessary and *proportional in the circumstances* to overcome the resistance or to prevent the suspect from fleeing.
- Section 49 allows the use of deadly force only to protect your own life, that of colleagues or any other bystanders, or where *the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm*. An example of this would be attempting to arrest an armed group of rhino poachers who then proceed to start shooting at you and your colleagues, thereby posing an imminent and real threat to your lives.
- When in doubt, do not use deadly force.

4.4 Warning To An Arrested Person In Terms Of Section 35(1) Of The Constitution

4.4.1 During or immediately after his or her arrest, furnish the following warning to the accused to ensure that he is informed of, and understands, his/her rights, as is required section 35 (1) of the Constitution:

- the reason for his or her arrest (on which charges he/she will be brought before the court);
- the right to remain silent and that anything he or she says may be used as evidence against him or her in a court of law;
- that he / she has the right to consult with a legal practitioner of his / her choice or they may apply to the Legal Aid Board to have a legal practitioner assigned to the case at state expense; and
- that he or she has the right to apply to be released on bail.

4.4.2 The arrested person must be communicated with in the language, which he or she understands.

- If no officials present speak the language of the accused, make use of an interpreter.
- In the absence of an interpreter is present, make use of the assistance of a bystander or member of the public who can speak the particular language.
- If no person is available, take the arrested person to the nearest police station and immediately make arrangements to obtain the services of an interpreter (also do this if you used a member of the public to assist at the scene).
- In all cases, irrespective of whether the arrested person was informed of his/her rights during arrest, this must be done again at the SAPS station, and clearly set out on a statement. SAPS stations have a standard form for this.

4.5 Search Of Arrested Person

4.5.1 Section 23 of the CPA provides that an arrested person may be searched by a peace officer, and section 29 prescribes the way in which the search must be conducted:

4.5.2 A person may only be searched by a person of the same gender. If no female EMI is available to search a female suspect, any female present can be appointed for that purpose by the EMI. If a female is not readily available, transport the person to the nearest police station under strict supervision by at least two officials (female suspects can also carry firearms!) to be searched by a female officer. In a life-threatening situation (e.g. where it is clear that a female suspect is armed, and refuses to surrender the firearm) proceed to disarm the female. Ensure that another colleague is present to witness this and be able to confirm that this was done in a proper way. A female suspect may never be left alone in the company of a single male official. At least two officials should be present at all times to avoid the possibility of allegations of misconduct.

4.5.3 Ensure, for your own safety, that of your colleagues, as well as the person being arrested, that the arrested person is searched thoroughly and meticulously, and that there is absolutely no possibility of any concealed weapons left in possession of the accused.

4.5.4 While there is a need to be absolutely thorough, undertake the search in a decent manner, with respect for the dignity of the person.

4.6 Injuries Sustained Prior To Or During Arrest

4.6.1 The safety of the arrested person must be ensured at all times by the person conducting the arrest. Should the arrested person show any signs that he or she is ill or injured, immediately report it to the detaining official. Medical treatment should be arranged immediately in the case of serious injuries or illness, and where necessary, even before the accused is taken to the police station.

4.7 The Use Of Restraining Measures

4.7.1 In order to prevent an arrested person from escaping handcuffs (or cable-ties around the thumbs) or leg-irons may be used if necessary. Irrespective of whether restraining measures are used or not, remain alert until such person is safely placed in a cell or handed to a police official.

4.8 Procedure after Arrest

4.8.1 An arrested person must be taken to the nearest SAPS Community Centre as soon as possible.

4.8.2 Where a suspect has been arrested during an inspection or investigation, and the suspect's presence is required to complete the inspection or investigation (e.g. during a search), the suspect must be taken to the nearest police station after the completion of the inspection or investigation.

4.8.3 Charge the subject without delay. The SAPS will assist with this:

- Warn the suspects of his/her rights again
- Interview the suspect and obtain a warning statement if the suspect wishes to provide such a statement
- Take the fingerprints of the suspect
- Complete the charge sheet
- Request the SAPS commander to formally charge the suspect in the Occurrence Book

IMPORTANT NOTES

Warning Statement: Use the standard SAPS prescribed form [G.P.-S 002-0542 SAPS 3M(m)], available at all police stations, to obtain the warning statement.

Fingerprints: The fingerprints of the suspect are taken on the prescribed form, and must be handed to the detective branch at the police station to submit it to the SAPS Criminal Record Centre. The Centre will then provide the criminal record of previous convictions.

4.8.4 The arrested person must be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest.

4.8.5 Suspects may be released by the SAPS before appearing in court by means of:

- a SAPS 328 (a release form, if no charges are to be brought against him or her);
- warning (SAPS 496) or bail, in certain circumstances, by a senior police official, in consultation with the public prosecutor.

4.8.6 If the arrested person remains in custody till the first appearance, he/she can apply for bail in court.

4.8.7 See SOP 6.8: Criminal Procedure, for the role of the EMI with regard to bail applications.

4.9 <u>Securing The Attendance Of An Accused At A Trial By Other Means Than Arrest</u>

4.9.1 There are various methods by which an accused’s attendance at a trail may be secured. Arrest is one of these methods and because it constitutes one of the most drastic infringements of the rights of a person, it should be regarded as a last resort.

4.9.2 Summonsing the accused is dealt with in SOP 6.8. Note that where a suspect summonsed, the fingerprints of such a suspect must also be taken, as in the case of arrest above.

PROCEDURE FOR CRIME SCENE MANAGEMENT, EVIDENCE COLLECTION AND HANDLING

1 OBJECTIVE

This procedure prescribes the method for securing and managing a crime scene, and the collection and handling of evidence. It must be read with and applied with reference to SOP 6.2: Search and Seizure. Also refer to the SAPS SOP for crime scene management in cases where SAPS is taking the lead in the investigation in accordance with SOP 3.1: Co-operation with the SAPS.

2 DEFINITIONS

Transient Evidence: Evidence that might be expected to degrade or disappear within a short time frame for example pools of liquid from a spill, volatile liquids, a fire or articles that are on fire, the colour or appearance of blood indicating its freshness.

3 PROCEDURE

3.1 Planning and Preparation

3.1.1 You might either be called out to the scene of a crime, or come across the scene of a crime during a patrol or an inspection. Ensure that all the equipment needed to conduct an investigation is available at all times, even during a patrol or inspection.

3.1.2 Include the following in the basic investigations kit:

- Pocketbook & at least two pens
- Notebook or clipboard and paper
- Cellular telephones or radios (with charged batteries)
- A torch with spare batteries and globe (note that this is not only for nighttime use, but also to search in dark, secluded places)
- Digital camera (see the specifications below)
- Video recorder (where appropriate);
- Binoculars (depending on the type of crime scene)
- Audio recording equipment (where necessary for interviews)
- Measuring equipment (tape measure, ruler, vernier slide rule)
- Current maps and GPS
- Rubber gloves for handling evidence
- Containers for collecting samples (forensic bags, sterilized containers)
- Seals to secure bags and containers
- Labels (self adhesive label for containers/cable ties for attaching labels to bags)
- Chain of custody forms
- Crime scene tape
- Appropriate personal protective equipment
- Basic first aid kit

3.1.3 Prepare your digital camera:

- Ensure that the batteries are adequately charged.
- If disposable batteries are used, ensure that you have sufficient spare batteries
- Ensure that the memory card in your camera has had all previous photos downloaded and removed before going to the site.
- Ensure that the memory card you are using is of sufficient capacity to allow you to take as many photos as you require.
- Ensure that your camera is set to record a date stamp on each photo.
- Ensure that your camera's date and time settings are accurate.

- Ensure that our camera's flash is working and adequate for taking pictures in low light conditions
- Take markers (e.g. traffic cones or differently coloured small flags) with you

3.1.4 Where time and circumstances allow, produce an investigation plan, and in such a plan:

- Determine the nature and scope of the contravention, and other contraventions typically associated thereto;
- Identify the suspected contravention and legislated requirements specific to the suspected contravention and probable associated contraventions – ensure that a copy of such legislation is available
- Where a suspected crime scene will be entered based on a warrant in terms od section...of NEMA, or a CPA search warrant, list the scope and conditions of the warrant, and ensure that all team members understand it
- Draft a list of documents/records that should be available on site that will be relevant to the investigation (where applicable)
- Get a copy of conditions of EAs and/or authorisations, permits or licences that the alleged transgressor must adhere to (where applicable).
- Draft a site-specific health and safety plan.
- Draft a list of the members of the investigation team and the role allocated to each member; (see SOP 6.2: Search and Seizure)
- Identify the nature of samples and items which may reasonably be expected to form part of the evidence collected (e.g. contaminated water, DNA, toxic waste, cartridges, rhino horn)
- Include a sampling plan with a list of required based on the above, and including:
  - Equipment required for extraction of samples
  - Sample containers and bags suited to the expected samples and items
  - Sampling documentation and seals
  - Sample preservation equipment
  - PPE required for sampling and handling of samples and items
- Sampling equipment must be cleaned/sterilised and calibrated (where applicable) before going to the scene
- If live, dangerous, perishable or transient evidence or specimens are expected to be seized, make the necessary arrangements to seize such items, deal with dangerous situations, and preserve or keep such evidence after seizure (refer to SOP 6.2: Search and Seizure)
- Already start asking the key questions: Who? What? Where? When? Why? How?

3.2 <u>Arrival at the scene</u>

3.2.1 Upon arrival at the scene the EMI in charge must immediately take control of the scene

3.2.2 Apply the STOP principle (Stop/Think/Orientate/Proceed) on arrival: Do not rush in - stop at an appropriate distance, take in all the apparent details, think about what needs to be done, orientate the team and only then proceed.

3.2.3 Determine any risk factors to the EMIs or any other persons present as a matter of priority

3.2.4 Neutralise any danger and minimise the risk factors, whether it is a wild animal or potentially toxic chemicals.

3.2.5 Establish the boundaries of the crime scene. Determine an inner perimeter, the place where the crime occurred, and an outer perimeter, for example, the exit or entrance doors or windows. There may also be an extended perimeter, an area where, for example, a perpetrator may have discarded evidence when fleeing the scene.

3.2.6 Secure the scene of crime by placing EMIs on the perimeter to ensure that no persons leave or enter the scene of the crime, and that evidence cannot be tampered with.

3.2.7 Mark perimeters with crime scene tape or barriers.

3.2.8 Avoid excessive human activity on the scene and immediately remove any unauthorised person from the scene

3.2.9 Ensure that any possible witnesses stay present and appoint a member to conduct an initial interview with the witness(es) .

3.2.10 Depending on the extents of the crime scene, it might be expedient at this stage to create a temporary crime scene operational centre, so as to centralize all the operations at the crime scene

3.2.11 Record conditions of the area and anything that affects it. Write down time, weather conditions, description of area and number of people, if any, present upon your arrival. Take extensive notes and photographs - do not rely on memory!

3.2.12 Maintain the integrity of the crime scene: Avoid disturbing the scene unless absolutely necessary (e.g. while searching for clues), and then only after the scene was documented and photographed prior to such disturbance

3.2.13 Photograph the scene (see further below).

3.2.14 Evaluate potentially significant evidence and ensure that it is protected from tampering or damage

3.2.15 Allocate individual team members to do the collection and documenting of specific evidence, and for obtaining detailed witness statements.

3.2.16 Where necessary, collect transient evidence immediately

3.3 <u>Document the scene</u>

3.3.1 Draw a map that reasonably represents the crime scene. Sketch maps and plans are a great way to help the prosecutor and the court to visualize the crime scene.

HOT TIP

It is often impractical to draft a sketch at the scene of the crime. Draw the rough sketch in your pocketbook (or a bigger piece of paper) whilst at the scene, and then redraft a neat and detailed sketch at the office and place it in your docket for court purposes. Ensure that you take all the necessary measurements and note all details on the rough sketch. The sketch can be used when interviewing witnesses and suspects, and is extremely important for court purposes later.

3.3.2 Record the following information on the sketch:

- Specific location of the scene;
- Date;
- Time of arrival at the scene;
- Weather conditions;
- Lighting conditions;
- Compass orientation (i.e. an arrow indicating north on your sketch);
- Positions of important pieces of evidence;
- Measurements and distances (preferably measured, else paced off distances)
- A key or legend for symbols used in your sketches (where applicable)

3.3.3 If you used a rough sketch at the scene of the crime, file and retain the rough sketch under the B Section of the docket (unless it was done in your pocketbook).

3.4 Photographing the Crime Scene and Evidence

3.4.1 The purpose of a photograph is to produce an accurate visual depiction of articles, events and patterns at the scene. Immediate and extensive photographing of a scene is often the only means of preserving transient contextual evidence.

3.4.2 The use of a digital camera generally enables the EMI to take a large number of pictures. EMIs are encouraged to photograph extensively but systematically. Note that items which may not appear to be significant at first sight may in fact become key to the investigation. In addition the scene, and the search, can be videotaped.

3.4.3 Photographic technique

- Document what you are photographing in your pocketbook.
- Ensure that a progression of overall, medium and close-up views of the scene and evidence is established.
  - Take an initial overview shot(s) show a wide area that includes the subject and a fixed landmark to establish location and help the viewer understand where the subject is located. The overview shot(s) should cover the entire scene to bring out the relationships between objects and their location on the site.
  - Mark all the evidence/locations where evidence was found with clear distinguishable markers (e.g traffic cones or marked flags) so that the position of all exhibits can be seen in relation to the rest of the scene, and take another overview shot(s).
  - Take a subject shot (or mid range shot) that shows the important object(s) and its immediate surroundings or the special area of an event that the photographer wants to bring to the attention of the viewer.
  - The close-up shot shows unique details of the object or event that makes it unique and identifiable, such as close-up photographs of evidence uncovered.
- Take photographs from eye-level, when feasible, to represent a scene as it would be observed by normal view.
- Use a recognisable and relevant scale device to indicate size when applicable, (e.g. a coin or a ruler) this will give the viewer a reference to understand the size of the photographed object.
- When a scale device is used, first take a photograph without the inclusion of this device, to show that nothing of importance is covered by the device.
- Be observant of and photograph areas adjacent to the crime scene - points of entry, exits, windows, attics, etc. This might become relevant at a later stage.
- Where aerial photography is undertaken be aware that the angle of the camera and curvature of the earth may require the photograph to be geo-referenced before it can be used to measure items.

3.4.4 Securing photographic evidence

- All the photographs must be downloaded from the camera as soon as is practically possible.
- Do not alter photographs in any way.
- Save the originals in a non-editable format.

- All the photographs must be written to at least two non-editable mediums, such as a non rewritable recordable CD.
- One copy must be sealed in an evidence bag and the second copy can be used for investigative purposes.
- The CD in the evidence bag must be labelled in accordance with the requirements for chain of custody, handed into the SAP 13 and kept accordingly.
- Where it might be helpful to alter photo's to improve quality or enlarge a part of the photograph (e.g. zoom, contrast, brightness), this must be done using a copy, and the original photographs must always be available for comparison and corroboration.
- The EMI responsible for photographing and/or videotaping the scene must provide an affidavit on oath reflecting the fact that he/she photographed and/or videotaped the scene, and downloaded and safeguarded the evidence as set out above.

3.4.5 <u>Compiling a Photo Album</u>

- Show the scene as it was first observed by the EMI
- Follow that with the photograph of the overview of the scene
- Thereafter, the photographs can follow the sequence of the discovery of the objects
- The final photographs should again be those taken from a distance, to show the numbered stakes or beacons in relation to each other;
- Fix only one photograph per page in order that they can be easily referred to and shown individually in court;
- Head the photographs with numbers only: Photograph No. 1 and consecutive numbers thereafter
- No other annotations referring to objects in the photograph may be made on the page - this allows the photograph to be used in court without any "hints" being present to suggest what appears in the photograph
- The cover of the photograph album should be headed: Photograph Album No. 1 and reflect the date, time and place where the photograph album was compiled, and the name and signature of the person who compiled the album;
- The key to the photograph album should be headed: Key to Photograph Album No. 1.
- This is followed by a list of the photographs in numerical order, with a brief description of what appears in each photograph. The date, time and place of the crime scene visit are then reflected at the end of the key, followed by the name and signature of the person who compiled the key.

