

MINISTRY OF WATER AND  
ENVIRONMENTAL AFFAIRS

2010 -09- - 6

PRIVATE BAG X313  
PRETORIA 0001



**water affairs**

Department:  
Water Affairs  
REPUBLIC OF SOUTH AFRICA

Enquiries: Mr S. Skosana  
Telephone: 012-336-7677  
Reference: 2/1/5/1

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

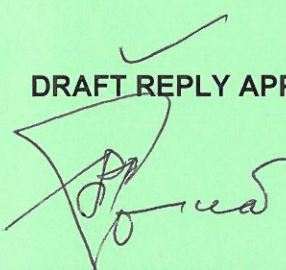
NATIONAL ASSEMBLY: QUESTION 1998 FOR WRITTEN REPLY

A draft reply to the above-mentioned question asked by Mr G R Morgan (DA); is attached for your consideration.

  
DIRECTOR-GENERAL (Acting)

DATE: 6/9/10

DRAFT REPLY APPROVED/AMENDED

  
MS B P SONJICA, MP  
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE: 11-09-2010

NATIONAL ASSEMBLY

FOR WRITTEN REPLY

QUESTION NO 1998

DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 30 JULY 2010  
(INTERNAL QUESTION PAPER NO. 18)

**1998. Mr G R Morgan (DA) to ask the Minister of Water and Environmental Affairs:**

- (1) Whether, with reference to mines operating without valid water licences, there are any established standards applicable to these mines pertaining to the discharge of mine water; if not, why not; if so, what are the relevant details;
- (2) what regulations would her enforcement officers use when (a) issuing directives or (b) bringing criminal charges against mines operating without valid water licences;
- (3) (a) what are the (i) names and (ii) locations of mines operating without a valid water licence that have had (aa) pre-directives issued, (bb) directives issued or (cc) criminal charges brought against them since 1 July 2009 and (b) why are pre-directives, directives or criminal charges not automatically issued/brought against these mines once her department becomes aware of the situation;
- (4) whether she has any intention to seek an amendment to the National Water Act, Act 36 of 1998, in order to strengthen its provisions relating to mine water; if not, why not; if so, what are the relevant details?

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**REPLY:**

- (1) The National Water Act (NWA) specifically introduced the principle of "classifying water resources" as well as setting "resource quality objectives" where the quality of the discharge allowed for a certain mine will depend on the characteristics and other details of a specific water source. In addition the current water legislation clearly sets out applicable principles with regard to prevention and remedying effects of pollution (Section 19 of the National Water Act, 1998(Act 36 of 1998) (NWA)) and also the control of emergency situation (Section 20 of NWA). These provisions are the most appropriate in addressing the discharge of mine water. In addition, section 7 of Government Notice 704 of 1999 (Vol. 408, No. 20119) (Regulation on use of water for mining and related activities) also provides that any person in control of the mine must take reasonable measures to prevent water containing waste or any substance which causes or is likely to cause pollution of a water resource from entering any water resource, either by natural flow or by seepage, and must retain or collect such substance or water containing waste for use, re-use, evaporation or for purification and disposal in terms of the Act.
- (2)(a) Enforcement officers issue directives as mandated by and according to the related sections in the NWA and specifically sections 19, 20, 53 and 118. There is no need for regulations relating to these sections.
- (2)(b) Enforcement officers bringing criminal charges against mines make use of the regulations published in Government Notice 704 of 1999 (Vol. 408, No. 20119) (Regulation on use of water for mining and related activities). These regulations are aimed at protection of water resources and clearly stipulate in regulation 14 the offences and penalties that can be imposed on all water users. These regulations are applied in conjunction with section 151 of the NWA which clearly sets out the offences that one can be charged with if water related crimes are committed.

(3)(a)(i) Refer to table below.

| <b>Number</b>     | <b>(i) Name of Mine</b>  | <b>(ii) Location of Mine</b> | <b>Status</b>             |                       | <b>(cc) Criminal</b> |
|-------------------|--------------------------|------------------------------|---------------------------|-----------------------|----------------------|
|                   |                          |                              | <b>(aa) Pre-Directive</b> | <b>(bb) Directive</b> |                      |
| 1.                | Total Coal               | Mpumalanga                   | Yes                       | No                    | No                   |
| 2.                | Arnot Coal               | Mpumalanga                   | Yes                       | Yes                   | No                   |
| 3.                | Leeuwpan Colliery        | Mpumalanga                   | Yes                       | Yes                   | No                   |
| 4.                | Throncliff Mine          | Mpumalanga                   | No                        | Yes                   | No                   |
| 5.                | Barberton Mine           | Mpumalanga                   | Yes                       | No                    | No                   |
| 6.                | Doornrug Mine            | Mpumalanga                   | Yes                       | No                    | No                   |
| 7.                | Foskor Mine              | Mpumalanga                   | Yes                       | Yes                   | No                   |
| 8.                | Izinyoni Trading         | Mpumalanga                   | Yes                       | No                    | No                   |
| 9.                | Jagtlus Colliery         | Mpumalanga                   | Yes                       | Yes                   | No                   |
| 10.               | Lydenburg Construction   | Mpumalanga                   | Yes                       | No                    | No                   |
| 11.               | West Coal                | Mpumalanga                   | Yes                       | No                    | No                   |
| 12.               | Umcebo Grootpan Colliery | Mpumalanga                   | Yes                       | No                    | No                   |
| 13.               | Eastside Colliery        | Mpumalanga                   | Yes                       | No                    | No                   |
| <b>TOTAL = 13</b> |                          |                              | <b>12</b>                 | <b>5</b>              | <b>0</b>             |

(3)(b) Pre-directives, directives or criminal charges cannot automatically be issued due to the variance in technical nature, different processes involved as well as the complexity of each case. There will always remain a high degree of professional judgement required by the DWA officials. It can happen that High Court Orders and civil claims for compensation be lodged against DWA for irresponsible directives and criminal actions. Enforcement officers cannot do without the necessary detail technical investigations to ascertain the extent of any transgression. This is also essential to ensure that due process is followed to avoid technicalities that could potentially compromise the case.

(4) Yes, I have requested the my Department to look at a possible amendment of the NWA and this may include its provisions relating to mine water. As the process has only just started it is premature to discuss the relevant details. However, in February 2010 officials of my Department started a process relating to the review of the current regulations and this process plans to deliver by mid 2011 an updates set of regulations. (GN 704: "regulations on use of water for mining and related activities aimed at the protection of water resources").