

DEPARTMENT OF WATER AFFAIRS

NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998)

WATER USE AUTHORIZATION REGULATIONS

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

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.

INTERPRETATION AND PURPOSE OF THESE REGULATIONS

Interpretation

1. Section 21 of the National Water Act, 1998 (Act No 36 of 1998, hereafter referred to as “the Act” should be consulted for definitions of water use activity. In addition, in these Regulations, any other word or expression to which a meaning has been assigned in the Act shall have that meaning, unless the context otherwise
 - a. **“application”** means an application for—
 - i. a water use authorisation in terms of Chapter 4 of these Regulations;
 - ii. transfer of water use authorisation
 - iii. an amendment to an water use authorisation in terms of Chapter 4 of these Regulations
 - iv. Renewal of a water use authorization
 - b. **Water use activity**
 - c. **Integrated water use licence**
 - d. **“the Act”** means the National Water Act, 1998 (Act No. 36 Of 1998)
- a) **“Timeframes”** - for the purpose of the Regulations-

- i. 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.
- ii. 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.
- iii. 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.

Purpose of these Regulations

2. 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.

DELEGATED AUTHORITY

3. All applications in terms of these Regulations must be decided upon by the delegated authority who must consider and decide upon an application in respect of a specific activity.

Where to submit application

4. The application for a water use authorization shall be submitted to;
 - a. the respective Regional Office of the Department of Water Affairs, or such other satellite offices as maybe specified by the Regional Office
 - b. the Catchment Management Agency, where the water resource duties have been devolved to the CMA

Pre-application process

5. The applicant must conduct a compulsory pre-application process with the DWA, involving the following;
 - a. submission of a notice in writing to the delegated authority of the intent by the application to submit a water use licence application;
 - b. such written notice shall be responded to by the department within a period of 5 days from date of receipt of the notice

- c. undertaking with the department pre-application consultations involving
 - i. meeting between the applicant and the department;
 - ii. site inspection of the site and facilities (if existing) proposed to be authorized if any;
- d. the pre-application process must be concluded within a period of 30 days from inception of the notice of intent to apply.

Assistance by delegated authority to applicant

- 6. The delegated authority may offer assistance in conducting the water use licence application process to deserving previously disadvantaged persons on merit and after due assessment.

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

- 7. The delegated authority may consult with other organs of state administering a law related to a matter affecting water uses for integrated or joint permitting.

Delegated authority's right of access to information

- 8. The delegated or competent authority may request for any additional information to assist with the processing of the application at any time during the WULA assessment process

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

Timeframes for delegated authority

- 9. The delegated authority shall assess and review the application within the stipulated timeframes in Table 1 and make a decision in writing, in line with coordinated timeframes of other interested and affected permitting Departments

Table 1: Timeframes for processing of water use licence applications

No	Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days) (benchmarked on Mining and Industry WULA)
1	Acknowledgement of notice of intent to apply	5
2	Pre-application processes finalised and applicant notified to proceed to prepare application, including application checklist	30
3	Acknowledge receipt of complete application, and accept or reject application	14

No	Decision and/or action required by authorities	Timeframe for Water Use Licence Application (days) (benchmarked on Mining and Industry WULA)
4	Initial assessment, including drafting of ROR and draft decision documents	21
5	Reserve request and determination	30
6	Obtain technical comments and legal review from DWA components	"30
7	Incorporate comments, Reserve and quality check	10
8	Presentation of initial assessment to assessment committee (WUAAAC) to validate information in file and/ or recommend on type of authorisation	10
9	Obtain outstanding information from applicant as identified in WUAAAC	"35
10	Direct and allow time for public participation process in terms of section 41 (4) of NWA, (if so required)	90
11	Review of additional information submitted by applicant by Technical and legal sections (if required) and recommend	15
12	Collate and consider inputs comments from technical reviewers and other government departments	10
13	Final assessment and decision documents and quality check	5
14	Presentation of final assessment to assessment committee (WUAAAC)	10
15	Regional Head or Catchment Manager consideration	20
16	Delegated Authority for Decision	20
17	Notify the applicant of the decision	10
18	Departmental administrative processes	5
##	Minimum days required (if all information is provided first time, and no public participation required)	165
##	Maximum days required (if all information is provided first time, and public participation required later in the process)	270

" Processes that may run in parallel

Note period not directly added as processes may run in parallel

Where applications for water use authorizations are submitted, which would required to follow the basic assessment process in terms of NEMA, The delegated authority shall assess and review the application within the stipulated timeframes in Table 2

Table 2: Timeframe for Water Use Licence Applications which would follow BAS process according NEMA