HOT TIP

Photography is a skill. Get in touch with your local SAPS Criminal Record Centre which has trained and skilled photographers, and they can assist you in this regard.

3.4.6 <u>Sampling as Evidence</u>

3.4.7 Samples should be taken when:

- Analysis is required to determine the composition of a substance
- Analysis is required to confirm the composition of a substance when there is a suspicion that the integrity of existing data is questionable

- Data is needed to document an event, discharge or release;

3.4.8 Taking a representative sample

- Representative sampling ensures that a sample or group of samples accurately reflects the concentration of the contaminant(s), or characteristics of substances of concern, at a given time and location.
- Obtaining representative samples for transient evidence requires that you apply basic logic:
  - A visual assessment of the area and items to be sampled will often indicate where the substance of concern is at its purest.
  - Avoid, if it is possible, samples that have been mixed or contaminated
  - If it is practical, take at least three samples.
  - Ensure that the samples have been documented adequately
- Non-transient samples allow for more time and effort to be spent in determining suitable sample positions, sample technique and number of samples required:
  - Visually assess the area of interest to determine the extent of contaminated area
  - Where there is contamination over a wide area a sampling plan must be set out determining how many samples must be taken and in which positions
  - Avoid, if it is possible, samples that have been mixed or contaminated
  - Ensure that the samples have been documented adequately
- All samples must be sealed and labelled immediately

3.4.9 Sampling Equipment

- Ensure that your sampling equipment is clean (and if possible sterilised for biological samples)
- To prevent contamination across samples the following precautions must be taken:
  - Sampling equipment must be cleaned after each sample is taken
  - Disposable equipment and equipment which cannot be thoroughly cleaned (for example gloves) must be attached to their respective samples to show that they have been re-used and thus potentially caused cross contamination

3.4.10 Documenting Samples

- Every sample must be labelled for unique identification
- The following information must be documented:
  - Inspection code
  - Sample Number or code (as designated in the sampling plan).
  - Sample location
  - Date & Time of sampling
  - Sample type (i.e. composite, grab sample etc)
  - Field sampler’s name & signature
  - Field sample custodian’s name and signature
  - Sample preservation Requirements
  - Types of analyses to be performed
- It may be impractical to document all of this information on the sample label, however the sample label as a minimum have a sample code, date and time sampling, and a the inspection code.
- The area being sampled must be sketched out

- The location each sample must be captured both in writing (i.e. narrative) and on a sketch of the site
- The sampling procedure must be photographed (refer to photographic technique above)
- Every sample must be captured on a chain of custody form

3.5 Handling and Chain of Custody

3.5.1 Evidence handling

- Refer to SOP 6:2 Search and Seizure for the procedure on the handling of seized items.
- All samples that require preservation must be subjected to the required conditions of preservation as soon as is practically possible
- Chain of custody must be established for all samples and evidence
- All evidence and samples must remain in the custody of a designated person(s) throughout the period on the crime scene and during transfer to the evidence locker.

3.5.2 Establishing chain of custody

- The person, or designated person in a group, must record the information for each article of evidence on its respective chain of custody form, including the date and time.
- Every transfer of custody must be recorded and signed by both the relenting and receiving parties. The time and date must be accurately captured.
- Any article of evidence which is not in the immediate possession of the custodian must be in a secured place to which access is controlled and recorded.
- Instructions for sample preservation must be handed over when custody is transferred.

COMPILING A CASE DOCKET

1 OBJECTIVE

This procedure prescribes how a criminal investigation case docket must be compiled. It applies to all investigation case dockets compiled by EMIs.

2 BACKGROUND

A docket is an official file or dossier containing a record of a reported crime and its investigation.

- It reflects all the available evidence to prove the commission of the offence;
- It shows the steps taken in the investigation process;
- It acts as a communication tool between the investigator, his/her superiors and the prosecutor.

In addition to these prescriptions, ensure that the provisions in the agreement of cooperation of the SAPS in Agreements with Other Organisations 3.1: Cooperation with the South African Police Service, are fully complied with.

3 PROCEDURE

3.1 <u>Registering a criminal case docket</u>

3.1.1 A SAPS registered criminal case docket can be referred to an EMI via the designated SAPS representative in accordance with the agreement in 3.1. Register this docket on the EMI national case registration system.

3.1.2 Also register a case docket on both the SAPS CAS system, as well as the EMI national case registration system, where:

- A suspect has been arrested;
- A decision to open a criminal investigation has been made according to 2.1: Enforcement Policy in 2.1, irrespective of whether it was precluded by an Enquiry Docket or not.

3.2 <u>Sections Of A Case Docket</u>

3.2.1 A docket comprises six (6) parts.

3.3 <u>Cover Page</u>

3.3.1 Furnish all the information on the cover, except:

- “Court Number” and “Court Case Number”, which will only be available after the first appearance in court.
- The column “Finding/Result of Trial”, which the prosecutor will complete at the conclusion of the case.
- The column ”Disposal of Docket”, which will only be completed after the docket has been closed.

3.3.2 Ensure that the information on the cover is complete, accurate and corresponds with the information in the docket.

3.3.3 In the case of a statutory crime the sections of the particular Act or regulation contravened must be entered, and this is essential for registration purposes.

3.3.4 Where a particular heading, e.g. “Type of Instrument Used” is not applicable, note that on the cover by inserting “N/A”.

3.3.5 If there is not sufficient space to list the offences, this can be done via an annexure under the A Clip.

3.4 A Section / A Clip

3.4.1 This section contains the available evidence.

3.4.2 Enter notes to the prosecutor containing recommendations as to whether bail should be granted or not (only applicable where an accused has been arrested).

3.4.3 File the statement from complainant as A1. In many cases the complainant will be the EMI who detected that an offence has been committed, but could for e.g. also be a statement by a member of the public or a person from another agency reporting the crime.

3.4.4 File all other statements by witnesses and documents listed below on top of the A1 statement and mark them chronologically on the top right hand corner of the page starting at A2.

3.4.5 The name of the police station where the case docket is registered, the SAPS CAS number and the EMI national case registration system number must appear at the top of each page or document.

3.4.6 Also file the following documents in the A clip:

- Application for a warrant;
- Warrants of arrest;
- Search warrants;
- Copies of warrants;
- Plans and photographs of the crime scene;
- Fingerprint archive sheet;
- Positive fingerprint report;
- Withdrawal statements;
- Reports by specialists or expert witnesses;
- Any document that may assist the prosecutor in conducting the case;

3.5 B Section/B Clip

3.5.1 This section contains correspondence and documents that do not form part of the A Clip (evidence) or the C Clip (investigation diary).

3.5.2 File the following documents under this section:

- Correspondence relating to this case;
- A record of the investigator sleuthing work;
- Negative fingerprint reports (SAPS 191);
- Correspondence from other Police Stations or EMI Units (letters, faxes etc.);
- Newspaper clippings;
- Correctional Services reports where these are obtained for sentencing purposes;
- SAPS Circulation documents where relevant:
    - SAPS 324- Prescribed SAPS document used for the circulation of lost, stolen and found firearms.
    - SAPS 55- Prescribed SAPS document used for the circulation of wanted individuals for whom warrants of arrest has been issued.

3.5.3 All documents must be chronologically numbered on the top right hand corner marked B1, B2, B3 etc.

3.6 C Section/C Clip

3.6.1 The investigation diary must contain a complete record of all work expended on the case. It must serve as an index to all the documents contained in the case docket. The officer in charge of the investigation must be able to follow the course of the investigation without difficulty and be satisfied that all steps have been taken to bring the case to a successful conclusion.

3.6.2 Compile and file the following official documents when registering a case docket on the official SAPS CAS system:

- SAP 4m First information of crime;
- SAP 3m(g) Particulars of additional accused to be filed under the A clip.

3.6.3 The SAPS member on duty at the point of registration will assist with the above where necessary.

3.7 Particulars of Accused

3.7.1 Enter all particulars of the accused.

3.7.2 Verify identity numbers, residential and work addresses.

3.7.3 If there are more than two accused, file a SAP 3m(g) with the names of additional accused under the A clip.

3.8 Exhibit details

3.8.1 Details of available exhibits, disposal of such exhibits and items seized must be entered here.

4 PROTECTING YOUR DOCKET

4.1 Never leave a docket unattended, and always under lock and key when not under personal control.

4.2 Maintain an updated copy of the docket, containing certified copies of all statements and documents. This “ghost docket” must be kept in a secure location separately from the original docket.

4.3 If the docket is handed over to the prosecutor via the SAPS system, the prosecutor will sign for receipt of the docket in the SAPS docket register.

4.4 When handing a docket to a prosecutor personally, obtain a signature for the receipt of the docket on a document reflecting the SAPS station, CAS number, EMI registration number, name of accused and date.

4.5 When the prosecutor hands back the docket, he/she will also require your signature to acknowledge receipt of the docket.

4.6 Only certain people are allowed access to your docket and its contents, i.e. your supervisor, EMI or SAPS colleagues that are involved with the specific investigation, and the prosecutor.

IMPORTANT NOTE

While the legal counsel of the accused (attorney or advocate) also has the right to see the contents of the docket, this is only at a particular stage (normally once the investigation is completed and a trial date has been set), and only if an application is made to the prosecutor. Under no circumstances allow access to the docket to an accused or his/her legal representative, unless it is under direct instruction from the prosecutor.

5 CLOSING THE DOCKET

5.1 The closure of a docket is a process that will be finalised by the police at the police station where the case docket was first registered. It is only finalised once the docket is signed off for filing by the Police Officer with the authority to do so, normally the commander of the detectives at the Police Station.

5.2 There is however an onus on the EMI investigating the docket to go and fetch the docket at court once the case is finished and to then prepare the docket for closure by the police. The preparation for closure is done by the way of completing the 10 point plan for closure of a docket and attaching it to the C clip of the docket. The 10 point plan covers all the aspects requested to complete in preparation for closure of the docket.

5.3 Attached find an example of a 10 point plan for use during the closure of a case docket.

ANNEXURE 1

10 POINT PLAN C…

DATE AND TIME ______/____/____ _______:______	UNIT INVESTIGATING: ____ CAS NO_________/_____/________	YES	NO	REF
	1. Accused found Not Guilty/or Convicted as charged/ Convicted on the following charges (The outcome of the Trial): ____ ____ ____ ____ ____ ____ ____________________			
	2. Complainant Notified			
	3. SAP 69 Completed according to Instructions and forwarded t the SAPS LCRC as per			
	4. NO (SAP 277) to CRC			
	5. SAP 62 to prison as per			
	6. Photo Taken __________/______ Film no.			
	7. Any Suspects outstanding? If yes, particulars of suspects: ____ ____ ____ ____ ____ ____________________			
	8. Informers claim outstanding			

	9. Circulation/Cancellation outstanding			
	10. Exhibits outstanding. Furnish recommendation as to the disposal of the exhibits; ____________________ ____________________ ____________________ ____________________ ____________________ ____________________			
	11. Ready for Filing			

____________________ **SIGNATURE OF I/O**

____________________ **SIGNATURE OF OFFICER**

1 OBJECTIVE

This prescribes the manner and structure of conducting covert investigations. It is applicable to all covert operations and investigations undertaken by EMIs. **However, clearly note the restrictions in this regard placed on EMIs.**

2 INTRODUCTION

The term covert implies acquiring information for the purposes of law enforcement, which cannot be obtained by overt means and therefore complete secrecy is required. Covert investigations almost invariably have the effect that the right to privacy of individuals is infringed upon, and knowledge of the relevant legal mandate that empowers the EMI and/or other official is therefore essential.

3 BACKGROUND

Section 16 (2) of the South African Police Service Act, 1995 (Act No. 68 of 1995), defines crime threats and factors that need to be considered when attempting to establish whether or not organized crime is being committed, for which specialised interventions can be conducted in order to address the threat. Certain environmental crimes are linked to organized crime, and EMIs must take note of the prescriptions in SOP 3.1: Cooperation with the South African Police, in this regard.

Section 2(3) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), makes provision for the existence of five (5) Intelligence bodies within South Africa:

- National Intelligence Agency (NIA);
- South African Secret Services (SASS);
- Military Intelligence (MI);
- The Intelligence wing of the SAPS; and
- The National Intelligence Coordinating Committee (NICOC), which co-ordinates intelligence at Ministerial and National level. Members of NICOC are SAPS, National Intelligence Agency and Military Intelligence. NICOC assists and advises the National Government to make informed decisions regarding policing and other law enforcement activities that need to be embarked upon in order to address all prioritised threats.

EMIs must take note of the existence and functions of these organizations and liaise with them where necessary.

4 COVERT INVESTIGATION GATHERING TOOLS

4.1 <u>Section 205 of the CPA</u>

4.1.1 A subpoena is issued in terms of section 205 of the CPA to obtain information pertaining to any alleged offence, where the State has reason to believe that a certain individual or institution has such information at his/her disposal but is unwilling to disclose that information to the state, for e.g. because it might be private information. Typical examples of such documentary or other private information that can be used to afford proof to the commission of a crime include cell phone records and bank statements. In such cases the cell phone company or bank will be issued with a section 205 subpoena.

4.1.2 Obtaining such evidence through improper methods, such as through a “contact”, will almost invariably lead to such evidence being excluded by the court as being inadmissible. EMIs can apply for section 205 subpoenas to be issued so as to gain insight into a suspect under investigation's banking records and cellular phone records. If these privileged documents are obtained under such a subpoena and it affords proof of the commission of a crime, the documents can be legally presented in a court of law. The section 205 subpoena is obtained by presenting the case docket and a supporting affidavit to a prosecutor at the court that has jurisdiction over the case.

4.2 <u>Regulation of Interception of Communications and Provision of Communication- related Information Act, 2002 (Act No. 70 of 2002)</u>

4.2.1 The Act makes provision for;

- participant monitoring for example by a person in a group, e.g. the recording of a telephone conversation by one of the participants in the conversation;
- carrying a recording device on a person to record conversations;
- placing a recording device in a room and the presence of the device is unknown to the persons in the room.

4.2.2 The Act prescribes when a directive to intercept or record communications must be obtained. In most cases recording without audio (sound) does not requires a directive, but recording with sound (audio) requires a directive where it is done without the knowledge of the person being recorded. You may therefore record telephone conversations, interviews and meetings via a recording device, BUT only with the permission of the persons being recorded.

4.2.3 In such cases ensure that:

- Permission to record is obtained prior to the start of the conversation, interview or meeting;
- Where such permission is obtained, the recording device can be activated;
- Ask the person(s) present, at the start of the recording, to confirm audibly that they have granted such permission.

4.2.4 In matters where it is intended that audio recordings, without the permission of the person(s) being recorded, will be utilised, an application to authorise such interception and monitoring is made by presenting an affidavit and the case docket to the DPP. If DPP is satisfied that the request meets the necessary requirements, it will be placed in front of a Judge of the High Court who can issue the directive. The investigators involved must be mentioned in the request, as the directive grants permission only to those investigators. The directive stays valid for the period that it is granted for or until it is cancelled by the judge. As is the case above, EMIs must obtain the assistance of the SAPS and/or the office of the DPP in such matters.

4.2.5 In terms of section 31H(1)(g) of NEMA, EMIs are empowered to take photographs or make audiovisual recordings of anything or any person relevant for the purposes of an investigation. EMIs may therefore, without obtaining a directive as described above, take photographs or video recordings (with audio) during surveillance operations or during an inspection or a search. This authorises the EMI that is overtly involved in an inspection or investigation to openly and freely record and videotape (with audio) during such actions. However, if the intention changes to covertly gaining information, the protective clauses of the legislation are activated and a directive must be obtained for audio recordings.

