

## DEPARTMENT OF WATER AFFAIRS

### DRAFT REGULATIONS IN TERMS OF SECTION 26(1) (k) OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) FOR ENHANCED ALIGNMENT AND INTERGRATION OF WATER USE AUTHORIZATIONS AND LICENCES WITH THE PERMITTING PROCESSES OF DEPARTMENT OF MINERAL RESOURCES AND DEPARTMENT OF ENVIRONMENTAL AFFAIRS.

#### REGULATIONS ON USE OF WATER IN TERMS OF SECTION 26(1) (k) OF THE NWA PRESCRIBING PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS

The Minister of Water Affairs has, under the powers vested in her by section 26(1) (k), of the National Water Act, (Act No. 36 of 1998), made the regulations contained in this Schedule in respect of procedural requirements for water use authorisation applications.

#### Explanatory Note

*National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest.*

*A person may only use water if the use is permissible under the National Water Act, 1998. In general, a water use must be Licensed unless it is listed in Schedule 1, is an existing lawful use, is permissible under a general authorisation or if a responsible authority dispenses with the requirement for a licence.*

## 1 INTERPRETATION AND PURPOSE OF THESE REGULATIONS

### 1.1 Interpretation

In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise;

**“application”** means an application for—

- (a) a water use authorisation in terms of Chapter 3 of these Regulations;
- (b) an amendment to an water use authorisation in terms of Chapter 4 of these Regulations
- (c) ..

#### Water use activity

## **Integrated water use licence**

**"the Act"** means the National Water Act, 1998 (Act No. 36 Of 1998)

**"Timeframes"** - for the purpose of the Regulations-

- a) when a period of days must in terms of these Regulations be reckoned from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.
- b) For any action contemplated in terms of these regulations for which a timeframe is prescribed, the period of 15 December to 2 January must be excluded in the reckoning of days.
- c) Where a prescribed timeframe is affected by one or more public holidays, the timeframe must be extended by the number of public holiday days falling within that timeframe.

## **2 Purpose of these Regulations**

The purpose of these Regulations is to regulate the procedure and criteria in Chapter 4 of the National Water Act relating to the submission, processing and consideration of, and decision on applications for water use authorisations in order to avoid or minimize detrimental impacts on the water resources.

## **3 DELEGATED AUTHORITY**

### **3.1 Identification of delegated authority**

All applications in terms of these Regulations must be decided upon by a delegated authority

The delegated authority who must consider and decide upon an application in respect of a specific activity, must be determined with reference

### **3.2 Where to submit application**

The application for a water use authorization shall be submitted to

- (a) the respective Regional Office of the Department of Water Affairs
- (b) the Catchment Management Agency where the water resource duties have been devolved to the CMA

### 3.3 Assistance by delegated authority to applicant

### 3.4 Consultation between delegated authority and State departments administering a law relating to a matter affecting water uses

### 3.5 Delegated authority's right of access to information

### 3.6 Criteria to be taken into account by delegated authority when considering a water use authorization application

### 3.7 Timeframes for delegated authority

The delegated authority shall assess and review the application within the stipulated timeframe as in Table 1 and make a decision in writing, in line with coordinated timeframes of other Departments

Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days)			Timeframe for General Authorisation (days)		
	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA
Acknowledge receipt of application	14	14	14	14	14	14
Assess application and make a decision to grant authorisation						
Extension if decision-making timeframe is missed						
Review additional information (if required) and make a decision						
Notify the applicant of the decision						
Minimum days required (if all						

Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days)			Timeframe for General Authorisation (days)		
	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA	Mining and Industry WULA	Agriculture and SFRA WULA	Local Government and Developments WULA
information is provided first time, the delegated authority meets the timeframe and no review is required)						

### 3.8 Notification of decision on application

### 3.9 Commencement of water use charges

### 3.10 Registry of applications and record of decisions

## 4 APPLICATIONS FOR WATER USE AUTHORISATION

### 4.1 Application

An application for the commencement of a water use activity must be made to the delegated authority. An application must

- (a) be made on official application forms obtainable from the relevant delegated authority; and
- (b) be accompanied by the prescribed application fee.