No	Decision and/or action required by authorities	Timeframe for Water Use Licence Applications which would follow BAS process according NEMA
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No	Decision and/or action required by authorities	Timeframe for Water Use Licence Applications which would follow BAS process according NEMA
1	Acknowledgement of notice of intent to apply	5
2	Pre-application processes finalised and applicant notified to proceed to prepare application, including application checklist	30
3	Acknowledge receipt of complete application, and accept or reject application	7
4	Initial assessment, including drafting of ROR and draft decision documents	10
5	Reserve request and determination	30
6	Obtain technical comments and legal review from DWA components	10
7	Incorporate comments, Reserve and quality check	10
8	Presentation of initial assessment to assessment committee (WUAAAC) to validate information in file and/ or recommend on type of authorisation	10
9	Obtain outstanding information from applicant as identified in WUAAAC	30
10	Direct and allow time for public participation process in terms of section 41 (4) of NWA, (if so required)	0
11	Review of additional information submitted by applicant by Technical and legal sections (if required) and recommend	10
12	Collate and consider inputs comments from technical reviewers and other government departments	5
13	Final assessment and decision documents and quality check	5
14	Presentation of final assessment to assessment committee (WUAAAC)	5
15	Regional Head or Catchment Manager consideration	5
16	Delegated Authority for Decision	5
17	Notify the applicant of the decision	5
18	Departmental administrative processes	5
##	Minimum days required (if all information is provided first time, and no public participation required)	152
##	Maximum days required (if all information is provided first time, and public participation required later in the process)	

Notification of decision on application

Commencement of water use charges

- All applicable water use charges shall commence from the date of signature of the water use authorisation

1.1 Registry of applications and record of decisions

APPLICATIONS FOR WATER USE AUTHORISATION

Application

11. 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 for each water use;
 - b. be accompanied by such supporting technical documents as specified in Regulation—
 - c. be accompanied by the prescribed application fee.
 - d. In the case of an integrated water use licence application, one application fee shall be paid for all water uses applied for.

Checking of application for compliance with formal requirements

12. 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
 - b. it contains the information required in the application form; and
 - c. is accompanied by any reports, other documents and fees as required in terms of these Regulations; and
 - d. has taken into account any guidelines applicable to the submission of applications.
 - e. Should the application be in any way incomplete, or fails to meet the standards as set out in regulation----, that application shall be rejected and returned to the applicant.

Content of the water use authorization application

13. A water use authorization applications shall contain such information as is required to adequately provide

Mining and industry water use authorisation application

An application for a mining or industry related water use activity shall contain the following minimum information

Agriculture water use authorisation application

14. A technical design report in support of water use authorization applications for water uses for agricultural activities shall include the following information;

- a. particulars of the project, background and justification
 - i. purpose of the scheme or project
 - ii. location, access and site conditions, including water management area, property descriptions, magisterial district, coordinates, water resources affected,
 - iii. proposed water uses and water users
- b. particulars of the physiognomic information of the area, including
 - i. weather/ climate
 - ii. water resources situation
 - iii. soil and land resource assessment
 - iv. social aspects of the project development
- c. particulars of existing infrastructure and services setup
- d. particulars of the agricultural development contemplated for the development
 - i. current crop management practices
 - ii. proposed cropping programme and rotations
 - iii. crop water requirements
 - iv. irrigation water requirements
 - v. livestock practices
- e. particulars of engineering development plan and requirements
 - i. irrigation system selection

- ii. general scheme/ project layout
 - iii. the design criteria and design process, technology choice
- f. particulars of facility planning proposed
 - i. enabling works
 - ii. infrastructure
- g. operation and maintenance plan
- h. particulars of scheme organisation and management
 - i. organisation and management for implementation
 - ii. organisation for operation and maintenance
 - iii. water management
 - iv. agricultural production
 - v. maintenance
- i. cost estimates
- j. Particulars relating to the construction of the works
- k. conclusion **Error! Bookmark not defined.**

Infrastructure water use authorisation application

Water and wastewater treatment plants water use authorisation application

Engineering drawings

Activity on land owned by person other than the applicant

Appointment of Professional Person to manage the application

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

Submission of application to delegated authority

15. 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.

Application fee

16. 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.

Table 2: Fees for consideration of water use authorization application

Application fee description	Fee
Water use licence application	R5000.00
Application for amendment of a water use licence	R5000.00
Application for renewal of a water use licence	R5000.00
Application for the transfer of a water use authorisation	R5000.00

1.1.1 Checking of applications for compliance with formal requirements on submission

1.2 Public Participation Process

1.2.1 Public participation process

1.2.2 Register of interested and affected parties

1.2.3 Registered interested and affected parties entitled to comment on submissions

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

2. ASSESSMENT OF APPLICATIONS

2.1 Assessment process

2.2 Parties and structures undertaking the water use authorization assessment

Assessor

17. A water use authorization application shall be allocated to a competent official of the department for the assessment of the application

- a. A competent person is one who has the requisite qualifications, training and experience as recognized by the department in water resources management and /or regulation
- b. The assessor may consult any other relevant official of the department for inputs on the technical and legal merits of the application, which inputs shall be provided within prescribed timeframes as set out in **Regulation**
- c.

