

## **LAWS CREATING A LEGAL DUTY ON LANDUSERS TO CONTROL INVADING ALIEN PLANTS.**

### **Introduction**

1. The adverse impacts of invading alien plants have been well-documented and scientifically verified.
2. Landowners are under a legal obligation to control invading alien plants occurring on their properties. This obligation exists as a result of the various laws. The relevant laws identified at this stage are the following:
  - i. The common law relating to neighbours and nuisance;
  - ii. Section 151(1) of the National Water Act 36 of 1998
  - iii. Section 28 of the National Environmental Management Act, 107 of 1998;
  - iv. Section 31A of the Environment Conservation Act, 73 of 1989;
  - v. Municipal by-laws and the National Veld and Forest Fire Act 101 of 1989
  - vi. Regulations in terms of the Conservation of Agricultural Resources Act, 43 of 1983.

### **The Common Law**

3. The common law is the law developed by the courts as opposed to laws that are written in an act of Parliament. A principle has been developed in terms of the common law relating to neighbours and nuisance in terms of which the owner of land may not use his or her land in such a way that it impacts on the use and enjoyment by other land owners of their land. This is based on the Roman law principle *sic utere tuo ut alienum non laedas* but it is also contained within the concept of *ubuntu*.
4. If a landowner breaches the common law rule relating to neighbours and nuisance an aggrieved party may approach the court for an order compelling the landowner to remove the cause of the nuisance. This is normally done in the form of an interdict.

### **National Water Act No 36 of 1998**

5. Section 151(1) of the National Water Act 36 of 1998 states that:

**“No person may –**

- (j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource.”**

A **“water resource”** is defined in the National Water Act to include **“a water course, surface water, estuary or aquifer”**.

A **“water course”** is defined in the National Water Act to mean:

- “(a) a river or spring,**

- (b) a natural channel in which water flows regularly or intermittently;
  - (c) a wetland, lake or dam into which, or from which, water flows; and
  - (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks.”
6. Any person contravening s151(1) of the National Water Act is guilty of a criminal offence. It is therefore possible to institute criminal proceedings against an offending landowner or landuser.
7. In addition to criminal proceedings, section 155 of the National Water Act provides that the Minister or the concerned water management institution may apply to the High Court for an interdict or other appropriate order. This may include an order to discontinue the activity and to remedy the adverse effects of the contravention.
8. A stand of invasive alien plants exceeding 1 hectare in extent could be regarded as a plantation that is being grown without water use permit in terms of the National Water Act.

### **National Environmental Management Act No 107 of 1998**

9. Section 28 of the National Environmental Management Act, 107 of 1998 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...”**

The National Environmental Management Act makes it possible for the Director General of Environmental Affairs and Tourism or a provincial head of department or, if the powers have been delegated to it, a local authority to direct a person causing such pollution or damage to the environment to remove the cause. Should such a directive be ignored the Director General may adopt reasonable measures to remedy the situation and to recover from that person the costs thereby incurred.

### **Environment Conservation Act No 73 of 1989**

10. Section 31A of the Environment Conservation Act, 73 of 1989 states that:

**“If, in the opinion of the Minister or ...[other] authority 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 or ... [other] authority, 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 or ... [other] institution... may deem fit,

**within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.**

11. The Minister or other authority may further require the responsible person to rehabilitate any damage. Should the responsible person fail to do so the Minister or other authority may rehabilitate the damage and recover from the responsible person any expenditure incurred.
12. Failure to comply with a direction in terms of section 31A is a criminal offence in terms of section 29(3) of the Environment Conservation Act.

**13. Municipal By-laws and the National Veld and Forest Fire Act 101 of 1998**

14. Before dealing with each of these provisions it is necessary to mention that a legal obligation to control invading alien plants may also be created by the rules of Fire Protection Associations established in terms of the National Veld and Forest Fire Act 101 of 1998 and by municipal by-laws.

**Conservation of Agricultural Resources Act No 43 of 1983**

15. Regulations that have been promulgated in terms of the Conservation of Agricultural Resources Act, No 43 of 1983 further make it unlawful to allow various species of weeds and invader plants to grow.

## **GUIDE TO THE CONSERVATION OF AGRICULTURAL RESOURCES ACT, NO 43 OF 1983**

The Conservation of Agricultural Resources Act regulates various activities that may have an impact on agricultural resources including water sources and deals directly with the combating of invasive alien plants.

The enforcement of the legislation is the responsibility of the “Executive Officer” who is a person appointed by the Minister or a person to whom a power has been delegated.

