



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X 447 PRETORIA 0001 Environment House, 473 Steve Biko Road, Arcadia, PRETORIA
Tel (012) 399 9081 E-mail: mlchauke@environment.gov.za
Ref: 14/7/6/4/2/6/25
Enquiries: Minky Chauke

Dr Gisela Kaiser
Executive Director: Informal Settlements, Water & Waste
City of Cape Town
P O Box 298
CAPE TOWN
8000

Fax: (021) 400 0500
Attention: Dr Gisela Kaiser
Email: Gisela.kaiser@capetown.gov.za

DIRECTIVE IN TERMS OF SECTION 30A OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") IN RESPECT OF THE CURRENT EMERGENCY SITUATION: THE PROVISION OF ADEQUATE WATER SUPPLY IN RESPONSE TO THE WATER CRISES WITHIN THE JURISDICTION OF CITY OF CAPE TOWN AVAILABILITY

Dear Sir,

Your mail correspondence dated 13 March 2018, pertaining to Section 30A(2) of the NEMA, requesting the competent authority to issue a Directive in terms of section 30A of NEMA, 1998 (Act 107 of 1998) to address the current emergency situation related to water supply crisis being experienced in the City of Cape Town, refers.

1. The National Department of Environmental Affairs (hereinafter referred to as "DEA") herewith **issue the City of Cape Town a Directive in terms of Section 30A of NEMA** in order to carry out listed activities (in terms of the NEMA Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended)), related to the implementation of interventions to address the current water shortage emergency situation in the City of Cape Town.
2. This Section 30A directive shall remain in effect (from the date of decision) for the duration that the Western Cape Province remains a declared disaster area as defined in section 1 of the Disaster Management Act, 2002 (Act No. 57 of 2002), and until such time that the City of Cape Town can demonstrate its ability to provide adequate water supply to all the areas which fall within the affected jurisdiction.

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The mitigation hierarchy must be implemented by the City of Cape Town where *bona fide* measures or interventions are implemented to address the current water supply emergency situation. The Department of Water and Sanitation must take into consideration the principle contained in Section 2 of the NEMA, 1998 (Act 107 of 1998).

5. Listed activities relevant to the potential measures or interventions that may be implemented

Emergency measures or interventions may fall within the ambit of the following listed activities in terms of the NEMA EIA Regulations, 2014 (as amended):

ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS LISTING NOTICE 1 OF 2014
(GOVERNMENT NOTICE NO. R983, AS AMENDED ON 7 APRIL 2017) –

Activity Number: 9

Activity Description:

The development of infrastructure exceeding 1 000 metres in length for the bulk transportation of water or storm water—

- (i) with an internal diameter of 0,36 metres or more; or
- (ii) with a peak throughput of 120 litres per second or more;

excluding where—

- (a) such infrastructure is for bulk transportation of water or storm water or storm water drainage inside a road reserve or railway line reserve; or
- (b) where such development will occur within an urban area.

Activity Number: 10

Activity Description:

The development and related operation of infrastructure exceeding 1 000 metres in length for the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes –

- (i) with an internal diameter of 0,36 metres or more; or
- (ii) with a peak throughput of 120 litres per second or more;

excluding where—

- (a) such infrastructure is for the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes inside a road reserve or railway line reserve; or
- (b) where such development will occur within an urban area.

Activity Number: 12

Activity Description:

The development of—

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- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs—

- (a) within a watercourse;
- (b) in front of a development setback; or
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —

excluding—

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;
- (dd) where such development occurs within an urban area;
- (ee) where such development occurs within existing roads, road reserves or railway line reserves; or
- (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

Activity Number: 13

Activity Description:

The development of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, with a combined capacity of 50 000 cubic metres or more, unless such storage falls within the ambit of activity 16 in Listing Notice 2 of 2014.

Activity Number: 15

Activity Description:

The development of structures in the coastal public property where the development footprint is bigger than 50 square metres, excluding—

- (i) the development of structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (ii) the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (iii) the development of temporary structures within the beach zone where such structures will be removed within 6 weeks of the commencement of development and where coral or indigenous vegetation will not be cleared; or
- (iv) activities listed in activity 14 in Listing Notice 2 of 2014, in which case that activity applies.

Activity Number: 16

Activity Description:

The development and related operation of facilities for the desalination of water with a design capacity to produce more than 100 cubic metres of treated water per day.

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Note: The activity only applies where it is specifically linked to the drought relief. Where this activity requires a coastal discharge permit, the proposal must first be approved by all relevant authorities.