### 4.2 Checking of application for compliance with formal requirements

Upon receipt of an application, the delegated authority to which the application is submitted must check whether the application and confirm that

- (a) it is properly completed and that it contains the information required in the application form; and
- (b) is accompanied by any reports, other documents and fees as required in terms of these Regulations; and
- (c) has taken into account any guideline applicable to the submission of applications.

### 4.3 Content of the water use authorization application

#### 4.3.1 Mining and industry water use authorisation application

#### 4.3.2 Agriculture water use authorisation application

#### 4.3.3 Infrastructure water use authorisation application

#### 4.3.4 Water and wastewater treatment plants water use authorisation application

### 4.4 Activity on land owned by person other than the applicant

### 4.5 Appointment of Professional Person to manage the application

### 4.6 General requirements for a person compiling a specialist report or undertaking a specialised process

#### 4.6.1 Submission of application to delegated authority

Once the application has been completed, the Professional Person managing the application should complete the application forms for water use authorisations and submit it to the delegated authority, together with the prescribed fee, and at least five copies of:

- a) The IWWMP;
- b) Any representations and comments received in connection with the application
- c) The minutes of any meetings the applicant held with interested and affected parties and other role players, which record the views of the participants; and
- d) Any responses by the applicant to those representations, comments and views.

#### 4.6.2 Application fee

Fees must be paid to the delegated authority before an application for a water use authorization is considered. The fee scale is set out in Table 1.

Fees for consideration of water use authorization application

Application fee description	Fee
Water use licence application	114.00
Application for amendment of a water use licence	
Application for renewal of a water use licence	

4.6.3 Checking of applications for compliance with formal requirements on submission

#### 4.7 Public Participation Process

4.7.1 Public participation process

4.7.2 Register of interested and affected parties

4.7.3 Registered interested and affected parties entitled to comment on submissions

4.7.4 Comments of interested and affected parties to be recorded in reports submitted to delegated authority

### 5 ASSESSMENT OF APPLICATIONS

5.1 Assessment process

5.2 Parties and structures undertaking the water use authorization assessment

5.2.1 Assessor

5.2.2 Specialists

5.2.2.1 *Specialists to comment on applications*

5.2.2.2 *Timeframes for specialists inputs*

5.2.3 Water Use Authorisations Assessment Advisory Committee (WUAAAC)

The purpose of the WUAAAC shall be to provide an independent advisory body for recommendation of water use authorizations to the delegated authority.

5.2.3.1 *Functions of WUAAAC*

1. The functions of WUAAAC are;

- a) To provide a platform for the coordinated and timely consideration, assessment, review and recommendations on water use authorization applications
- b) To consider the administrative, legal and technical merits of water use authorization applications and make recommendations to the delegated authority
- c) To periodically review rules or procedures and guidelines of WULAs processing including the business process
- d) To ensure consistent application of rules and guidelines in processing of WULAs

- e) To disseminate updated rules and guidelines among all officials dealing with WULAs, including recommendations made by the delegated authorities
  - f) To take note and record decisions made by the delegated authority
  - g) To receive and consider rulings of the courts of law in regard to water use authorisation, from the Water Tribunal, High Court, Supreme Court and the Constitutional Court, and integrate the legal precedents into the rules and guidelines for processing of WULAs in the department
  - h) To provide critical interventions where challenges are identified, which may include sourcing additional information on WULAs, referring WULAs for further technical inputs etc.
  - i) To ensure coordinated and alignment of authorizations recommended with the authorizations of other Government Departments
  - j) To support Regional WUAAACs through relevant Regional co-ordination units
  - k) To undertake any other functions as are prescribed by the delegated authority
2. The WUAAAC may establish such sub-committees as are necessary to provide advice or to assist it in the performance of its functions.
  3. The WUAAAC may delegate any of its functions to a subcommittee established under section (4), subsection (2).