4.2.6 In compiling a supportive affidavit for an interception and monitoring application, adhere to the following:

- The affidavit must be clear, candid, concise and complete;
- Identify the applicant and, if known and appropriate, the identity of the law enforcement officer who will execute the interception direction;

- Identify the person, if known, whose communication is required to be intercepted, or the group of potential persons;
- The postal service provider or telecommunication service provider to whom the direction must be addressed, if applicable;
- Specify the grounds on which the application is made;
- State full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;
- The nature and location of the facilities from which, or the place at which, the communication is to be intercepted, if known;
- The type of communication which is required to be intercepted;
- The basis for believing that evidence relating to the ground on which the application is made will be obtained through the interception;
- If applicable, indicate whether other investigative procedures have been applied and have failed to produce the required evidence or indicate the reason why other investigative procedures reasonably appear to be unlikely to succeed if applied or are likely to be too dangerous to apply in order to obtain the required evidence:
- Indicate that a serious offence has been or is being or will probably be committed for the benefit of, at the direction of, or in association with, a person, group of persons or syndicate involved in organized crime;
- Indicate the period for which the interception direction is required to be issued;
- Indicate whether any previous application has been made for the issuing of an interception direction in respect of the same person or customer, facility or place specified in the application and, if such previous application exists, must indicate the current status of that application; and
- Do not hide anything relevant: Be absolutely candid;
- Do not try to write persuasively or add editorial comments about what you think: Simply state the facts;
- Describe the sources of all factual information;
- If you are relying on an informer, exercise extreme discretion as to what details you disclose: Ensure that you protect the identity of the informer.

4.3 Section 252A of the CPA

4.3.1 Section 252A of the CPA deals with authorisations to make use of traps and undercover operations and regulates the admissibility of evidence so obtained. The various DPP offices have, in terms of these provisions, issued specific guidelines regarding supervision and control of undercover operations and require any official and/or his/her agent to obtain authority from the DPP before utilising traps and undercover operations in their area of jurisdiction.

IMPORTANT NOTE
Should the covert investigation flow from one division to another, the DPP of the affected division must be consulted for authority to operate in that area.

4.3.2 The case docket and a supporting affidavit must be presented to the DPP when applying for permission for a covert operation. EMIs, as law enforcement officers in service of the state, have in terms of section 252A(1) the authority to make use of these powers, but note the following:

- Under no circumstances may any EMI without prior training, experience and permission from his/her superiors, attempt such operations.

- Request the assistance of the Organised Crime or other appropriate branch of the SAPS where such covert investigation methods need to be employed.
- Under no circumstances may an EMI during covert or overt operations, partake in any actions of a criminal nature and/or commit the action of entrapment without first obtaining a Section 252A directive from the relevant DPP office.
- Where circumstances are such that the EMI is not within close proximity of the DPP office, or the time that it would take to first obtain the directive in writing would be detrimental to the operation, it is possible to contact the relevant DPP office and obtain the directive telephonically, with the necessary paperwork to be submitted to the DPP office as soon as possible. This can only be done on the authority of the delegated official at the relevant DPP office. Take note of the prescriptions in SOP 3.1: Cooperation with the South African Police in this regard.

4.3.3 In compiling a supporting affidavit in a section 252A application, adhere to the following:

- The affidavit must be clear, candid, concise and complete;
- Describe as precisely as possible what illegal acts are foreseen to be committed in the operation;
- Identify who is going to be involved as the agent in the undercover operation and precisely what role he/she will play;
- Do not hide anything relevant: Be absolutely candid;
- Do not try to write persuasively or add editorial comments about what you think: Only state the facts;
- Describe the sources of all factual information;
- If you are relying on an informer, exercise extreme discretion as to what details you disclose: Ensure that you protect the identity of the informer.

HOT TIP

In selecting suitable staff to act as agents and/or as handlers, ensure that they have appropriate strengths and talents. This may include:

- Resilience and the ability to react positively under stressful conditions;
- Inventiveness and resourcefulness;
- Able to create and live a legend suitable to the operation that he/she is involved in;
- Patience and tenacity;
- An eye for detail and good general situational perception;
- Self-discipline; and,
- Proven ability to memorize details and keep accurate records.

4.3.4 The planning of such operations should cover the following aspects:

- Who is the agent and how will he be introduced to the target of the investigation
- What mode of transport will be used by the agent
- What legend should be created for the agent to enable his acceptance by the targets
- How and when will the agent be inserted in the criminal operation relevant to the operation
- Who will be the handler and co-handler
- How will the agent have contact with his handlers and if necessary where will they meet to debrief
- How long will the operation last and how will the agent be extracted once the operation is done
- What backup is available to the agent and how will he/she contact them when the need arises

4.3.5 Advance reconnaissance of meeting places and other areas of operation during the undercover operation must be undertaken before surveillance can commence. If possible, take photographs and/or video footage during this stage. Also try and obtain photographs of the intended subjects or targets in the operation.

4.3.6 When using an agent to make a buy in a sting operation (e.g. sending an agent to buy rhino horn from a known illegal dealer):

- Photostat and record all the serial numbers of the money to be used in the transaction so as to afford proof of the sale when the money is recovered in the suspect's possession;
- Search the agent before he/she proceeds and ensure that the agent has no other money or any other objects or substances in his/her possession, before you hand over the money intended to be used in the transaction;
- Take note of the time the agent leaves and returns, and what, if anything, he/she has in his/her possession on return;
- Again search the agent and ensure that he/she has no money or other objects or substances in his/her possession;
- Record all of the above in your pocketbook.

4.3.7 When involved in a long-term undercover operation it is important to keep detailed records (log) of everything that occurred. These logs must be completed on a daily basis and handed to the handler or co-handler at least once a week. If it can safely be done on a daily or bi-daily basis it would be more appropriate.

4.3.8 The handler must also accurately record the meetings and the receipt of the logs from the agent in his/her pocketbook. The records received from the agent must be safeguarded in chronological order for court purposes. Remember the integrity of the agent will be attacked in any court proceedings that results from the operation and the records are the only backup that an agent has: The more accurate the record, the better the evidence.

4.4 Finally:

4.4.1 Do not attempt a section 252A operation without the necessary training, assistance and backup;

4.4.2 A successful operation relies heavily on planning, which includes formulating a strategic plan of action, as well as putting in place contingency arrangements;

4.4.3 Rather abort the operation than endanger your agent's life: you can always re-evaluate and plan a new operation.

1 OBJECTIVE

This procedure contains the prescriptions for matters where EMIs are interacting directly with the criminal justice system. This includes the issuing of admission of guilt fines and the interaction with prosecutors regarding bail applications, the decision to prosecute, summonsing of an accused, subpoenaing of witnesses, transferring of exhibits to court and plea and sentence agreements. In addition it covers aspects regarding the conduct of the EMI during a criminal trial. Some of the prescriptions apply specifically to the EMI investigating officer, whilst others apply to all EMIs who may be involved in the case as witnesses. This SOP must be read with the Enforcement Guidelines: 2.1 and all other SOPs relating to criminal enforcement.

2 DEFINITIONS

Admission of guilt (AG) fine, also referred to as a J534 fine

Defence counsel: This refers to any legal representative appearing for the accused, who may be an attorney and/or advocate

Presiding Officer: This includes magistrates, regional court magistrates and judges

Prosecutors/Prosecution (where used as a noun): This includes public prosecutors and state advocates

The Guide: The Prosecution of Environmental Crime: A Guide for Prosecutors

3 BACKGROUND

EMIs must endeavour to build strong relationships with the prosecutors in the regions that they work. This can include events where prosecutors are sensitised to environmental issues. Where the prosecutor might have a limited knowledge of the particular legislation, EMIs should refer him or her to the relevant legislation, as well as tools such as supplementary orders under NEMA, that are available. In addition, the prosecutor should be alerted to the Guide and EMI website, and provided with the contact details of legal advisors that might be of assistance.

EMIs should not have direct contact with presiding officers outside of the courtroom, except where a magistrate is approached, via a prosecutor, for a search warrant or to take a confession from an accused, in which case such formal contact will be in the office of the magistrate. This instruction does however not exclude incidental or purely social interaction with a presiding officer, with the proviso that even such contact should be avoided during a trial where both parties are involved. The principle is that justice should not only be done, but also manifestly be seen to be done. The presiding officer is an objective adjudicator and must be perceived to be such.

4 PROCEDURE

4.1 <u>Issuing Admission of Guilt Fines</u>

4.1.1 EMIs are regarded as peace officers (see section 31H(5) of NEMA) and can issue AG fines in accordance with the list of fines determined by the magistrate for the district in terms of the provisions in the CPA, or the fines set by the Minister in terms of section 34G of NEMA.

4.1.2 Where an AG fine has been set in terms NEMA or the CPA, decide in light of the prescriptions in the Enforcement Guidelines: 2.1, whether it is appropriate to issue an AG fine. Note that the mere fact that an AG fine has been set for the particular offence does not mean that it is always appropriate to set a fine, and the mere fact that no such fine has been specified, does not mean that an AG fine is not necessarily appropriate in particular circumstances relating to minor offences.

4.1.3 Where no admission of guilt fine has been determined, EMIs can contact their local prosecutor for a determination where there are particular circumstances in a specific case which warrant the setting of an admission of guilt fine where it is not specified. EMIs must ensure that they have the contact numbers of the relevant prosecutors.

4.1.4 The maximum amount determined for AG fines is currently set at R2 500 by R239 in GG 24393 of 14 February 2003 ("R239"). If the matter warrants the issuing of an AG fine of more than R2 500, 00, but less than R5 000, 00, open a case docket without effecting an arrest, and then request the prosecutor to issue a summons in terms of the CPA, as prosecutors may set AG fines of up to R5000, 00, the maximum set by R239.

4.1.5 Obtain appropriate court dates from the prosecutor to specify in the J534. Prosecutors might prescribe a certain date(s) in the month, or a particular day(s) in a week.

4.1.6 Ensure that the date of the court appearance is at least two weeks from the date of the issuing of the J534.

4.1.7 A mistake on the J534 form or any other shortcoming often results in such cases being withdrawn or removed from the court roll. Therefore:

- Ensure that handwriting is clear and legible.
- Clearly set out the date and place of the offence, the number of the particular section or regulation of the particular Act or Regulation that has been transgressed, the description of the offence as well as the quantity and species, where applicable..
- Initial all alterations on the J534, and add the date next to the initial.
- Inform the accused, as is prescribed in section 73(2A) of the CPA, that he/she has the right to be represented by a legal advisor of choice, and if unable to afford such services, can apply for legal assistance, as well as to which institutions he/she can apply for such assistance.
- Hand the original to the accused and timeously lodge a copy with the clerk of the court at the magistrate's office. Retain the other copy in the J534 booklet.
- Attach an affidavit containing a short summary setting out the facts of the case to the first copy of the J534, and retain a copy of the statement until such time as the case has been disposed of. The prosecutor might receive a request for withdrawal or reduction of the fine and will need the EMI's contact details and a short version of the facts. An accused might also prefer not to pay the fine in which case a trial would follow, possibly months after the fine has been issued, and the EMI will need the affidavit to refresh his/her memory.
- Register the case and obtain a CAS number at the police station. Note the CAS number on the first copy.
- Deposit the first copy, with the original statement attached to it, at the Clerk of the Court (in some cases this can be done via the Police Station).
- Retain the second copy in the J534 book.

Follow up and report on the payment, or non-payment, of AG fines monthly, report back and track subsequent court dates.

4.2 <u>Bail</u>

4.2.1 Where an accused has been arrested, he/she/they must be taken to the nearest police station as soon as possible. Where it is a Schedule 1 CPA offence (note that almost all offences under NEMA, the SEMAs and regulations under them provide for the possibility of more than 6 months imprisonment without the option of a fine, and will therefore be Schedule 1 CPA offences), and:

- the accused has a fixed address; and

- there is no danger that the accused will not stand trial; and
- the accused does not have previous convictions or a pending case; and
- there is no danger of the accused interfering with the investigation; and
- there is no danger of the accused influencing or intimidating witnesses; and
- there is no other reason not to grant bail

then the EMI may propose to the SAPS that the accused be released on “police bail”.

4.2.2 Alternatively, the accused will appear in court within 48 hours. If there are reasons to oppose bail, be sure to inform the prosecutor of this, either in the standard SAPS form, or in a separate statement. Also indicate to the prosecutor what investigation is outstanding, and provide an estimate of the time required to complete the investigation.

4.2.3 The EMI investigating officer must report to the prosecutor at least half an hour before the court starts on the date of first appearance of the accused (courts usually start at 9 am). The prosecutor might want to discuss the issue of bail, the merits of the case or what further investigation is required. The EMI must remain at court until such time as the case has been dealt with, unless excused by the prosecutor before that.

4.3 Appealing the Prosecutor’s Decision

4.3.1 In any case, whether it originates from a J534, arrest or summons, the decision whether to prosecute or not, is that of the prosecutor. Refer to the Enforcement Policy: 2.1 for prescriptions in this regard.

4.3.2 In a case where the EMI investigating officer is convinced that a prosecution should be instituted, or should proceed, but the prosecutor declines to prosecute or permanently withdraws the charges against the accused, the EMI must, in writing, motivate why the decision should be reversed. This letter must be on an official letterhead and addressed to the Senior Prosecutor for that particular region. Where the decision not to prosecute or to permanently withdraw was taken by the Senior Prosecutor, or the EMI investigating officer is still not satisfied with the decision after it has been referred to the Senior Prosecutor, a similar letter must be addressed to the DPP’s office for the division. If the decision not to prosecute remains confirmed, the NPA’s office can be approached, but this should only be done in exceptional circumstances, as it is highly unlikely that they will come to a different conclusion after all the previous steps have been followed.

4.3.3 While the above procedure also applies to charges against the accused being withdrawn, note that a prosecutor might in particular circumstances temporarily withdraw the charges against an accused. This will be accompanied by specific instructions to the EMI investigating officer for further investigation, or for a specific condition to be met, in which instance the case can be put back onto the court role in the future.

4.3.4 A decision not to prosecute will be indicated by the term “nolle prosequi” written on the docket, with the signature of the prosecutor, and that will be sufficient to close the docket. A decision to withdraw will also be noted on the docket and will usually indicate whether it is a permanent withdrawal or not. A permanent withdrawal is sufficient to close the docket.

4.4 Summonsing of the Accused

4.4.1 Where the prosecution has decided to institute prosecution in cases where no person has been arrested, the accused will usually be summonsed to appear in court (the state can also apply for a warrant of arrest, but that will only be done where circumstances dictate that such a drastic step is required).

4.4.2 The prosecutor will request the clerk of the court to issue summons against the accused, as is provided for in section 54 of the CPA.

4.4.3 As EMIs do not have the power to issue summons (see section 54 and 329 of the CPA, and section 31H(5) of NEMA), they will have to obtain the assistance of the SAPS or sheriff's office to issue such summons.

4.4.4 The summons must be issued 14 days prior to the date of first appearance in court, and failure of the accused to appear will lead to the court issuing a warrant of arrest in terms of section 55 of the CPA.

4.5 Subpoenaing of Witnesses

4.5.1 The subpoenaing of witnesses is done in accordance with Chapter 23 of the CPA.

4.5.2 As EMIs are not authorised to subpoena witnesses, they will have to obtain the assistance of the SAPS in this regard.

4.6 Transferring of Exhibits to Court

4.6.1 Exhibits must be transferred to court prior to trial should they be necessary to serve as evidence or for the purposes of a potential forfeiture order.

4.6.2 In terms of section 33 of the CPA, this is done by handing such items over to the clerk of the court, who is under an obligation to keep such items in safe custody.

4.6.3 Where the nature of the exhibits makes such handing over impractical or undesirable, the clerk of the court can instruct that such items be kept in police custody or any other safe custody.

4.6.4 It will be desirable and practical to get an instruction as described in 4.6.3 above from the clerk of the court to keep exhibits such as valuable wildlife products in EMI custody until the time it is required for court purposes, and EMIs must arrange this with the clerk.

4.7 Plea and Sentence Agreements

4.7.1 If the EMI investigating officer is of the opinion that such an agreement might be advantageous and appropriate, discuss the possibility with the prosecutor.

4.7.2 If the EMI investigating officer, or any EMI witness, is approached by the accused or defence counsel regarding the possibility of such an agreement, they may under no circumstances discuss the issue with them but must refer them to the prosecutor.

4.7.3 The EMI investigating officer does not have a right to be present during negotiations between the state prosecutor and the defence counsel on such an agreement, but may be requested by the prosecutor to do so.

4.7.4 The prosecutor is under an obligation to consult with both the EMI investigating officer and the complainant prior to concluding such an agreement. In many cases the EMI investigating officer will also be the complainant, or a representative of the state department or organ of state that is the complainant. Be objective, fair and flexible during such a consultation.