Activity Number: 17

Activity Description:

Development—

- (i) in the sea;
- (ii) in an estuary;
- (iii) within the littoral active zone;
- (iv) in front of a development setback; or
- (v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;

in respect of—

- (a) fixed or floating jetties and slipways;
- (b) tidal pools;
- (c) embankments;
- (d) rock revetments or stabilising structures including stabilising walls; or
- (e) infrastructure or structures with a development footprint of 50 square metres or more —

but excluding—

- (aa) the development of infrastructure and structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (cc) the development of temporary infrastructure or structures where such structures will be removed within 6 weeks of the commencement of development and where coral or indigenous vegetation will not be cleared; or
- (dd) where such development occurs within an urban area.

Activity Number: 19

Activity Description:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

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Activity Number: 19A**Activity Description:**

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—

- (i) the seashore;
- (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or
- (iii) the sea; —

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or

where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Activity Number: 24**Activity Description:**

The development of a road—

- (i) for which an environmental authorisation was obtained for the route determination in terms of activity 5 in Government Notice 387 of 2006 or activity 18 in Government Notice 545 of 2010; or
- (ii) with a reserve wider than 13,5 meters, or where no reserve exists where the road is wider than 8 metres;

but excluding a road—

- (a) which is identified and included in activity 27 in Listing Notice 2 of 2014;
- (b) where the entire road falls within an urban area; or
- (c) which is 1 kilometre or shorter.

Activity Number: 25**Activity Description:**

The development and related operation of facilities or infrastructure for the treatment of effluent, wastewater or sewage with a daily throughput capacity of more than 2 000 cubic metres but less than 15 000 cubic metres.

Activity Number: 27**Activity Description:**

The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.

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Activity Number: 34**Activity Description:**

The expansion of existing facilities or infrastructure for any process or activity where such expansion will result in the need for a permit or licence or an amended permit or licence in terms of national or provincial legislation governing the release of emissions, effluent or pollution, excluding-

- (i) where the facility, infrastructure, process or activity is included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies;
- (ii) the expansion of existing facilities or infrastructure for the treatment of effluent, wastewater, polluted water or sewage where the capacity will be increased by less than 15 000 cubic metres per day; or
- (iii) the expansion is directly related to aquaculture facilities or infrastructure where the wastewater discharge capacity will be increased by 50 cubic meters or less per day.

Activity Number: 45**Activity Description:**

The expansion of infrastructure for the bulk transportation of water or storm water where the existing infrastructure—

- (i) has an internal diameter of 0,36 metres or more; or
- (ii) has a peak throughput of 120 litres per second or more; and
 - (a) where the facility or infrastructure is expanded by more than 1 000 metres in length; or
 - (b) where the throughput capacity of the facility or infrastructure will be increased by 10% or more;

excluding where such expansion—

- (aa) relates to transportation of water or storm water within a road reserve or railway line reserve; or
- (bb) will occur within an urban area.

Activity Number: 46**Activity Description:**

The expansion and related operation of infrastructure for the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes where the existing infrastructure—

- (i) has an internal diameter of 0,36 metres or more; or
- (ii) has a peak throughput of 120 litres per second or more; and
 - (a) where the facility or infrastructure is expanded by more than 1 000 metres in length; or
 - (b) where the throughput capacity of the facility or infrastructure will be increased by 10% or more;

excluding where such expansion—

- (aa) relates to the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes within a road reserve or railway line reserve; or
- (bb) will occur within an urban area.

Activity Number: 48**Activity Description:**

The expansion of—

- (i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or

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- (ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100 square metres or more;

where such expansion occurs—

- (a) within a watercourse;
- (b) in front of a development setback; or
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse;

excluding—

- (aa) the expansion of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such expansion activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;
- (dd) where such expansion occurs within an urban area; or
- (ee) where such expansion occurs within existing roads, road reserves or railway line reserves.

Activity Number: 50

Activity Description:

The expansion of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, where the combined capacity will be increased by 50 000 cubic metres or more.

Activity Number: 52

Activity Description:

The expansion of structures in the coastal public property where the development footprint will be increased by more than 50 square metres, excluding such expansions within existing ports or harbours where there will be no increase in the development footprint of the port or harbour and excluding activities listed in activity 23 in Listing Notice 3 of 2014, in which case that activity applies.

Activity Number: 53

Activity Description:

The expansion and related operation of facilities for the desalination of water where the design capacity will be expanded to produce an additional 100 cubic metres or more of treated water per day.

Note: The activity only applies where it is specifically linked to the drought relief. Where this activity requires a coastal discharge permit, the proposal must first be approved by all relevant authorities.

Activity Number: 54

Activity Description:

The expansion of facilities—

- (i) in the sea;
- (ii) in an estuary;
- (iii) within the littoral active zone;
- (iv) in front of a development setback; or

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- (v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;

in respect of—

- (a) fixed or floating jetties and slipways;
- (b) tidal pools;
- (c) embankments;
- (d) rock revetments or stabilising structures including stabilising walls; or
- (e) infrastructure or structures where the development footprint is expanded by 50 square metres or more,

but excluding—

- (aa) the expansion of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (bb) where such expansion occurs within an urban area.