#### **5.2.3.2 Composition/ MEMBERSHIP**

- a) **Chief Directorate: Water Use**, represented by Deputy Director: Strategic Support.
- b) **Directorate: Resource Protection and Waste (RPW)** - Presents applications from the directorate and provides technical inputs, represented;
  - Director: Resource Protection and Waste (RPW) - Participates in the functions of the WUAAAC
  - Deputy Director: Mines - Supports the Director
  - Deputy Director: Industries - Supports the Director
  - Deputy Director: Agriculture - Supports the Director
  - Deputy Director: Local Government & Water Services Institution - Supports the Director
  - Deputy Director: Source Co-ordination - Supports the Director
- c) **Directorate: Water Abstraction and Instream Use (WAIU)** - presents applications from the directorate and provides technical inputs, represented by;
  - Deputy Director: Abstraction and Storage - Supports the Director
  - Deputy Director: Stream Flow Reduction - Supports the Director

- Deputy Director: Environment & Recreation - Supports the Director
- d) **Directorate: Water Allocation (WA)** - Ensure compliance to Water Allocation Reform imperatives including compliance to BBBEE aspects, represented by;
  - Director: Water Allocation - Participates in the functions of the WUAAAC
  - Deputy Director: Authorisation Administration - Supports the Director and provides administrative support and guidance on the applications presented including statistics on authorisations required from time to time
- e) **Directorate: Resource Directed Measures (RDM)** - shall be represented as and when required to give advice on issues related to reserve determination
- f) **Directorate: Water Resource Management Support (WRMS)** shall be represented as and when required to facilitate Regional Co-ordination
- g) **DD's: Policy & Procedure – Internal Guidelines/Strategy/Water Sector Charter, Allocation Equity - BBBEE Policy Implementation, and Compulsory Licencing – WAR** shall be called upon as and when the need arises.

#### **5.2.3.3 Quorum**

At least 7 members must be present for a meeting to proceed. In the event of lack of a quorum, the members present can call off a meeting. The delegated authority can consent to call off a meeting at any stage.

#### **5.2.3.4 Chairperson**

The **Chairperson** shall be Chief Director. The chairperson shall be responsible for;

- a) Scheduling meetings and notifying committee members;
- b) Inviting specialists to attend meetings when required by the committee;
- c) Guiding the meeting according to the agenda and time available;
- d) Ensuring all discussion items end with a decision, action or definite outcome; and
- e) Review and approve the draft minutes of previous committee sittings before distribution;

#### **5.2.3.5 Secretariat**

The **Secretariat** services shall be provided by D: WA - Authorisation Administration. The secretariat shall be responsible for:

- a) Preparing the agenda of the meetings, including drawing up the schedule of WULAs to be considered
- b) Issuing notices for meetings, to assessors, committee members, specialists, and any other persons who maybe invited to the meetings



- c) Ensuring all necessary documents requiring discussion or comment are attached and circulated with the agenda.
- d) Taking notes of proceedings and preparing the minutes of meetings.
- e) Distributing the Agenda and Minutes of the previous meeting within three working days of a meeting

#### **5.2.3.6 Meetings**

- National WUAAAC meetings shall be held every **Monday**. Regional WUAAAC meetings shall be held every 2 weeks.
- The Chairperson shall appoint an Acting Chairperson in absence of chairperson for the chairing the meetings

#### **5.2.3.7 Operations**

Presentation of WULAs at the WUAAAC meeting, admin processes and procedure

- All WULAs received in the department shall be presented to the WUAAAC
- The presentation shall be made by the respective assessor who analysed and synthesised the information in the water use authorization documents into a Record of Recommendation (RoR) and draft decision documents
- All WULAs with court orders may be finalized by the CD: WU but records should be sent to WUAAAC
- Presentation of WULAs in the WUAAAC shall be done under the auspices of the Directorate which considered and assessed the application
- Upon WUAAAC recommending the application, the enquiry official shall ensure that the application is corrected, updated and processed to its final stage reflecting the recommendation of the WUAAAC Review of water use authorization applications

## **6 AMENDMENT OF WULAS**

## **7 RENEWAL OF WATER USE AUTHORISATIONS**

## **8 SHORT TITLE AND COMMENCEMENT**

These Regulations are called the Water use authorization Regulations, 2013, and take effect on a date determined by the Minister by notice in the Gazette.