4.7.5 If it is a Schedule 3 NEMA offence, alert the public prosecutor of the supplementary orders available.

4.8 Aspects of the Trial

4.8.1 Where a trial date has been set, the EMI investigating officer must consult with the prosecutor and inquire which witnesses should be subpoenaed and whether the prosecutor wants to consult with him/her and/or witnesses prior to the date of trial. If so, arrange with the witnesses. Liaise with the prosecutor and/or clerk of the court to obtain subpoenas, and serve the subpoenas on the witnesses.

4.8.2 The EMI investigating officer and all EMI witnesses must study their statements (of which they must retain a copy), prior to the court date to refresh their memory. Should any inaccuracies be detected at that stage, immediately inform the prosecutor (before commencement of the trial).

4.8.3 On the date of the court appearance:

- Dress in uniform or other formal EMI clothing. Where that is not available, dress neatly, with a tie and jacket for male EMIs and formal dress for females.
- Both the EMI investigating officer and all EMI witnesses must report to the prosecutor at least half an hour before commencement of the court (courts usually commence at 9 am).
- The EMI investigating officer must insure that all witnesses are present and alert the prosecutor of any absentees, and where necessary, follow up and attempt to trace the witnesses.
- Any EMI witness who has a religious objection to taking the oath, should inform the prosecutor of this prior to their testimony.
- At the trial:
- All witnesses who have not yet testified must remain outside the courtroom while other witnesses are testifying. The EMI investigating officer must ensure that this is done.
- No direct contact or any communication with the presiding officer is allowed, except the communication in court.
- No witness is allowed to discuss his or her testimony with any of the other witnesses during any stage of the trial, and only may do so after they have both completed their testimony.

4.8.4 After conviction, but prior to sentence:

- If an accused has been convicted of an offence listed in Schedule 3 of NEMA, alert the prosecutor to the possibility of any supplementary orders that are available, and provide the prosecutor with the necessary written requests and/or cost estimations and/or a proposed rehabilitation plan and/or expert witnesses who can advise on this.
- Ensure that wherever possible, evidence in aggravation is led. This can be by the EMI investigating officer, other complainants or victims, or testimony by experts. It is the duty of the EMI investigating officer to obtain information and statements in this regard.

4.9 <u>Appeal and Review</u>

4.9.1 There is no appeal available to the State on the merits of a particular case. The outcome is therefore reported and the docket is closed.

4.9.2 Only where the court made a mistake in law, or where there was a procedural irregularity, does the state have the option of appeal and/or review. Discuss this with the prosecutor or the DPP's office if you believe this to be the case.

ADMINISTRATIVE ENFORCEMENT

1 OBJECTIVE

To inform the EMI of the procedure to be complied with where non-compliance with provisions in the relevant legislation can be met with an administrative enforcement action. This includes instances where there is or could be serious harm to or a negative impact on the environment even if no listed activities are involved.

2 DEFINITIONS

Issuing authority: the authority issuing the administrative notice
Transgressor: the person who failed to comply with the relevant legislation

3 BACKGROUND

As all administrative enforcement tools falls within the definition of an administrative action, it is essential that the requirements of PAJA be complied with. This implies adherence to the principles of fair administrative action and especially the *audi alteram partem* rule. In order to be procedurally fair, such enforcement actions would usually be preceded by a pre–directive or pre-notice to provide the alleged transgressor with the opportunity to respond to the proposed action. In the case of an emergency, where urgent action is required, this step can be disposed of and the directive or notice can be issued immediately, but opportunity for a response and representations after the fact must still be provided for. Another requirement of just and fair administrative action is that the requirements of the legislation - who can issue, when can such an order be issued and what instructions can be issued – must be strictly adhered to.

In addition, a pre-directive or pre-notice and a directive or notice, must be substantially the same. While less onerous instructions can be issued in a final notice, adding instructions or conditions should only be done where an additional opportunity to respond to such proposed instructions or conditions has been afforded to the transgressor.

Each of the available administrative enforcement tool options are discussed separately, but in some cases a combination of options may be utilised simultaneously, e.g. a NEMA directive and compliance notice can be issued simultaneously if both are triggered and the circumstances are appropriate. In addition, the issuing of a compliance notice or directive does not exclude the possibility of referring the matter for prosecution at the same time. The Enforcement Policy (2.1) should be consulted for a decision in this regard.

4 PROCEDURE

4.1 Taking Administrative Actions

4.1.1 Determine whether the transgressor is an organ of state.
4.1.2 If so, refer to 2.2: Procedure for Dealing with Non Compliant Organs of State
4.1.3 If not, proceed to the relevant section below:

- 4.2 below for a section 31 ECA Directive,
- 4.6 or 4.7 for a section 28 NEMA directive,
- 4.10 or 4.11 for a section 31L NEMA compliance notice,
- 4.16 for a section 59 NEMICMA coastal protection notice,
- 4.20 for a section 59 NEMICMA coastal access notice
- 4.24 for a NEMICMA repair or removal notice,
- 4.26 for a section 69 NEMBA alien species directive,
- 4.30 for a section 73 NEMBA invasive species directive.

4.1.4 If a section 30 NEMA emergency incident is involved, refer to and follow SOP 5.10: Procedure Subsequent to Reporting of Emergency Incidents.

4.2 Section 31A ECA Urgent Directive

4.2.1 Section 31A does not provide explicitly for an urgent directive. However if the activity or failure to take action has resulted, or can potentially result in the environment being seriously damaged, endangered or detrimentally affected, and the circumstances dictate that issuing of a pre-directive will have the result of frustrating the reason for the issuing of the directive, i.e. eliminating, reducing or preventing the damage, danger or detrimental effect on the environment, proceed directly to 4.4 below.

4.3 Section 31A ECA Pre-Directive

4.3.1 Issue a pre-directive to the transgressor setting out the following:

- That the pre-directive is issued in terms of section 31A of ECA;
- By whom/In what capacity the pre-directive is issued (either the Minister (DWEA), competent authority, local authority or government institution)
- To whom the directive may be issued
- Use the full and correct name if the directive will be issued against a juristic person, and address it to the most senior level, e.g. “The Managing Director, as representative of Major Polluter (Pty) Ltd”
- What activity has been performed, or failed to be performed, and if it is a specific transgression, a reference to and short description of the relevant provision in the relevant legislation;
- How the activity or failure has resulted, or can potentially result, in the environment being seriously damaged, endangered or detrimentally affected;
- Justification for the issuing of the pre-directive based on the above information;
- Intention to direct such person to cease the activity and/or steps required to be taken, including the performing of any activity or function at the expense of such a person to rehabilitate any damage caused to the environment
- Intended prescribed time period for ceasing the activity and/or taking of steps;
- The potential legal consequences of a failure to comply with a directive, should it be issued (refer to 4.5 below);
- Time period within which reasons must be provided as to why a directive should not be issued.

4.3.2 The pre-directive must be signed by the person from the issuing authority with the necessary power to issue directives.

4.3.3 Send the pre-directive to all the relevant organs of state.

4.3.4 If inadequate reasons are provided in response to the pre-directive, a directive should be issued in accordance with the provisions of 4.4 below.

HOT TIP

A Combination of pre-directives or pre-notices in different administrative tools, where more than one is triggered, can be very useful. Depending on the response of the transgressor, decide on which tool(s) should be used in the final notice.

4.4 Section 31A Directive

4.4.1 Issue a directive setting out the following:

- All of the factors listed above for the issuing of a pre-directive, with the necessary modifications, i.e. replacing the allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons unless no pre-directive was issued, in which case an opportunity to make representations or enter into discussions with the relevant authority must be included).

- Reference to the person's response to the pre-directive and any pertinent issues and conclusions;

4.4.2 If any additional or contradictory information has been acquired since the drafting of the pre-directive, this must be firstly be divulged to the transgressor in an amended pre-directive , and the transgressor must be provided with an additional and adequate opportunity to comment on this prior to the issuing of the directive.

4.4.3 Although not specifically provided for, the alleged transgressor must be afforded an opportunity to object or appeal against the decision and be granted a reasonable time and opportunity to do so.

4.5 <u>Legal Consequences of Failing to Comply with a Section 31A ECA Directive</u>

4.5.1 Non-compliance with a section 31A directive is a criminal offence in terms of section 29(3) of ECA and on conviction, the maximum sentence, specified in section 29(3) is:

- an unspecified fine (a maximum of R5 000.00 in terms of the Adjustment of Fines Act); or
- imprisonment for a period not exceeding 3 months; or
- to both such a fine and imprisonment.

4.5.2 In addition:

- section 29(6) provides that in the case of a continuing offence, a person can be sentenced to an additional R250.00 and/or 20 days imprisonment for each day the transgressor persists with such act or omission after conviction; and
- section 29(7) provides that on conviction the court may order that any damage to the environment resulting from the offence must be repaired by the person so convicted, to the satisfaction of the Minister, competent authority or local authority concerned; and
- section 29(8) provides that if such an order in terms of section 29(7) is not complied with within 30 days after a conviction (sic- should read "sentence", or rather "date of order"), or such longer period as the court may determine, the issuing authority may itself take steps to repair the damage and recover the cost from the transgressor.
- Section 31A(3) provides that the issuing authority may perform the actions required by the directive and may authorise any person to take all actions required for that purpose. All expenditure may be recovered from the person to whom the directive was issued.

4.5.3 The contravention of section 31A is listed in Schedule 3 of NEMA, and the supplemental orders in section 34(1)-(4) of NEMA therefore apply in the case of a conviction.

HOT TIP

While the criminal penalty for non-compliance with a section 31A directive is very low, the trigger only requires that the activity has caused or may cause serious harm, and unlike section 28 of NEMA does not contain the additional requirement that all reasonable steps to prevent or minimise the harm should have been taken. Since September 2009 the contravention is also listed on Schedule 3 of NEMA, broadening the consequences of a conviction substantially. In addition, until such time as sufficient EMIs have been appointed on local government level, a local government authority also has the power to issue a section 31A ECA directive.

4.6 <u>Section 28 NEMA Urgent Directive for Breach of the General Duty of Care</u>

4.6.1 Where urgent action is necessary for the protection of the environment, issue an urgent directive setting out the all the factors listed below in 4.7, and in addition:

- The reasons why urgent action is necessary for the protection of the environment;
- Justification, based on the above grounds, as to why no pre-directive has been issued;
- A reasonable timeframe for the transgressor to supply reasons as to why the directive should be amended;
- Must clearly set out that the directive remains valid and must be complied with within the prescribed timeframe (which can be immediately), in spite of the opportunity to provide reasons as to why the directive should be amended
- Intention to consult with organs of state concerned subsequent to the issuing of the directive;
- Intention to afford any affected persons an opportunity to state their interests with regard to the issuing of the directive.

4.6.2 As soon as is reasonably possible after the issuing of the directive, consult with any relevant organs of state and affected persons.

4.7 Section 28 NEMA Pre-Directive for Breach of Duty of Care

4.7.1 Issue a pre-directive setting out the following:

- That a directive in terms of section 28 of NEMA may be issued;
- By whom/in what capacity the directive will be issued (either the DG or provincial head of department);
- To whom the directive will be issued, including but not limited to:
  an owner of land or premises
  a person in control of land or premises or a person who has a right to use the land or premises on which or in which -
  (a) any activity or process is or was performed or undertaken; or
  (b) any other situation exists, which causes, has caused or is likely to cause significant pollution or degradation of the environment.
- Use the full and correct name if the directive will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty) Ltd;
- Factual position leading to the conclusion that the person caused, is causing or may cause significant pollution or degradation of the environment; and
- the factual position leading to the conclusion that the transgressor failed to take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or to minimise and rectify such pollution or degradation;
- “[P]ollution is defined in section 1 of NEMA, but there is no further definition of “significant pollution or degradation”.

4.7.2 Such reasonable measures that a person must take, that may include measures to:

- investigate, assess and evaluate the impact on the environment;
- inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
- cease, modify or control any act, activity or process causing the pollution or degradation;
- contain or prevent the movement of pollutants or the causant of degradation;
- eliminate any source of the pollution or degradation; or
- remedy the effects of the pollution or degradation.
- What measures will be required to be taken by the person;

4.7.3 The transgressor can be required to:

- investigate, evaluate and assess the impact of specific activities and report thereon
- commence taking specific reasonable measures before a given date
- diligently continue with those measures; and

- complete them before a specified reasonable date
- The time and dates by which the above must be done

4.7.4 Regard must be had to the following when considering measures or time periods:

- The principles set out in section 2 of NEMA
- The provisions of any adopted environmental management plan or environmental implementation plan
- The severity of any impact on the environment and the costs of the measures being considered
- Any measures proposed by the person on whom measures are to be imposed, and noting specifically that the transgressor still have the opportunity to do this;
- The desirability of the State fulfilling its role as custodian holding the environment in public trust for the people
- Any other relevant factors
- The legal consequences of a failure to comply with a directive (see 4.9 below)

4.7.5 The above considerations should firstly be noted as having been taken into consideration, and secondly, where applicable, must be noted as part of the justification for specific measures or timeframes created.

4.7.6 The pre-directive must be signed by the person from the issuing authority with the necessary power to issue directives.

4.7.7 Send the pre-directive to all the relevant organs of state. Where it is clear that a particular organ of state has a very direct interest in the particular matter, it will be expedient to consult with them even prior to the issuing of the pre-directive.

4.7.8 If inadequate reasons are provided in response to the pre-directive, a directive should be issued according to 4.8 below.

4.8 <u>Section 28 NEMA Directive for Breach of Duty of Care</u>

4.8.1 Issue a directive setting out:

- All of the factors listed above for the issuing of a pre-directive, with the necessary amendments by replacing allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons).
- Reference to the person's response to the pre-directive and any pertinent issues and conclusions, dealing specifically with any measures proposed by the person on whom measures are to be imposed (this will not be applicable in the case of an urgent directive)

4.8.2 If any additional or contradictory information has been acquired since the drafting of the pre-directive, this must be firstly be divulged to the transgressor by the issuing of an amended pre-directive, and the transgressor must be provided with an adequate opportunity to comment on this prior to the issuing of the directive.

4.8.3 As the power to issue a directive rests with DG or the HOD of the provincial department, the right to appeal to the Minister or MEC against a decision taken by any person acting under a power delegated by the Minister or MEC, as is provided for in section 43 of NEMA, does not apply. However, although not specifically provided for, the alleged transgressor must be afforded an opportunity to object or appeal against the decision and be granted a reasonable time and opportunity to do so.

4.9 <u>Legal Consequences of Failing to Comply with a Section 28 NEMA Directive</u>

4.9.1 Should a person fail to comply, or inadequately complies with such a directive, the issuing authority (the DG or provincial head) may take reasonable measures to remedy the situation and recover all costs incurred as a result thereof as is provided for in section 28(7) – (11).

4.9.2 In addition, in terms of section 14(c), it is a criminal offence to fail to comply with such a directive and, on conviction, the sentence could include the following:

- a fine not exceeding R1 million; or
- imprisonment for a period not exceeding 1 year; or
- both such a fine and imprisonment.

4.9.3 This offence is also listed in Schedule 3 of NEMA, and on conviction, the court can also order the following in terms of section 34(1) –(4):

- Payment of the amount of loss or damage caused to an organ of state or other person as a result of the offence, including the cost incurred (or likely to be incurred by organ of state) in rehabilitating the environment or preventing damage to the environment; and
- Payment of the monetary value of any advantage gained (or likely to be gained) by person in consequence of the offence; and
- payment of reasonable costs incurred by public prosecutor and organ of state in the investigation and prosecution of the offence.

4.9.4 As a listed Schedule 3 offence, a director, manager, agent or employee could, in certain circumstances, be liable for the offence in their personal capacities as is set out in section 34(5) – (10).

HOT TIPS

- Use the section 28 directive to address environmental harm or degradation caused before 1998 as this provision now applies retroactively since the September 2009 amendments, (see section 28(1A), as inserted by section 12 of Act 14/2009).

- Section 28(2) imposes an obligation to take reasonable measures on a broad range of persons, including the owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which any activity or process was performed or undertaken, or any other situation exists which causes, has caused or is likely to cause significant pollution or degradation of the environment. Similarly, in terms of section 28(7) a broad range of persons can be kept liable for costs for reasonable remedial measures undertaken by the DG or HOD.