Activity Number: 55

Activity Description:

Expansion—

- (i) in the sea;
- (ii) in an estuary;
- (iii) within the littoral active zone;
- (iv) in front of a development setback; or
- (v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;

in respect of —

- (a) facilities associated with the arrival and departure of vessels and the handling of cargo;
- (b) piers;
- (c) inter- and sub-tidal structures for entrapment of sand;
- (d) breakwater structures;
- (e) coastal marinas;
- (f) coastal harbours or ports;
- (g) tunnels; or
- (h) underwater channels;

but excluding the expansion of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

Activity Number: 57

Activity Description:

The expansion and related operation of facilities or infrastructure for the treatment of effluent, wastewater or sewage, where the capacity will be increased by 15 000 cubic metres or more per day and the development footprint will increase by 1 000 square meters or more.

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Activity Number: 63**Activity Description:**

The expansion of facilities or infrastructure for the transfer of water from and to or between any combination of the following—

- (i) water catchments;
- (iii) water treatment works; or
- (iv) impoundments;

where the capacity will be increased by 50 000 cubic metres or more per day, but excluding water treatment works where water is treated for drinking purposes.

Activity Number: 66**Activity Description:**

The expansion of a dam where—

- (i) the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 metres or higher and where the height of the wall is increased by 2,5 metres or more; or
- (ii) where the high-water mark of the dam will be increased with 10 hectares or more.

Activity Number: 67**Activity Description:**

Phased activities for all activities –

- (i) listed in this Notice, which commenced on or after the effective date of this Notice or similarly listed in any of the previous NEMA notices, which commenced on or after the effective date of such previous NEMA Notices;

excluding the following activities listed in this Notice –

17(i)(a-d); 17(ii)(a-d); 17(iii)(a-d); 17(iv)(a-d); 17(v)(a-d);
20; 21; 22; 24(i); 29; 30; 31; 32; 34; 54(i)(a-d);
54(ii)(a-d); 54(iii)(a-d); 54(iv)(a-d); 54(v)(a-d);
55; 61; 64; and 65; or

- (ii) listed as activities 5, 7, 8(ii), 11, 13, 16, 27(i) or 27(ii) in Listing Notice 2 of 2014 or similarly listed in any of the previous NEMA notices, which commenced on or after the effective date of such previous NEMA Notices;

where any phase of the activity was below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.

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**ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS LISTING NOTICE 2 OF 2014
(GOVERNMENT NOTICE NO. R984, AS AMENDED ON 7 APRIL 2017) –**

Activity Number: 6

Activity Description:

The development of facilities or infrastructure for any process or activity which requires a permit or licence or an amended permit or licence in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent, excluding –

- (i) activities which are identified and included in Listing Notice 1 of 2014;
- (ii) activities which are included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies;
- (iii) the development of facilities or infrastructure for the treatment of effluent, polluted water, wastewater or sewage where such facilities have a daily throughput capacity of 2 000 cubic metres or less; or
- (iv) where the development is directly related to aquaculture facilities or infrastructure where the wastewater discharge capacity will not exceed 50 cubic metres per day.

Activity Number: 11

Activity Description:

The development of facilities or infrastructure for the transfer of 50 000 cubic metres or more water per day, from and to or between any combination of the following —

- (i) water catchments;
- (i) water treatment works; or
- (ii) impoundments;

excluding treatment works where water is to be treated for drinking purposes.

Activity Number: 15

Activity Description:

The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for—

- the undertaking of a linear activity; or
- maintenance purposes undertaken in accordance with a maintenance management plan.

Activity Number: 16

Activity Description:

The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.

Activity Number: 24

Activity Description:

The extraction or removal of peat or peat soils, including the disturbance of vegetation or soils in anticipation of the extraction or removal of peat or peat soils, but excluding where such extraction or removal is for the rehabilitation of wetlands in accordance with a maintenance management plan.

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Activity Number: 25**Activity Description:**

The development and related operation of facilities or infrastructure for the treatment of effluent, wastewater or sewage with a daily throughput capacity of 15 000 cubic metres or more.

Activity Number: 26**Activity Description:****Development—**

- (i) in the sea;
- (ii) in an estuary;
- (iii) within the littoral active zone;
- (iv) in front of a development setback; or
- (v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;

in respect of —

- (a) facilities associated with the arrival and departure of vessels and the handling of cargo;
- (b) piers;
- (c) inter- and sub-tidal structures for entrapment of sand;
- (d) breakwater structures;
- (e) coastal marinas;
- (f) coastal harbours or ports;
- (g) tunnels; or
- (h) underwater channels;

but excluding the development of structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

6. Reporting protocol

The reporting requirements associated with this Directive are limited to measures or interventions that constitute a listed activity in terms of the NEMA EIA Regulations, 2014 (as amended), and where this Department and the Department of Environmental Affairs and Development Planning is the Competent Authority.