This legislation is binding on all land users

### **Who is a land user?**

‘**landuser**’ is defined in the Act as the owner of land, and includes-

- (a) any person who has a personal or real right in respect of any land in his capacity as fiduciary, fideicommissary, servitude holder, possessor, lessee or occupier, irrespective of whether he resides thereon;
- (b) any person who has the right to cut trees or wood on land or to remove trees, wood or other organic material from land; and

not a person who carries on prospecting or mining activities

### **What is a weed or invader plant?**

‘**invader plant**’ is defined in the Act as “a kind of plant which has under section 2(3) been declared an invader plant, and includes the seed of such plant and any vegetative part of such plant which reproduces itself sexually”.

‘**weed**’ is defined as “any kind of plant which has under section 2(3) been declared a weed, and includes the seed of such plant and any vegetative part of such plant which reproduces itself asexually”.

In terms of the Act the Minister may by regulation declare any plant to be a weed or an invader plant for the purposes of this Act, either throughout the Republic or in one or more areas therein.

### **What plants have been declared weeds and invader plants?**

Regulations were passed in 1984 in terms of which about 50 species were declared “weeds” or “invader plants”. This includes species such as mesquite, black wattle and a number of other species that the Working for Water Programme is clearing.

The Department of Agriculture has now published a draft amendment to these regulations.

The proposed amendment increases the number of species that are declared weeds and invader plants and also divides the weeds into three categories:

### **What are Category 1 plants?**

- They are declared weeds.
- They may not occur on any land or on any inland water surface throughout the Republic.
- No person may:
  - (a) sell, agree to sell or offer advertise, keep exhibit, transmit, send, convey or deliver for sale, or exchange for anything or dispose of to any person in any manner for a consideration, any weed, or
  - (b) in any manner permit whatsoever disperse or cause or permit the dispersal of any weed from any place in the Republic to any place in the Republic

### **What are Category 2 plants?**

- They are generally plants grown for commercial purposes but may also be uses as a woodlot, shelter belt, building material, animal fodder, soil stabilisation or other beneficial function that may determined;
- They are invader plants that may only be allowed to grow in demarcated areas.

### **What is a demarcated area?**

- "**demarcated area**" is defined in the draft regulations as "any area demarcated by the Executive Officer as an area where invader plants of the kinds specified as Category 2 are established or are to be established and may be retained".
- An area in respect of which a water use license for stream flow reduction activities has been issued in terms of section 36 of the National Water Act, 36 of 1998 shall be deemed to have been demarcated in terms of these regulations.
- No area shall be demarcated for the growing of invader plants of a kind specified as Category 2 unless the land user is able to establish to the satisfaction of the Executive Officer that, as far as may be practicable:
  - (a) The invader plants shall be confined to such demarcated areas;  
and

- (b) Controlled circumstances of cultivation of the invader plants shall prevail in the demarcated areas; and
- (e) All steps are taken by the land user to curtail the spreading of the propagating material of the invader plants to land and inland water surfaces outside the demarcated areas; and
- (f) Financial guarantees to the satisfaction of the Executive Officer are furnished by the land user for the cost of the control of any invader plants that may in the future grow outside the demarcated area from propagating material emanating from invader plants inside the demarcated area. The Executive Officer may dispense with the requirement for financial guarantees if the Executive Officer is satisfied that financial guarantees furnished by the land user in terms of any other law are adequate; and

### **What are Category 3 plants?**

- Category 3 plants are invader plants that may continue to grow where they already exist.
- However, no new planting or trade or propagating of these plants is permitted.

### **What happens when plants occur in contravention of the regulations?**

- If weeds or invader plants occur contrary to the provisions of these regulations, the land user must control those weeds or invader plants by means of any of the control methods that are appropriate for the species concerned and the ecosystem in which it occurs.
- Any action taken to control weeds or invader plants must be executed with caution and in a manner that will cause the least possible damage to the environment.
- Regulations 2 to 14 must be adhered to including the obtaining of written consents to cultivate virgin soil and to burn veld, the protection of land against erosion, the protection of vleï, marshes, water sponges and water courses and the restoration of degraded land.

### **What happens to land users who fail to comply with the regulations?**

- It is a criminal offence to ignore the regulations and to allow species to grow in contravention of them. A criminal case may then be brought against the land user.
- If a land user does not comply with the regulations the Department may issue a directive setting a date by when the property must be cleared.

- The directive is binding on a successor-in-title (person to whom the property is later sold).
- If the directive is ignored the Department can clear the land or engage someone (such as Working for Water or an implementing agent or an emergent contractor) to do so.
  - It may be worth compiling a list of emergent contractors who can be employed for this purpose.
- The costs of this clearing can then be recovered from the land user and can also be registered against the title deeds of the property in terms of the Agricultural Credit Control Act. This is then like a mortgage bond. The property can't be sold until these moneys have been repaid.
- The Department is considering introducing a prohibition on the transfer or subdivision of land unless it has first been certified as being free of weeds and invader plants. If accepted, this will not be included in the regulations but in the Act itself when it is amended later in the year.

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