- Where the activity takes place in the coastal environment, section 58 of NEMICMA makes it clear that the section 28 duty of care applies to the coastal environment, and further specifies that obligation to take reasonable measures applies to a broad range of persons, including the user of coastal public property, the owner, occupier, person in control of or user of land or premises on which an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned, the owner or person in charge of a vessel, aircraft, platform or structure at sea, or the owner or driver of a vehicle, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned, the operator of a pipeline that ends in the coastal zone, and any person who produced or discharged a substance which caused, is causing or is likely to cause an adverse effect.

4.10 <u>Section 31 L NEMA Urgent Compliance Notice</u>

4.10.1 A compliance notice can be issued for non-compliance with a provision of NEMA or the SEMAs, or with the conditions of an authorisation, license or permit issued in terms of NEMA or the SEMAs. While Regulation 8 in R 494 in GG28869 of 2 June 2006 prescribes that a notice of intention to issue a compliance notice must first be given, it also provides that an EMI may issue a compliance notice without first giving notice of the intention to issue such a notice, where such a step will cause a delay resulting in significant and irreversible harm to the environment. Where urgent action is therefore required for the protection of the environment, and there are reasonable grounds for believing that a person has not complied with any relevant environmental approvals or with a provision of the law for which the EMI has been designated, issue an urgent compliance notice setting out the all the factors listed in 4.11 below, and in addition:

- The reasons why urgent action is necessary for the protection of the environment;
- The factual basis and reasons why the EMI has reason to believe that first giving notice of the intention to issue such a notice will cause a delay resulting in significant and irreversible harm to the environment
- Justification, based on the above grounds, as to why no notice of intention has been issued;
- That the person to whom the notice was issued, may object to the notice by making representations, in writing, to the Minister or MEC, within 30 days of receipt of the notice.
- That after considering such representations the Minister or MEC may confirm, modify or cancel such a notice, or any part of the notice, and will specify the period within which any part of the notice that is confirmed or modified must be complied with.
- Must clearly set out that the compliance notice remains valid and must be complied with within the prescribed timeframe (which can be immediately), in spite of the objection process.
- Intention to consult with organs of state concerned subsequent to the issuing of the directive;
- Intention to afford any affected persons an opportunity to state their interests with regard to the issuing of the directive.
- the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.

4.10.2 The compliance notice must be in the form set out in Annexure 3 of R494 of GG 28869 of 2 June 2006.

4.10.3 As soon as is reasonably possible after the issuing of the notice, consult with organs of state and affected persons.

4.11 <u>Section 31L NEMA Pre-Compliance Notice</u>

4.11.1 Only a Grade 1 EMI can issue a compliance notice: This means that only a Grade 1 EMI can issue a pre-compliance notice, being a notice of intention to issue a compliance notice.

4.11.2 The pre-compliance notice must follow the basic format and contents of the compliance notice as set out below.

4.11.3 Issue a pre-compliance notice to the transgressor, setting out the following:

- That a compliance notice in terms of section 31L of NEMA may be issued;
- By whom/in what capacity the compliance notice will be issued, with full details of the person, grade and date of appointment (which must be a Grade 1 EMI)
- To whom the compliance notice will be issued;
- Use the full and correct name if the notice will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty) Ltd;
- Details of the action constituting a non-compliance;
- Reference to the provision of NEMA or SEMA, or regulations thereunder, allegedly transgressed, as well as the consequences thereof, and if also an offence, what the consequence of conviction could be;
- Any steps that the person must take and the period within which those steps must be taken;

- Anything which the person may not do, and the period during which the person may not do it;
- Time period within which the Department requires reasons / representations to why a compliance notice should not be issued;
- Intention to withdraw or suspend any relevant environmental approval.

4.11.4 If inadequate reasons are provided in response to the pre-compliance notice, and/or the transgressor has not complied with the pre-compliance notice, issue a compliance notice as per the provisions in 4.12 below.

4.12 Section 31L NEMA Compliance Notice:

4.12.1 The compliance notice must be in the form set out in Annexure 3 of R494 of GG 28869 of 2 June 2006.

4.12.2 Issue a compliance notice setting out all of the factors listed above for the issuing of a pre-compliance notice, with the necessary variations, such as replacing allegations as stated facts, and intentions as a notice/order (and excluding the opportunity to forward reasons.

- Reference to the person's response to the pre-compliance notice and any pertinent issues and conclusions (where applicable).
- If any additional or contradictory information has been acquired since the drafting of the pre-compliance notice, this must be firstly be divulged to the transgressor by the issuing of an amended pre-compliance notice, and the transgressor must be provided with an adequate opportunity to comment on this prior to the issuing of the notice.
- That the person to whom the notice was issued, may object to the notice by making representations, in writing, to the Minister or MEC, within 30 days of receipt of the notice.
- That after considering such representations the Minister or MEC may confirm, modify or cancel such a notice, or any part of the notice, and will specify the period within which any part of the notice that is confirmed or modified must be complied with.
- Must clearly set out that the compliance notice remains valid and must be complied with within the prescribed timeframe (which can be immediately), in spite of the objection process.

4.13 Legal consequences of Non-Compliance with a Section 31L NEMA Compliance Notice:

4.13.1 A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice.

HOT TIP

Note that an application for a suspension can only be submitted together with an objection, as is provided for in section 31M. If the person to whom the notice was directed do not submit an objection, a suspension cannot be granted

4.13.2 A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.

4.13.3 Failure to comply with a compliance notice is a criminal offence in terms of section 31N, and on conviction carries a maximum penalty of R5 million and/or 10 years imprisonment.

4.13.4 Note that this offence is listed in Schedule 3 of NEMA, and the supplemental orders in section 34(1)-(4) of NEMA will apply on conviction.

4.13.5 Non-compliance to the provision must be reported to the MEC or Minister, depending on the circumstances, who may:

- Revoke or vary the relevant permit, authorisation or other instrument which is the subject of the compliance notice;
- Take any steps necessary and recover the costs of doing so from the person who failed to comply;

HOT TIP
An environmental management inspector may, in terms of section 31L(3), on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice .

4.14 Section 59 NEMICMA Urgent Coastal Protection Notice

4.14.1 There are no provisions for the issuing of an urgent coastal protection notice in the absence of first consulting with any other organ of state that authorised or is competent to authorise the undertaking of the activity or proposed activities concerned; and also affording the person to whom the notice is to be addressed, the opportunity to make representations, as is stipulated in section 59(2).

4.14.2 However, section 92 of NEMICMA provides that where there is a reason to believe that urgent action is necessary for the protection of the coastal environment, the Minister (or delegated person- see section 59(3)) may issue a verbal directive to stay an activity if the activity poses:

- An immediate risk of serious danger to the public or property; or
- An immediate risk of serious damage, or potentially significant detriment, to the environment

A verbal directive must be confirmed in writing at the earliest opportunity, which must be within 7 days, and with all the information required in accordance with 4.16 below.

4.14.3 In the case of a verbal directive the provisions regarding consultation in section 59(2) do not apply.

4.15 Section 59 Notice of Intention to Issue a Coastal Protection Notice in terms of NEMICMA

4.15.1 Issue a notice of intention to issue a coastal protection notice setting out the following:

- That a coastal protection notice may be issued in terms of section 59 of NEMICMA
- To whom it is issued;
- By whom/in what capacity the notice will be issued (according to section 59(3) it can only be issued by the Minister, MEC, a municipality to whom the MEC has delegated the power to issue such a notice, or an official of DEA; it seems that the reference to section 87 must have been a reference to section 89, and should have included a reference to section 91)
- Use the full and correct name if the coastal protection notice will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty) Ltd;
- The factual position leading to the conclusion that the person is carrying out, or intends to carry out an activity that is having, or is likely to have, an adverse effect on the coastal environment
- That the person may be issued a coastal protection notice prohibiting the activity if it is not already prohibited in terms of NEMICMA, and further instructing that person to:

  take appropriate steps in terms of NEMICMA or any other applicable legislation to protect the environment investigate and evaluate the impact of an activity on an aspect of the coastal environment in accordance with Chapter 5 of NEMA

stop or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate the report

- The instructions may include, among other matters, instructions to:

  Build, maintain or demolish any specified works

  To close a public access or prevent unauthorised access to coastal public property at a specified place

  To plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place

  To stop altering the geographical features of land at a specified place

  To build or maintain any specified works at a specified place to protect land from wind erosion

  To rehabilitate land at a specified place

  To remove stock from land, or

  To take measures to protect indigenous fauna.
- the notice must include the timeframes within which all of the above must be done

4.15.2 The above considerations should firstly be noted as having been taken into consideration, and secondly, where applicable, must be noted as part of the justification for specific measures or timeframes created.

4.15.3 The notice of intention to issue a coastal protection notice must be signed by the person from the issuing authority with the necessary power to issue such notices.

4.15.4 The notice of intention to issue a coastal protection notice must also be sent to any other organ of state that authorised, or is competent to authorise, the undertaking of the activity concerned.

4.15.5 If inadequate reasons are provided in response to the notice of intention to issue a coastal protection notice, a coastal protection notice should be issued according to 4.16 below.

4.15.6 If any additional or contradictory information has been acquired since the drafting of the notice of intention to issue a coastal protection notice, this must be firstly be divulged to the person by way of an amended notice of intention, and they must be provided with an adequate opportunity to comment on this prior to the issuing of the notice. (Sections 28(1)-(6) of NEMA).

4.16 <u>Section 59 Coastal Protection Notice in terms of NEMICMA</u>

4.16.1 Issue a coastal protection notice setting out:

- All of the factors listed above for the issuing of a notice of intention to issue a coastal protection notice, with the necessary amendments by replacing allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons).
- Reference to the person’s response to the notice of intention to issue a coastal protection notice and any pertinent issues and conclusions, dealing specifically with any measures proposed by the person on whom measures are to be imposed (this will not be applicable in the case of an urgent directive)
- That the person to whom the notice is addressed may appeal against the notice in terms of Chapter 9 of NEMICMA, including the details of with whom it may be lodged, the method, contents and timeframes contained in section 74 of NEMICMA.

4.17 <u>Legal Consequences of Failing to Comply with Section 59 Coastal Protection Notice in terms of NEMICMA</u>

4.17.1 If a person fails to comply with a coastal protection notice where he or she was directed to carry out any specific action, the Minister or MEC who issued the notice may instruct appropriate persons to carry out what is required by the notice, and recover from the person to whom the notice was addressed, the costs reasonably incurred in carrying out the required action.

4.17.2 Failure to comply with a coastal protection notice is also a criminal offence in terms of section 79(4) of NEMICMA, and on a first conviction, the maximum sentence, specified in section 80(3) is:

- R50 000.00; or
- Community service for a period of up to 6 months; or
- To both such fine and community service

4.17.3 On a second conviction of failure to comply with a coastal protection notice, the maximum sentence, specified in section 80(4) is:

- R500 000.00; or
- Imprisonment or community service for a period of up to 5 months; or
- To both such fine and imprisonment or community service

4.18 <u>Section 59(5) Urgent Coastal Access Notice in terms of NEMICMA</u>

4.18.1 There are no provisions for the issuing of an urgent coastal access notice in the absence of first consulting with any other organ of state that is authorised or is competent to authorise the undertaking of the activity or proposed activities concerned; and also affording the person to whom the notice is to be addressed, the opportunity to make representations.

4.19 <u>Section 59(5) Notice of Intention to Issue a Coastal Access Notice in terms of NEMICMA</u>

4.19.1 Issue a notice of intention to issue a coastal access notice setting out the following:

- That a coastal access notice may be issued in terms of section 59 of NEMICMA
- By whom/in what capacity the notice will be issued (according to section 59(3) it can only be issued by the Minister, MEC, a municipality to whom the MEC has delegated the power to issue such a notice, or an official of DEA; it seems that the reference to section 87 must have been a reference to section 89, and should have included a reference to section 91. Also see section 60(3) where the reference is indeed to section 89)
- To whom the coastal protection notice may be issued;
- Use the full and correct name if the coastal access notice will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty) Ltd;
- The factual position leading to the conclusion that the person is carrying out, or intends to carry out an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property
- That the person may be issued a coastal access notice prohibiting the activity if it is not already prohibited in terms of NEMICMA, and further instructing that person to:
  take appropriate steps in terms of NEMICMA or any other applicable legislation to allow natural persons access to the coastal public property.
- The instructions may include, among other matters, instructions to:
  Build, maintain or demolish any specified works
  To close a public access or prevent unauthorised access to coastal public property at a specified place
  To plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place
  To stop altering the geographical features of land at a specified place
  To build or maintain any specified works at a specified place to protect land from wind erosion

To rehabilitate land at a specified place
To remove stock from land, or
To take measures to protect indigenous fauna.

- the notice must include the timeframes within which all of the above must be done.

4.19.2 The above considerations should firstly be noted as having been taken into consideration, and secondly, where applicable, must be noted as part of the justification for specific measures or timeframes created.

4.19.3 The notice of intention to issue a coastal access notice must be signed by the person from the issuing authority with the necessary power to issue such notices.

4.19.4 The notice of intention to issue a coastal access notice must also be sent to any other organ of state that authorised, or is competent to authorise, the undertaking of the activity concerned.

4.19.5 If inadequate reasons are provided in response to the notice of intention to issue a coastal access notice, a coastal access notice should be issued according to 4.20 below.

4.19.6 If any additional or contradictory information has been acquired since the drafting of the notice of intention to issue a coastal protection notice, this must be firstly be divulged to the person by way of an amended notice of intention, and they must be provided with an adequate opportunity to comment on this prior to the issuing of the notice. (Sections 28(1)-(6) of NEMA).

4.20 <u>Section 59(5) Coastal Access Notice in terms of NEMICMA</u>

4.20.1 Issue a coastal access notice setting out:

- All of the factors listed in 4.19 above for the issuing of a notice of intention to issue a coastal access notice, with the necessary amendments by replacing allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons).
- Reference to the person's response to the notice of intention to issue a coastal access notice and any pertinent issues and conclusions, dealing specifically with any measures proposed by the person on whom measures are to be imposed
- That the person to whom the notice is addressed may appeal against the notice in terms of Chapter 9 of NEMICMA, including the details of with whom it may be lodged, the method, contents and timeframes contained in section 74 of NEMICMA.

4.21 <u>Legal Consequences of Failing to Comply with Section 59(5) Coastal Access Notice in terms of NEMICMA</u>

4.21.1 If a person fails to comply with a coastal access notice where he or she was directed to carry out any specific action, the Minister or MEC who issued the notice may instruct appropriate persons to carry out what is required by the notice, and recover from the person to whom the notice was addressed, the costs reasonably incurred in carrying out the required action.

4.21.2 Failure to comply with a coastal access notice is a also criminal offence in terms of section 79(4) of NEMICMA, and on a first conviction, the maximum sentence, specified in section 80(3) is:

- R50 000.00; or
- Community service for a period of up to 6 months; or
- To both such fine and community service

4.21.3 On a second conviction of failure to comply with a coastal access notice, the maximum sentence, specified in section 80(4) is:

- R500 000.00; or
- Imprisonment or community service for a period of up to 5 months; or
- To both such fine and imprisonment or community service

4.22 Section 60 NEMICMA Urgent Repair or Removal Notice

4.22.1 There are no provisions currently for the issuing of an urgent repair or removal notice in the absence of first consulting with any other organ of state that is authorised or is competent to authorise the undertaking of the activity or proposed activities concerned; and also affording the person to whom the repair and removal notice is to be addressed, the opportunity to make representations.

4.22.2 However, section 92 of NEMICMA provides that where there is a reason to believe that urgent action is necessary for the protection of the coastal environment, the Minister (or delegated person- see section 59(3)) may issue a verbal directive to stay an activity if the activity poses:

- An immediate risk of serious danger to the public or property; or
- An immediate risk of serious damage, or potentially significant detriment, to the environment

4.22.3 A verbal directive must be confirmed in writing at the earliest opportunity, which must be within 7 days, and with all the information required in accordance with 4.16 above.

4.22.4 In the case of a verbal directive the provisions regarding consultation in section 60(2) do not apply.

4.22.5 The provision for an urgent verbal directive in section 92 of NEMICMA is only of assistance in the event that the structure is in the process of being erected or upgraded, in light of the fact that only allows for the Minister to issue a verbal directive to “stay an activity”.