2.2.1 Technical and Legal Reviews

- a) Water use authorization applications shall be subject to technical and legal reviews

2.2.1.1 Technical and Legal Reviewers to comment on applications

- a) The following technical and legal or equivalent components shall be accorded opportunity to review and comment on the water use authorization applications, for compliance with technical and legal requirements for protection, sustainable use and development of water resources
 - i. Reserve determination
 - ii. Groundwater resources
 - iii. National Water Resources Planning or any other competent component responsible for water infrastructure planning
 - iv. Legal services
 - v. Water abstraction and in-stream use
 - vi.

2.2.1.2 Timeframes for technical inputs

- a) All technical and legal reviews of applications shall be finalized within a period of 60 days.

2.2.2 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.

2.2.2.1 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).

2.2.2.2 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.

2.2.2.3 *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.

2.2.2.4 *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;

2.2.2.5 *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

2.2.2.6 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

2.2.2.7 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 synthised 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

2.3 Review of water use authorization applications

3. AMENDMENT OF WULAS

4. RENEWAL OF WATER USE AUTHORISATIONS

5. Procedures for internal appeal

This Section of the regulations enables the Minister to be the internal appeal authority to adjudicate appeals against certain decisions made by the delegated authority, catchment management agency or water management institution under NWA (Act 36 of 1998). Any person that is dissatisfied with a decision of the Minister may approach a High Court for appropriate relief.

5. Any person who may not be satisfied with a decision on the water use licence application, or whose water licence application has been declined by any administrator having the authority to make a decision on a water use license application in terms of these regulations may appeal to –

- (1). the Director-General, if it is an administrative decision delegated to a Regional Head;
or
- (2). the Minister, if it is an administrative decision delegated to the Director-General or The Head of the Water Use Authorization at Head Office.
- (3). appeals in terms of these Regulations suspends the decision on the water use license application, unless directed otherwise by the Minister
- (4). No appellant may apply to the High court for the review of a decision contemplated in this Regulation until that person has exhausted remedies in terms of this section of the Regulations.

6. Notice of Intention to Appeal

- (1) A person who wishes to appeal a decision, must submit a notice of intention to appeal in the form of Annexure 1 to these Regulations to the Appeal Administrator within 14 days after the decision has been made.
- (2) A short summary of -
 - (a) the issues that will be raised during the appeal process and whether these issues were raised during the original decision-making process; and
 - (b) new information that will be raised in the appeal submission, which must be attached to this document.
- (3) The appeal administrator must within five days of receipt of the notice of intention to appeal acknowledged receipt of the notice of intention to appeal and indicate the category of appeal to the appellant.
- (4) The appeal administrator must at the same time notify the original decision-maker and the applicant, of the notice of intention to appeal
- (5) Reasons for decisions should be obtained in terms of Section 42 of the NWA from the Department before the appeal is lodged.

7. Appeal Process

- (1) An appellant, must submit the appeal submission, to the Appeal Administrator of the Regional Head , Head of Water Use Authorizations at Head Office or the Director General or the Minister , as the case may be, within 10 days after receipt of the acknowledgment of receipt,
- (2) If the appellant is not the Water Use authorization applicant, the appeal administrator, must submit the appeal submission to the applicant within 5 days to the application and to any interested and affected parties, that will be affected by the decision.

- (3) The applicant, the original decision-maker, interested and affected parties must submit their response to the appeal authority within 15 days from the dated of receipt of the appeal submission.
- (4) The Appeal Administrator must within 10 days of receipt of the response submit the appeal, the decision of the original decision-maker, the appeals response report, all relevant documentation and a recommendation to the appeal authority.
- (5) If the appeal authority is of the view that expert advice must be sought or that an appeal panel must be appointed, the Minister must appoint a panel of experts and refer the appeal to the panel of experts for advice.
- (6) The Appeal Administrator must inform the appellant within 10 days from the date the of receipt of an instruction from the appeal authority of the appointment of the panel of experts.
- (7) The panel of expert must provide advice to the appeal administrator for considerations by the Minister within 30 days from the receipt of the instruction from the appeal administrator.
- (8) The appeal authority must take a decision within 15 days of receipt of the documents from the appeal administrator.

8. Appeals from decisions of the Minister

- (1) Should the appellant be dissatisfied with the decision of the Minister , the appellant may approach the High Court for appropriate relief.

9. 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.

ANNEXURE 1

Name and address of
prospective appellant

Code _____

E-mail _____

Fax _____

Date _____ 20__

Name and address of relevant appeal authority (Regional Head /Minister)

Attention: _____, Fax No.: _____ or E-mail: _____

Dear Minister or MEC

NOTICE OF INTENTION TO APPEAL AGAINST WATER USE LICENCE AUTHORISATION

I hereby give notice of my intention to appeal against the decision relating to the water Use Licence application of -----, the particulars of which are as follows:

Reference No.: _____.

Name of Project: _____

_____.

Date of issue of decision: _____ 20 ____.

I received notification of the decision on _____ 20 ____.

(A short summary of the issues-

- (a) that will be raised during the appeal process and whether these issues were raised during the original decision process; and*
- (b) whether new information will be raised in the appeal submission, which new information must be attached to this document.)*

Yours sincerely

Signature