6.1. General requirements

Monthly updates must be submitted to this Department and the Department of Environmental Affairs and Development Planning on the status of the water supply emergency situation within the City of Cape Town Area and the progress being made on the implementation of emergency measures or interventions to

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address the water supply emergency situation relief where applicable. This monthly updates must be submitted before the last working day of each month.

6.2. Pre-Implementation requirements

- 6.2.1. It is accepted that the City of Cape Town in conjunction with the Department of Water and Sanitation is in the process of securing and deploying the necessary resources to address the current water crisis a Water Supply Emergency Intervention Plan. The plan must be developed or updated and finalised as soon as is reasonably possible by setting out the list of measures or interventions that will fall within the ambit of this Section 30A Directive, describe each measure or intervention and explain how each measure or intervention specifically links to the current water supply emergency situation, as well as indicating the timeframe over which the measure or intervention will be implemented. This Water Supply Emergency Intervention Plan must also include a list of activities likely to be triggered and must be submitted to the National Department of Environmental Affairs and any other relevant authority whose listed or specified activities are triggered. The plan must be viewed as a dynamic document that will be constantly updated should any changes in the scope and listed or specified activities change. Any subsequent amended plan must be submitted to the authorities as instructed above. Copies of the Water Supply Emergency Intervention Plan must also be maintained and kept on site where the emergency relief efforts are to be implemented, and must be made available for inspection by any authority mandated to do so.
- 6.2.2. A generic Environmental Management Programme (EMP) must be finalised as soon as is reasonably possible and be submitted to the National Department of Environmental Affairs and other relevant authorities for acceptance before commencing with any of the listed activities, and copies of this EMP must also be submitted to this Department and any other relevant authority.
- 6.2.3. Method statements for each of the measures or interventions to be implemented, as part of the Water Supply Emergency Intervention Plan, must be finalised as soon as is reasonably possible for all those that constitute a listed activity and must be submitted to the National Department of Environmental Affairs and the Department of Environmental Affairs and Development Planning for acceptance, before commencing with any of the listed activities.

6.3. Requirements during Implementation

- 6.3.1. The City of Cape Town must submit audit reports (per measure or intervention to be implemented) to this Department for commenting purposes and acceptance. Copies of these audit reports must

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also be submitted to any relevant authority whose mandate is affected by the listed activities undertaken as part of the drought relief programme. The outline for the submission of audit reports is as follows:

- 6.3.2. A first audit report within three (3) months of the commencement of an emergency measures or interventions (per measure or intervention to be implemented). This audit report must *inter alia* confirm how the mitigation hierarchy has been implemented, how section 2 of the NEMA has been considered and how the best practicable environmental option has been selected from alternatives considered; and
- 6.3.3. Subsequent audit reports must be submitted on a three (3) months basis for the duration of completion of the construction and operation of the emergency interventions or measures (per measure or intervention). This audit reports must *inter alia* confirm how the measures or interventions implemented have contributed to addressing the current water crises and explain in detail how the environmental impacts associated with each measure or intervention implemented have been mitigated.

6.4. Post-Implementation requirements

- 6.4.1. A final audit report must be submitted, within three (3) months of completion of implementation of all the measures or interventions (as per the Water Supply Emergency Intervention Plan). This final audit report must *inter alia* confirm how all of the risks associated with the water supply emergency situation have been addressed and how all of the measures or interventions implemented have contributed to ensuring the future resilience of water supply security in the Western Cape. It must further indicate what future interventions that may fall outside the scope of this Directive are planned, to maintain such resilience into the future.

7. You may contact the following officials from the Chief Directorate: Compliance of the National Department of Environmental Affairs for further guidance and support pertaining to this Directive:
Director: Ms Minky Chauke at 012 399 9081 or 061 470 5879 or 082 805 4376 or
Chief Director: Mr. Sonnyboy Bapela at 012 399 9422 or 0823730351

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8. You are encouraged to maintain open communication lines with all relevant authorities and must ensure that all stipulated authorities are included in the reporting protocol. This Department will endeavour to assist in such efforts as far as is reasonably possible.
9. Please note that a person convicted of an offence in terms of Section 49(A)(1)(g) of the NEMA, namely failure to comply with a directive, is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.
10. In addition, you are strongly advised to familiarise yourself with the regulations relating to the procedure to be followed when oral request are made in terms of section 30A of NEMA, which includes the powers to amend, suspend or revocation of an issued Directive.
11. Please note that Section 28 of the NEMA remains applicable to all interventions to be implemented. Section 28 states the following: "Every 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."

Your interest in the well-being of the environment is much appreciated.

Yours faithfully,



Mr. Sonnyboy Bapela

Chief Director: Compliance

Department of environmental affairs

Date: 15-03-2018