4.23 Section 60 NEMICMA Notice of Intention to Issue a Repair or Removal Notice

4.23.1 Where there is a reason to believe that a structure on or within the coastal zone is having or is likely to have an adverse effect on the coastal environment, because of its condition or because it has been abandoned; or it has been erected, constructed or upgraded in contravention of NEMICMA or any other law, issue a notice of intention to issue a repair or removal notice setting out the following:

- That a repair or removal notice may be issued in terms of section 60 of NEMICMA
- By whom/in what capacity the notice will be issued (according to section 60(3), notwithstanding section 89, it can only be issued by the Minister, MEC, a municipality to whom the MEC has delegated the power to issue such a notice, or an official of DEA) to whom the repair or removal notice will be issued, (the person responsible for a structure in or on the coastal zone);
- Use the full and correct name if the repair or removal notice will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty) Ltd – if the person cannot readily be found, refer to the steps in 4.23.8 below.
- The factual position leading to the conclusion that a structure on or within the coastal zone is having or is likely to have an adverse effect on the coastal environment, because of its condition or because it has been abandoned; or that has been erected, constructed or upgraded in contravention of NEMICMA or any other law;
- That the repair or removal notice will, in the absence of a satisfactory response, further instruct the person to whom it is addressed, among other matters, to:

  Remove the structure from the coastal zone or place where it is situated within a specified period, or

  Rehabilitate the site and as far as is reasonable, to restore it to a natural state, or

  Repair the structure to the satisfaction of the Minister or the MEC within the timeframe stated in the notice; or

  Take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure

4.23.2 The above considerations should firstly be noted as having been taken into consideration, and secondly, where applicable, must be noted as part of the justification for specific measures or timeframes created.

4.23.3 The notice of intention to issue a repair or removal notice must be signed by the person from the issuing authority with the necessary power to issue such notices.

4.23.4 The notice of intention to issue a repair or removal notice must also be sent to any other organ of state that authorised, or is competent to authorise, the undertaking of the activity concerned.

4.23.5 If inadequate reasons are provided in response to the notice of intention to issue a repair or removal notice, a repair or removal notice should be issued according to 4.24 below.

4.23.6 If any additional or contradictory information has been acquired since the drafting of the notice of intention to issue a repair or removal notice, this must be firstly be divulged to the person via the issuing of an amended notice of intention, and they must be provided with an adequate opportunity to comment on this prior to the issuing of the notice.

4.23.7 In terms of section 60(5) of NEMICMA, if a person responsible for a structure as set out in 4.23.1 above cannot readily be found, the Minister or MEC, instead of issuing a notice as per 4.24 below, may:

- publish a notice after consultation with any other organ of state that authorised, or is competent to authorise, the undertaking of the activity concerned, once in the Gazette and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
- affix a copy of the notice to the structure in question during the period of advertisement.

4.23.8 If the person responsible for a structure is not identified after the publication of the notice, the Minister or MEC may instruct appropriate persons to carry out what is required by the notice, and recover from the person to whom the notice was addressed, the costs reasonably incurred in carrying out the required action.

4.24 <u>Section 60 NEMICMA Repair or Removal Notice</u>

4.24.1 Issue a repair or removal notice setting out:

- All of the factors listed in 4.23 above for the issuing of a notice of intention to issue a repair or removal notice, with the necessary amendments by replacing allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons).
- Reference to the person's response to the notice of intention to issue a repair or removal notice and any pertinent issues and conclusions, dealing specifically with any measures proposed by the person on whom measures are to be imposed
- That the person to whom the notice is addressed may appeal against the notice in terms of Chapter 9 of NEMICMA, including the details of with whom it may be lodged, the method, contents and timeframes contained in section 74 of NEMICMA.

4.25 <u>Legal Consequences of Failing to Comply with Section 60 NEMICMA Repair or Removal Notice</u>

4.25.1 If a person fails to comply with a repair or removal notice where he or she was directed to carry out any specific action, or if the person responsible is not identified after publication of a notice in terms of section 60(5) of NEMICMA, the Minister or MEC who issued the notice may instruct appropriate persons to carry out what is required by the notice, and recover from the person to whom the notice was addressed, or any person subsequently found to be responsible for the structure, the costs reasonably incurred in carrying out the required action.

4.25.2 Failure to comply with a repair or removal notice is a criminal offence in terms of section 79(2) of NEMICMA, and on a first conviction, the maximum sentence, specified in section 80(2) is:

- R500 000.00; or
- Imprisonment or community service for a period of up to 5 years; or
- To both such fine and imprisonment or community service

4.25.3 On a second conviction of failure to comply with a repair or removal notice, the maximum sentence, specified in section 80(4) is:

- R5 000 000.00; or
- Imprisonment for a period of up to 10 years; or
- To both such fine and imprisonment

4.26 <u>Urgent Section 69 NEMBA Alien Species Directive</u>

There are no provisions currently for the issuing of an urgent NEMBA alien species directive. However, in the event that urgent action needs to be taken, issue a section 31L compliance notice.

4.27 <u>Section 69 NEMBA Alien Species Pre-Directive</u>

4.27.1 Where there is a reason to believe that;

- a person who is authorised in terms of section 65(1) of NEMBA to carry out a restricted activity involving a specimen of an alien species, has failed to comply with the conditions under which the permit was issued, did not take all the required steps to prevent or minimize harm to biodiversity; or
- a person has/is carrying out a restricted activity involving a specimen of an alien species without a permit ; or
- a person has/is carrying out any restricted activity involving a specimen of an alien species published in the Government Gazette in terms of subsection 67(2) of NEMBA;

and the issuing of a directive is not urgent in the circumstances, issue a pre-directive setting out the following:

- That a directive may be issued in terms of section 69 of NEMBA;
- By whom/in what capacity the notice will be issued
- To whom the directive will be issued;
- Use the full and correct name if the directive will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty)
- The factual position leading to the conclusion that either:
    - a person who is authorised in terms of section 65(1) of NEMBA to carry out a restricted activity involving a specimen of an alien species, has failed to comply with the conditions under which the permit was issued, did not take all the required steps to prevent or minimize harm to biodiversity; or
    - a person has/is carrying out a restricted activity involving a specimen of an alien species without a permit ; or
    - a person has/is carrying out any restricted activity involving a specimen of an alien species published in the Government Gazette in terms of subsection 67(2) of NEMBA;
- That the directive will, in the absence of a satisfactory response, further instruct the person to whom it is addressed, among other matters, to take such steps:

  as may be necessary to remedy any harm to biodiversity caused by the actions of that person; and

  as may be specified in the directive.

4.27.2 The above considerations should firstly be noted as having been taken into consideration, and secondly, where applicable, must be noted as part of the justification for specific measures or timeframes created.

4.27.3 The pre-directive must be signed by the person from the issuing authority with the necessary power to issue such notices.

4.27.4 The pre-directive must also be sent to any other organ of state that authorised, or is competent to authorise, the undertaking of the activity concerned.

4.27.5 If inadequate reasons are provided in response to the pre-directive, that a directive will be issued according to 4.28 below.

4.27.6 If any additional or contradictory information has been acquired since the drafting of the pre-directive, this must be firstly be divulged to the person, and they must be provided with an adequate opportunity to comment on this prior to the issuing of the directive.

4.28 <u>Section 69 NEMBA Alien Species Directive</u>

4.28.1 Issue a directive setting out:

- All of the factors listed in 4.27 above for the issuing of a pre-directive, with the necessary amendments by replacing allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons).
- Reference to the person’s response to the pre-directive and any pertinent issues and conclusions, dealing specifically with any measures proposed by the person on whom measures are to be imposed
- Although not specifically provided for, the alleged transgressor must be afforded an opportunity to object or appeal against the decision and be granted a reasonable time and opportunity to do so.

4.29 <u>Legal Consequences of Failing to Comply with Section 69 NEMBA Alien Species Directive</u>

4.29.1 If a person fails to comply with a directive where he or she was directed to carry out any specific action, the competent authority who issued the directive may:

- Implement the directive, and
- Recover from the person to whom the directive was issued, all costs incurred by the competent authority in implementing the directive.

4.29.2 Should an alien species establish itself in nature as an invasive species because of the actions of a specific person, a competent authority may hold that person liable for any costs incurred in the control and eradication of that species

4.29.3 Failure to comply with provision of a section 69 NEMBA alien species directive is a criminal offence in terms of section 101 of NEMBA and on conviction, a person may be liable to a fine not exceeding R10 million, or an imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment.

4.30 <u>Urgent Section 73 NEMBA Listed Invasive Species Directive</u>

4.30.1 There are no provisions currently for the issuing of an urgent NEMBA alien species directive. However, in the event that urgent action needs to be taken, issue a section 31L compliance notice.

4.31 <u>Section 73 NEMBA Listed Invasive Species Pre-Directive</u>

4.31.1 Where there is a reason to believe that:

- A person authorised by permit in terms of section 71(1) of NEMBA has/is carrying out a restricted activity involving a specimen of a listed invasive species has failed to take all the required steps to prevent or minimise harm to biodiversity; or
- a person who is the owner of land on which a listed invasive species occurs has failed to:
    - notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;

- failed to take steps to control and eradicate the listed invasive species and to prevent it from spreading; and
- failed to take all the required steps to prevent or minimise harm to biodiversity; or

- A person has is carrying out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7;

  and the issuing of a directive is not urgent in the circumstances, issue a pre-directive setting out the following:

- That a directive may be issued in terms of section 69 of NEMBA;
- By whom/in what capacity the notice will be issued
- To whom the directive will be issued;
- Use the full and correct name if the directive will be issued against a juristic person, and address it to the most senior available manager, e.g. The Managing Director, as representative of Major Polluter (Pty) Ltd
- The factual position leading to the conclusion that either:
  - A person authorised by permit in terms of section 71(1) of NEMBA has/is carrying out a restricted activity involving a specimen of a listed invasive species has failed to take all the required steps to prevent or minimise harm to biodiversity; or
  - a person who is the owner of land on which a listed invasive species occurs has failed to:
    - notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;
    - failed to take steps to control and eradicate the listed invasive species and to prevent it from spreading; and
    - failed to take all the required steps to prevent or minimise harm to biodiversity; or
    - A person has is carrying out a restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7;
- That the directive will, in the absence of a satisfactory response, further instruct the person to whom it is addressed, among other matters, to direct any person who has failed to comply with section 73 (1) or (2), or who has contravened section 71(1), to take such steps-
  - as may be necessary to remedy any harm to biodiversity caused by-
    - the actions of that person; or
    - the occurrence of the listed invasive species on land of which that person is the owner; and
  - as may be specified in the directive.

4.31.2 The above considerations should firstly be noted as having been taken into consideration, and secondly, where applicable, must be noted as part of the justification for specific measures or timeframes created.

4.31.3 The pre-directive must be signed by the person from the issuing authority with the necessary power to issue such notices.

4.31.4 The pre-directive must also be sent to any other organ of state that authorised, or is competent to authorise, the undertaking of the activity concerned.

4.31.5 If inadequate reasons are provided in response to the pre-directive, that a directive will be issued according to 4.32 below.

4.31.6 If any additional or contradictory information has been acquired since the drafting of the pre-directive, this must be firstly be divulged to the person, and they must be provided with an adequate opportunity to comment on this prior to the issuing of the directive.

4.32 <u>Section 73 NEMBA Alien Species Directive</u>

4.32.1 Issue a directive setting out:

- All of the factors listed in 4.31 above for the issuing of a pre-directive, with the necessary amendments by replacing allegations as stated facts, and intentions as directives (and excluding the opportunity to forward reasons).
- Reference to the person's response to the pre-directive and any pertinent issues and conclusions, dealing specifically with any measures proposed by the person on whom measures are to be imposed
- Although not specifically provided for, the alleged transgressor must be afforded an opportunity to object or appeal against the decision and be granted a reasonable time and opportunity to do so.

4.33 Legal Consequences of Failing to Comply with Section 69 NEMBA Alien Species Directive

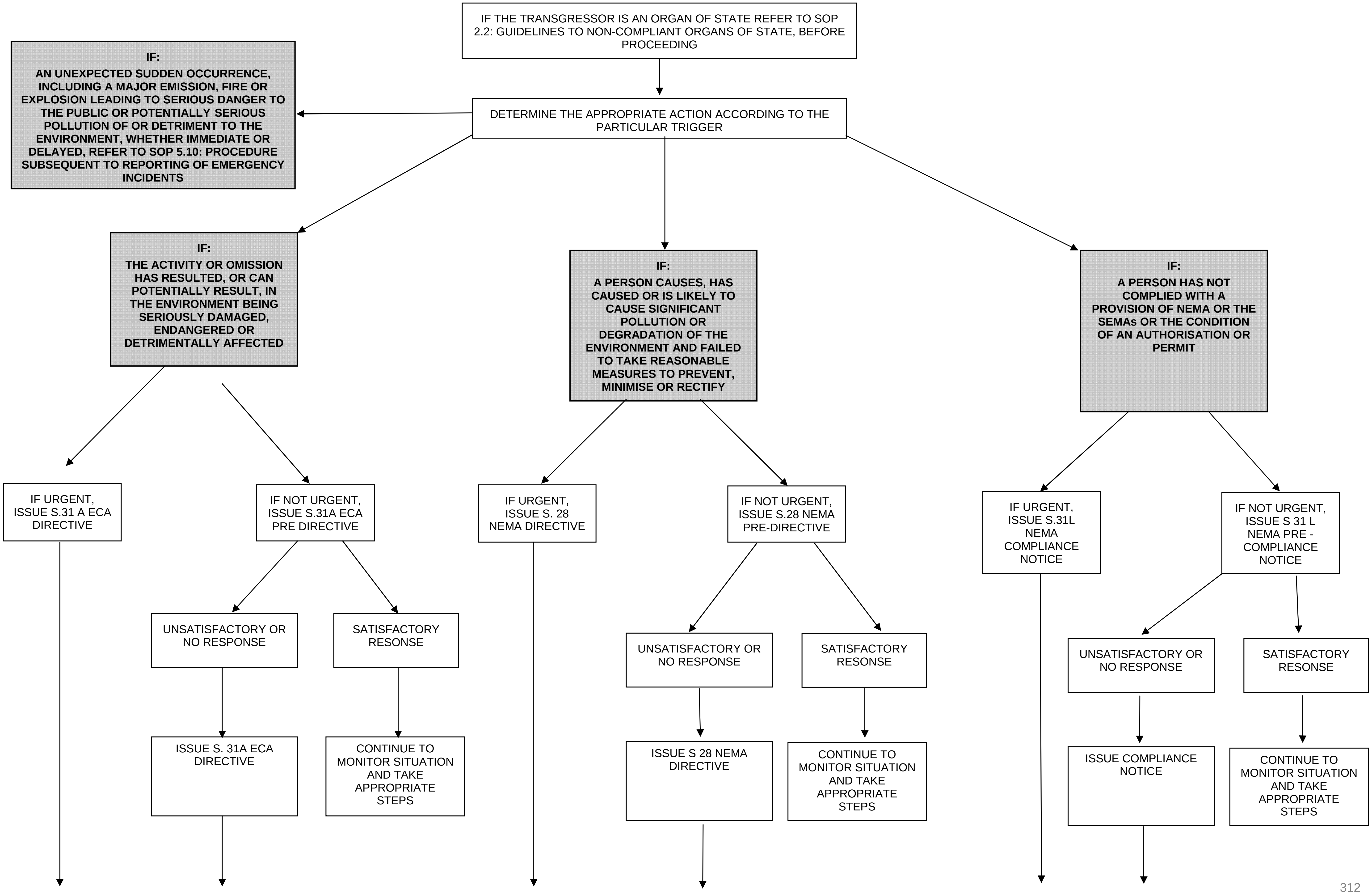
4.33.1 If a person fails to comply with a directive where he or she was directed to carry out any specific action, the competent authority who issued the directive may:

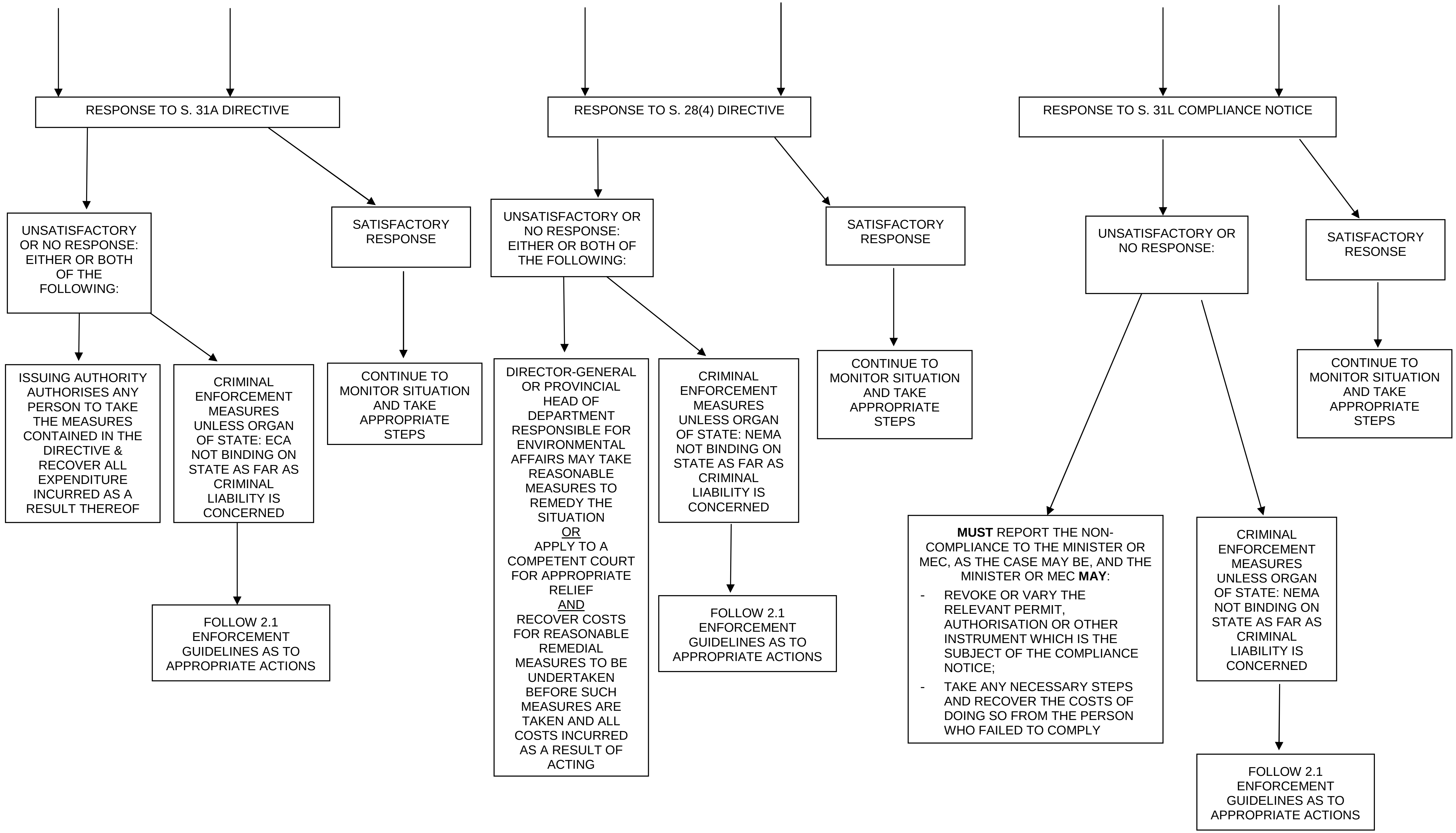
- Implement the directive, and
- Recover from the person to whom the directive was issued; or proportionally from that person and any other person who benefited from implementation of the directive, all costs reasonably incurred by a competent authority in implementing the directive

4.33.2 Failure to comply with provision of a section 73 NEMBA listed invasive species directive is a criminal offence in terms of section 101 of NEMBA and on conviction, a person may be liable to a fine not exceeding R10 million, or an imprisonment for a period not exceeding ten years, or to both such a fine and such imprisonment.

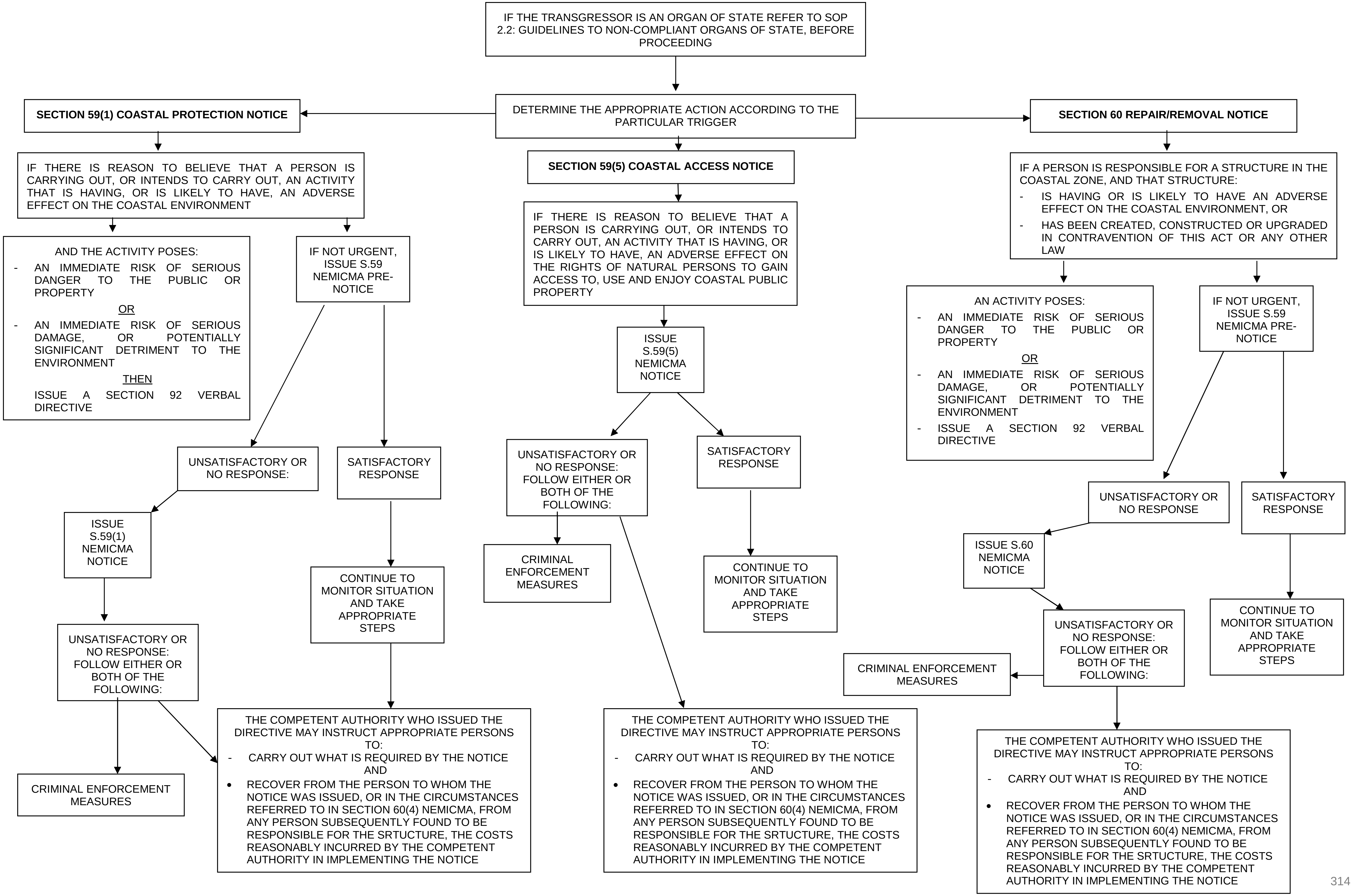
4.33.3 If a person is convicted of an offence involving a specimen of a listed threatened or protected species, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.

PROCEDURE DIAGRAM FOR ISSUING OF ADMINISTRATIVE MEASURES IN TERMS OF ECA OR NEMA

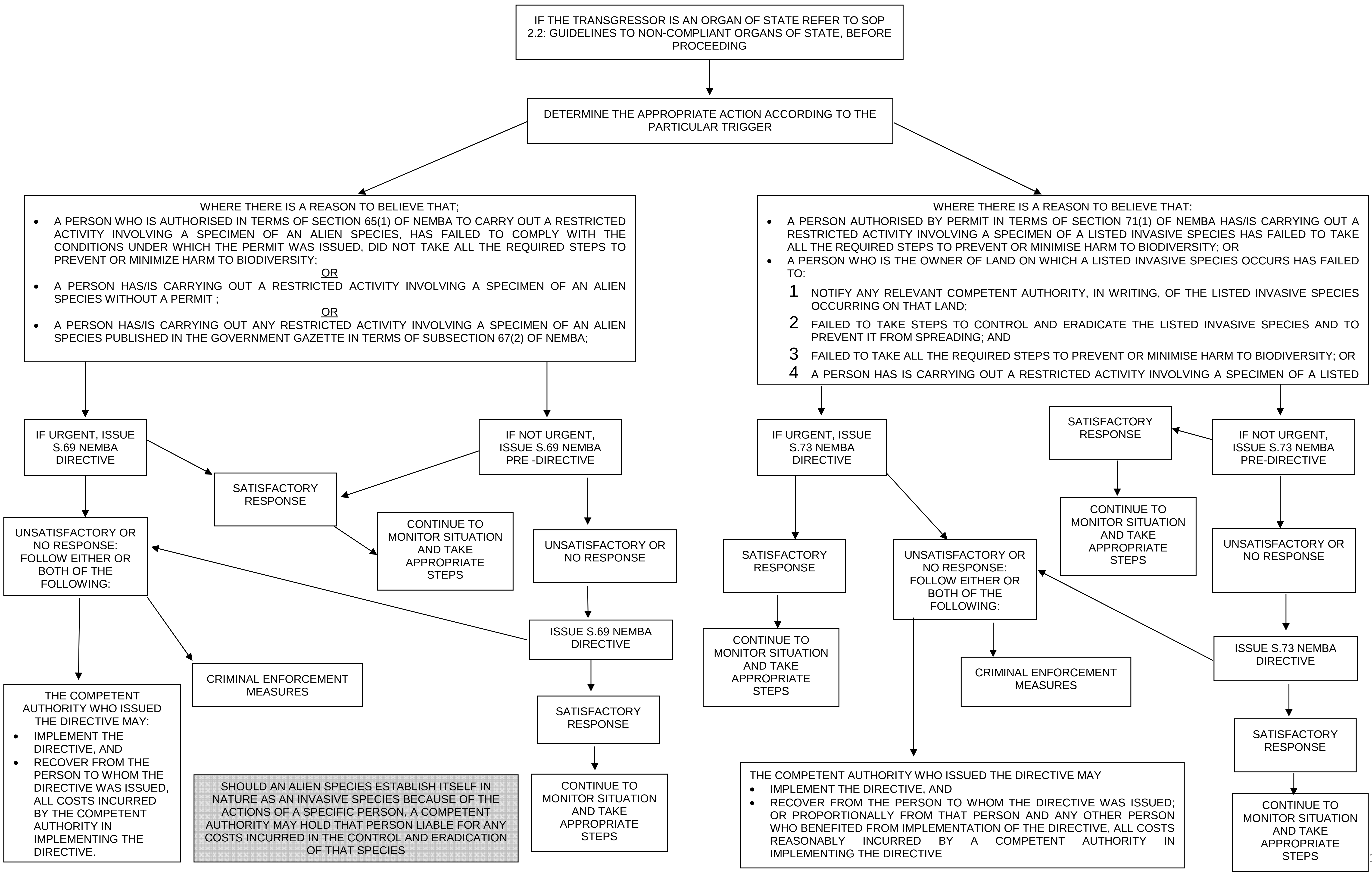



RESPONSE TO S. 31A DIRECTIVE
UNSATISFACTORY OR NO RESPONSE: EITHER OR BOTH OF THE FOLLOWING:
SATISFACTORY RESPONSE
ISSUING AUTHORITY AUTHORISES ANY PERSON TO TAKE THE MEASURES CONTAINED IN THE DIRECTIVE & RECOVER ALL EXPENDITURE INCURRED AS A RESULT THEREOF
CRIMINAL ENFORCEMENT MEASURES UNLESS ORGAN OF STATE: ECA NOT BINDING ON STATE AS FAR AS CRIMINAL LIABILITY IS CONCERNED
CONTINUE TO MONITOR SITUATION AND TAKE APPROPRIATE STEPS
FOLLOW 2.1 ENFORCEMENT GUIDELINES AS TO APPROPRIATE ACTIONS
RESPONSE TO S. 28(4) DIRECTIVE
UNSATISFACTORY OR NO RESPONSE: EITHER OR BOTH OF THE FOLLOWING:
SATISFACTORY RESPONSE
DIRECTOR-GENERAL OR PROVINCIAL HEAD OF DEPARTMENT RESPONSIBLE FOR ENVIRONMENTAL AFFAIRS MAY TAKE REASONABLE MEASURES TO REMEDY THE SITUATION <u>OR</u> APPLY TO A COMPETENT COURT FOR APPROPRIATE RELIEF <u>AND</u> RECOVER COSTS FOR REASONABLE REMEDIAL MEASURES TO BE UNDERTAKEN BEFORE SUCH MEASURES ARE TAKEN AND ALL COSTS INCURRED AS A RESULT OF ACTING
CRIMINAL ENFORCEMENT MEASURES UNLESS ORGAN OF STATE: NEMA NOT BINDING ON STATE AS FAR AS CRIMINAL LIABILITY IS CONCERNED
CONTINUE TO MONITOR SITUATION AND TAKE APPROPRIATE STEPS
FOLLOW 2.1 ENFORCEMENT GUIDELINES AS TO APPROPRIATE ACTIONS
RESPONSE TO S. 31L COMPLIANCE NOTICE
UNSATISFACTORY OR NO RESPONSE:
SATISFACTORY RESONSE
CONTINUE TO MONITOR SITUATION AND TAKE APPROPRIATE STEPS
MUST REPORT THE NON-COMPLIANCE TO THE MINISTER OR MEC, AS THE CASE MAY BE, AND THE MINISTER OR MEC **MAY**:
- REVOKE OR VARY THE RELEVANT PERMIT, AUTHORISATION OR OTHER INSTRUMENT WHICH IS THE SUBJECT OF THE COMPLIANCE NOTICE;
- TAKE ANY NECESSARY STEPS AND RECOVER THE COSTS OF DOING SO FROM THE PERSON WHO FAILED TO COMPLY
CRIMINAL ENFORCEMENT MEASURES UNLESS ORGAN OF STATE: NEMA NOT BINDING ON STATE AS FAR AS CRIMINAL LIABILITY IS CONCERNED
FOLLOW 2.1 ENFORCEMENT GUIDELINES AS TO APPROPRIATE ACTIONS

PROCEDURE DIAGRAM FOR ISSUING OF ADMINISTRATIVE MEASURES IN TERMS OF ICM ACT



PROCEDURE DIAGRAM FOR ISSUING OF ADMINISTRATIVE MEASURES IN TERMS OF NEMBA



ANNEXURE C: TEMPLATES FOR CHARGES

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

____

That the accused is/are guilty of a contravention of Section 79(4)(b) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), read with section ______, and also read with Sections 1, 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, 1998 (Act No. 107 of 1998)

In that the accused on or about ____

and at or near ____

in the district / regional division of____

wrongfully and unlawfully contravened a provision of this Act, other than those provisions referred to in section 79(1), (2) and (3), to wit ______________________

____

____

____.

Penalty provision:

First Conviction: Unspecified.

Second Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years.

CASE NUMBER: _______________

COUNT NUMBER: ________________

THE STATE VERSUS: ____

(Hereafter called the accused)

Dumping at Sea

That the accused is/are guilty of a contravention of Section 70(1)(e) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), read with Section 79(1)(e), as well as Sections 1, 70(2), 71, 80(1), 80(5) and 81 of the said Act, and further read with Section 250 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and section 34H of the National Environmental Management Act, 1998 (Act No. 107 of 1998)

In that the accused on or about ____

and at or near ____

in the district / regional division of____

wrongfully and unlawfully

i) dumped at sea waste or other material within the coastal waters and/or the exclusive economic zone; or

ii) dumped from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material on the high seas

without a dumping permit granted under section 71 of the Act.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 15(2), read with section 67(1)(a) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008): **Disposal of Priority Waste.**

- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act, 1998 (Act No. 107 of 1998): **Causing Significant Pollution or Degradation of the Environment**
- Contravention of Section 28(14)(b), read with section 28(15), of the National Environmental Management Act, 1998 (Act No. 107 of 1998): **Detrimentally Affecting the Environment in a Significant Manner**
- Depending on the circumstances, also take note of the other contraventions in section 67 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), as well as the contraventions under the Hazardous Substances Act, 1973 (Act No. 15 of 1973), should the waste be categorised as such.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Dumping in Jurisdiction of Other States

That the accused is/are guilty of a contravention of Section 70(1)(f) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 79(1)(d), as well as Sections 1, 70(2), 80(1), 80(5) and 81 of the said Act, and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977 and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____

and at or near ____

in the district / regional division of____

wrongfully and unlawfully dumped from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material in any area of the sea under the jurisdiction of another state, without the written permission of that state.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 15(2), read with section 67(1)(a) of the National Environmental Management: Waste Act 59 of 2008: **Disposal of Priority Waste.**
- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Causing Significant Pollution or Degradation of the Environment**

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Incineration at Sea

That the accused is/are guilty of a contravention of Section 70(1)(a) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 79(1)(b), as well as Sections 1, 70(2), 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully incinerated at sea waste and/or any other material within the coastal waters and/or the exclusive economic zone and/or aboard a South African vessel.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Causing Significant Pollution or Degradation of the Environment**
- Contravention of Section 28(14)(b), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Detrimentally Affecting the Environment in a Significant Manner**
- Depending on the circumstances, possibly the contravention of sections 51(1)(a) (read with section 22 and/or 25), or section 51(2) or section 51(3) of

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Making a False Statement

That the accused is/are guilty of a contravention of Section 79(1)(i) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 1, 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully made a false statement or report for the purpose of obtaining or objecting to an authorisation, to wit_____________________________
____
____
____.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Falsely Representing to be an Authorised Person

That the accused is/are guilty of a contravention of Section 79(2)(c) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 80(2), 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998.

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully knowingly falsely represented that he/she is a person authorised person to exercise powers in terms of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, or any regulation made in terms of that Act, to wit __________________________________
____
____
____.

Penalty provision:
First Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years (category 2 offence)
Second Conviction: A maximum fine of R5 000 000 and/or imprisonment of up to ten years.

ANNEXURE

CASE NUMBER: _______________

COUNT NUMBER: ________________

THE STATE VERSUS: ____

(Hereafter called the accused)

Illegal Occupation of, or Construction in, Coastal Public Property

That the accused is/are guilty of a contravention of Section 65(1) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with section 79(4), and also read with Sections 1, 67, 80(4), 80(5), 81 and 95 of the said Act, as well as with section 250 of the Criminal Procedure Act, Act 51 of 1977 and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully occupied any part of, or site on, or constructed or erected any building, road, barrier or structure on or in, coastal public property, without having been authorised to do so under a coastal lease, to wit _________________
____
____
____.

Penalty provision:

First Conviction: Unspecified.

Second Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Passing, Using, Altering or Possession of an Altered or False Document

That the accused is/are guilty of a contravention of Section 79(1)(h) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 1, 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____

and at or near ____

in the district / regional division of____

wrongfully and unlawfully passed, used, altered or possessed an altered or false document purporting to be an authorisation, to wit______________________

____

____

____.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Importing of Waste

That the accused is/are guilty of a contravention of Section 70(1)(b) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 79(1)(c), as well as Section 1, 70(2), 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully imported into the Republic any waste or other material to be dumped or incinerated at sea within the coastal waters or the exclusive economic zone.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 15(1), read with section 67(1)(a) of the National Environmental Management: Waste Act 59 of 2008: **Import of Priority Waste.**
- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Causing Significant Pollution or Degradation of the Environment**
- Contravention of Section 28(14)(b), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Detrimentally Affecting the Environment in a Significant Manner**

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Altering an Authorisation

That the accused is/are guilty of a contravention of Section 79(1)(f) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 1, 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully altered an authorisation, to wit_____________________
____
____
____.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Detrimentally Affecting the Environment in a Significant Manner

That the accused is/are guilty of a contravention of Section 28(14)(b) of the National Environmental Management, Act 107 of 1998, read with Section 28(15), as well as with Section 1, 28(1), 34 (with reference to Schedule 3) and 34H of the said Act and further read with section 58 of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008 (where applied to the coastal environment)

In that the accused on or about ____
and at or near ____
in the district / regional division of____
unlawfully and intentionally or negligently committed an act or omission which detrimentally affected, or was likely to affect, the environment in a significant manner, to wit by ____
____
____
____

Penalty provision: R1 million and/or 1 year imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Causing Significant Pollution or Degradation of the Environment

That the accused is/are guilty of a contravention of Section 28(14)(a) of the National Environmental Management, Act 107 of 1998, read with Section 28(15), as well as with Section 1, 28(1), 34 (with reference to Schedule 3) and 34H of the said Act, and further read with section 58 of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008 (where applied to the coastal environment)

In that the accused on or about ____
and at or near ____
in the district / regional division of____
unlawfully and intentionally or negligently committed an act or omission which caused, or was likely to cause, significant pollution or degradation of the environment, to wit by ____
____
____
____

Penalty provision: R1 million and/or 1 year imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Commencing with a Listed Activity without Environmental Authorisation

That the accused is/are guilty of a contravention of Section 24F(1)(a) of the National Environmental Management, Act 107 of 1998, read with Section 24F(2)(a), as well as Section 1, 24(2), 24D, 24F(3), 24F(4), 34 (with reference to Schedule 3) and 34H of the said Act, and also read with Government Notice R. 386 and/or R. 387 in Government Gazette 28753 of 21 April 2006, as amended (commencement on 3 July 2006, as stipulated by Government Notice R. 612 of Government Gazette 28938 of 23 June 2006) and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977

In that the accused on or about ____

and at or near ____

in the district / regional division of____

wrongfully and unlawfully commenced with an activity listed in terms of section 24(2)(a) without an environmental authorisation having being granted to the accused by the competent authority, to wit by ____________________________

____

____

____

Penalty provision: R5 million and/or 10 years imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to Comply with the Conditions of an Environmental Authorisation

That the accused is/are guilty of a contravention of Section 24F(2)(c) of the National Environmental Management, Act 107 of 1998, read with Section 1, 24(2), 24D, 24F(3), 24F(4), 34 (with reference to Schedule 3) and 34H of the said Act, and also read with Government Notice R. 386 and/or R. 387 in Government Gazette 28753 of 21 April 2006, as amended (commencement on 3 July 2006, as stipulated by Government Notice R. 612 of Government Gazette 28938 of 23 June 2006)

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully contravened or failed to comply with the conditions of an environmental authorisation granted for a listed or specified activity activity, to wit by
____
____
____

Penalty provision: R5 million and/or 10 years imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: _______________

COUNT NUMBER: ________________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to Comply with an Environmental Management Programme

That the accused is/are guilty of a contravention of Section 24F(2)(e) of the National Environmental Management, Act 107 of 1998, read with Section 1, 24(2), 24D, 24F(3), 24F(4), 24 N, 34 (with reference to Schedule 3) and 34H of the said Act, and also read with Government Notice R. 386 and/or R. 387 in Government Gazette 28753 of 21 April 2006, as amended (commencement on 3 July 2006, as stipulated by Government Notice R. 612 of Government Gazette 28938 of 23 June 2006)

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully contravened or failed to comply with the approved environmental management programme, to wit by____________________________
____
____
____

Penalty provision: R5 million and/or 10 years imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Commencing or Continuing with a Listed Activity not in terms of Norm or Standard

That the accused is/are guilty of a contravention of Section 24F(1)(b) of the National Environmental Management, Act 107 of 1998, read with Section 24F(2)(b), as well as Section 1, 24(2), 24D, 24F(3), 24F(4), 34 (with reference to Schedule 3) and 34H of the said Act, and also read with Government Notice R. 386 and/or R. 387 in Government Gazette 28753 of 21 April 2006, as amended (commencement on 3 July 2006, as stipulated by Government Notice R. 612 of Government Gazette 28938 of 23 June 2006)

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully commenced or continued with an activity listed in terms of section 24(2)(a) not in terms of the applicable norm or standard, to wit by
____
____
____

Penalty provision: R5 million and/or 10 years imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to Comply with Compliance Notice

WHEREAS, at all times relevant to the charge

- on the date of ____

the accused was issued with a compliance notice in terms of section 31 L of the National Environmental Management Act 107 of 1998

- which notice instructed the accused to take the following steps:

i)____

ii) ____

iii)____

within the period ____

and/or

-which notice instructed the accused not to perform the following actions

i)____

ii) ____

iii)____

within the period____

NOW THEN, it is alleged

-that the accused failed to take the said steps within the said period

and/or

performed the following actions

i)____

ii) ____

iii)____

within the said period

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to Comply with the Conditions of an Exemption

That the accused is/are guilty of a contravention of Section 24F(2)(d) of the National Environmental Management, Act 107 of 1998, read with Section 1, 24(2), 24D, 24F(3), 24F(4), 24M, 34 (with reference to Schedule 3) and 34H of the said Act, and also read with Government Notice R. 386 and/or R. 387 in Government Gazette 28753 of 21 April 2006, as amended (commencement on 3 July 2006, as stipulated by Government Notice R. 612 of Government Gazette 28938 of 23 June 2006)

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully contravened or failed to comply with the conditions of an exemption granted in terms of section 24M, to wit by_____________________
____
____
____

Penalty provision: R5 million and/or 10 years imprisonment.

Supplementary Orders: Section 34(1)-(4), read with Schedule 3 of the Act

ANNEXURE

CASE NUMBER: _______________

COUNT NUMBER: ________________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to Comply with a Directive

WHEREAS, at all times relevant to the charge

- on the date of ____

the accused was issued with a directive in terms of section 28(4) of the National Environmental Management Act 107 of 1998

- which directive instructed the accused to:

i)____

ii) ____

iii)____

within the period / before the date of____

NOW THEN, it is alleged that the accused failed to comply with the said instructions, to wit____

____

____

____

THEREFORE, that the accused is/are guilty of a contravention of Section 28(14)(c) of the National Environmental Management, Act 107 of 1998, read with Section 28(15), as well as with Section 1, 28, in particular section 28(1) and section 28(4), 34 (with reference to Schedule 3) and 34H of the said Act, and further read with section 58 of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008 (where applied to the coastal environment)

In that the accused on or about ____

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Non-compliance with a Condition of an Authorisation

That the accused is/are guilty of a contravention of Section 79(3)(a) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 80(3), 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully contravened or failed to comply with a condition, subject to which an authorisation was issued , to wit_________________________________
____
____
____.

Penalty provision:

First Conviction: A maximum fine of R50 000 and/or community service of up to six months (category 3 offence).

Second Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Performance of an Activity other than in Accordance with Conditions

That the accused is/are guilty of a contravention of Section 79(3)(b) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 80(3), 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of ____
wrongfully and unlawfully performed an activity for which an authorisation was issued, otherwise than in accordance with any conditions subject to which the authorisation was issued, to wit ____
____
____
____.

Penalty provision:

First Conviction: A maximum fine of R50 000 and/or community service of up to six months (category 3 offence).

Second Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Exporting of Waste

That the accused is/are guilty of a contravention of Section 70(1)(c) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 79(1)(c), as well as Section 1, 70(2), 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully exported from the Republic any waste or other material to be dumped or incinerated on the high seas and/or in an area of the sea under the jurisdiction of another state.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 15(1), read with section 67(1)(a) of the National Environmental Management: Waste Act 59 of 2008: **Export of Priority Waste.**
- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Causing Significant Pollution or Degradation of the Environment**
- Contravention of Section 28(14)(b), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Detrimentally Affecting the Environment in a Significant Manner**

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to comply with a Section 59 Notice

That the accused is/are guilty of a contravention of Section 79(4)(a) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 59, 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully failed to comply with a coastal protection notice / coastal access notice issued in terms of section 59 of the Act, to wit___________________
____
____
____.

Penalty provision:

First Conviction: Unspecified.

Second Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Fabrication or Forging of a Document

That the accused is/are guilty of a contravention of Section 79(1)(g) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 1, 80(1), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully fabricated or forged a document for the purpose of passing it off as an authorisation, to wit ____
____
____
____
.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Hindering or Interfering with an Authorised Person Performing Duties

That the accused is/are guilty of a contravention of Section 79(2)(b) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 80(2), 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998.

In that the accused on or about ____

and at or near ____

in the district / regional division of____

wrongfully and unlawfully hindered or interfered with a duly authorised person exercising a power or performing a duty in terms of this Act, to wit____

____

____

____.

Penalty provision:

First Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years (category 2 offence)

Second Conviction: A maximum fine of R5 000 000 and/or imprisonment of up to ten years.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Loading of Waste

That the accused is/are guilty of a contravention of Section 70(1)(d) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 79(1)(c), as well as Sections 1,70(2), 71, 80(1), 80(5) and 81 of the said Act, and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977 and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully loaded waste or other material to be dumped or incinerated at sea onto a vessel, aircraft, platform or structure at any place in the Republic, including the exclusive economic zone, without the master of such vessel, aircraft, platform or structure having provided written proof that such dumping have been authorised in terms of a dumping permit granted under section 71 of the Act.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 15(2), read with section 67(1)(a) of the National Environmental Management: Waste Act 59 of 2008: **Disposal of Priority Waste.**
- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Causing Significant Pollution or Degradation of the Environment**

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Failure to comply with a Section 60 Repair and Removal Notice

That the accused is/are guilty of a contravention of Section 79(2)(a) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 60, 80(2), 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully failed to comply with a repair and removal notice issued in terms of section 60 of the Act, to wit______________________________________
____
____
____.

Penalty provision:

First Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years (category 2 offence)

Second Conviction: A maximum fine of R5 000 000 and/or imprisonment of up to ten years.

ANNEXURE

CASE NUMBER: ______________

COUNT NUMBER: _______________

THE STATE VERSUS: ____

(Hereafter called the accused)

Discharging of Effluent

That the accused is/are guilty of a contravention of Section 69(1) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Section 79(1)(a), as well as Sections 1, 69, 80(1), 80(5) and 81 of the said Act, and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977 and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully discharged effluent originating from a source on land into coastal waters without a general authorisation in terms of section 69(2) or a coastal discharge permit in terms of section 69.

Penalty provision: A maximum fine of R5 000 000 and/or imprisonment of ten (10) years (category 1 offence).

Possible main or alternative counts:

- Contravention of section 28(14)(a), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Causing Significant Pollution or Degradation of the Environment**
- Contravention of Section 28(14)(b), read with section 28(15), of the National Environmental Management Act 107 of 1998: **Detrimentally Affecting the Environment in a Significant Manner**

ANNEXURE

CASE NUMBER: _______________

COUNT NUMBER: ________________

THE STATE VERSUS: ____

(Hereafter called the accused)

Allowing a Person to Commit an Offence under s.79(3)(a) or s.79(3)(b)

That the accused is/are guilty of a contravention of Section 79(3)(c) of the National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008, read with Sections 1, 79(3)(a), 79(3)(b), 80(3), 80(4), 80(5) and 81 of the said Act and section 34H of the National Environmental Management Act, Act 107 of 1998

In that the accused on or about ____
and at or near ____
in the district / regional division of____
wrongfully and unlawfully allowed any other person to do, or to omit to do, anything which is an offence in terms of section 79(3)(a) [contravening of failing to comply with a condition of an authorisation] or section 79(3)(b) [performing an activity other than in accordance with the conditions of an authorisation], to wit
____
____
____.

Penalty provision:
First Conviction: A maximum fine of R50 000 and/or community service of up to six months (category 3 offence).
Second Conviction: A maximum fine of R500 000 and/or imprisonment or community service of up to five years.