

DEPARTMENT OF WATER AND SANITATION

NO. R. 1046

30 OCTOBER 2015

REGULATIONS RELATING TO ACCESS AND USE OF GOVERNMENT WATERWORKS AND SURROUNDING STATE-OWNED LAND FOR RECREATIONAL PURPOSES IN TERMS OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998)

The Minister of Water and Sanitation intends, in terms of section 116 of the National Water Act, 1998 (Act No. 36 of 1998), to make the Regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed Regulations to the Director-General, Department of Water and Sanitation, Private Bag X313, Pretoria, 0001; Fax no (012) 336 6987; e-mail mzanywan@dws.gov.za (for the attention of the Directorate: Integrated Environmental Engineering, Mr. Lucky Mzanywa) within two months of the date of publication of the notice.

MRS NOMVULA PAULA MOKONYANE, MP**MINISTER OF WATER AND SANITATION**

Date: 29.06.15

SCHEDULE

Definitions

1. In these regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned, and, unless the context indicates otherwise -

“accommodation” means facilities of any nature for the accommodation of day and overnight visitors;

“alien species” means –

- (a) a species that is not an indigenous species; or
- (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

“access point” means an authorised place of entry, including, but not limited to access gates;

“aquatic fauna” includes crustacea and mollusca and fish in general and the eggs, hatch, spawn or the young of fishes and of such fauna;

“bioprospecting” means bioprospecting as defined in section 1 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“commercial fishing” means spearfishing, crossbow fishing, gill netting or any method used for revenue generation at a government waterworks;

“commercial water use” means recreational water use for revenue generation, including organised sporting activities and events;

“competent authority” in relation to the control over recreational, conservation or tourism use of the relevant government waterwork or portion thereof includes-

- (a) the Minister;
- (b) any organ of state; or
- (c) any person designated by the Minister to carry out these functions;

“control” in relation to an alien or invasive species, means -

- (a) to combat or eradicate an alien or invasive species; or
- (b) where such eradication is not possible, to prevent, as far as practicable, the recurrence, the re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;

“dangerous object” means any explosive or incendiary material, any explosive or incendiary device, any firearm, and any gas, material, weapon or other article, object or instrument which may be employed to cause bodily harm to a person, or to render a person temporarily paralysed or unconscious, or to cause damage to

property, as well as anything which the Minister of Police has by notice in the *Gazette* declared to be a dangerous object in terms of the Control of Access to Public Premises and Vehicles Act, 1985 (Act No. 53 of 1985);

“**event**” means competitions, sporting, entertainment, educational, recreational, religious, cultural, exhibitional, organisational, or similar activities hosted at a government waterwork;

“**event organiser**” means any person who plans, is in charge of, manages, supervises or holds an event or sponsorship rights to an event or in any manner controls or has a material interest in the hosting of an event;

“**explosive**” means-

- (a) any substance or a mixture of substances, in a solid or liquid state, which is capable of producing an explosion;
- (b) any pyrotechnic substance in a solid or liquid state, or a mixture of such substances, designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these, as the result of non-detonative self-sustaining exothermic chemical reaction, including pyrotechnic substances which do not evolve gases;
- (c) any article or device containing one or more substances contemplated in paragraph (a);
- (d) any plastic explosive; or
- (e) any other substance or article which the Minister of Safety and Security has by notice in the *Gazette* declared to be an explosive in terms of the Explosives Act, 2003 (Act No. 15 of 2003);

“**firearm**” means a firearm as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000);

“**high impact water use**” means recreational water use which does or has the potential to impact detrimentally on a water resource or other water users of that water resources;

“**hunt**”, in relation to all species, includes -

- (a) to intentionally kill such species by any means, method or device whatsoever;
- (b) to capture such species by any means, method or device whatsoever with the intent to kill or breed;
- (c) to search for, lie in wait for, pursue, shoot at, tranquillise or immobilise, such species with the intent to kill; or
- (d) to lure by any means, method or device whatsoever, such species with the intent to kill, but excludes the culling of a listed threatened or protected species in a protected area or on a registered game farm or for culling of a listed threatened or protected species that has escaped from a protected area and has become a damage causing animal;

“**indigenous species**” means a species that occurs, or has historically occurred, naturally in a free state in nature within the borders of the Republic, but excludes a species that has been introduced as a result of human activity;

“introduce”, in relation to a species, means the introduction by humans whether deliberately or accidentally, of a species to a place outside the natural range or natural dispersal potential of that species;

“invasive species” means any species as defined in section 1 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“night” means the period of time between sunset and sunrise;

“operational plan” means a written plan, providing detailed information on the manner, purpose and extent of the operation of an impacting or high impact or commercial recreational water use, as approved by the Minister;

“recreational water use” means the use of government water works for recreational purposes and includes all activities that require the use of water, including the surface of water for –

- (a) events, the exclusive purpose of sport, tourism or leisure;
- (b) personal use including, but not limited to, religious and cultural practices;
- (c) activities which contribute to the general health, well-being and skills development of individuals and society;
- (d) the purposes of research and education; and
- (e) commercial water uses including but not limited to bioprospecting, film production, photography and advertising;

“resource management plan” means a written plan, for the management of and control over the water surface and water body of a water resource including a water surface and water body of a government waterworks and the surrounding state-owned land, approved by the Minister and in the absence of this resource management plan includes historic zoning plans, and sustainable utilisation plans;

“restricted area” means an area in which public access is prohibited and only authorised personnel are allowed;

“surface water sport” means water skiing, tubing, or other water sport in the water, on the water or under the water;

“vessel” means any conveyance floating on, in, or over water and designed for navigation on or in water, howsoever propelled and includes any canoe, lighter, floating platform, decked vessel, carrier vessel, or any vessel equipped with an inboard or outboard motor or any other craft, whether surface craft or submarine; and

“water skiing” means to ski on or in the water with or without the assistance of any kind of skiing apparatus while the water-skier is towed by a vessel by means of a towing-rope or motorised cableway and includes kite-surfing and parasailing.

Application of Regulations

2. These Regulations are, unless specified otherwise, applicable to water storage reservoirs of all government waterworks.

Control over government waterworks

3. (1) The Minister may, in writing and for a period of time, designate a competent authority, and assign to it the necessary powers, to manage and control government waterwork and surrounding state owned land.

(2) Such powers shall be exercised for such period subject to the provisions of these regulations and terms and conditions which the Minister may deem fit.

(3) The competent authority must keep records of aspects relating to the water use such as the nature of recreational activities, number of visitors and incidents and it must make the information annually available to the Minister.

Implementation of a resource management plan on access and use of a government waterwork

4. (1) The Minister has developed resource management plans as the management tool for the recreational use of a government waterwork. These plans are site specific. The proposed institutional structures, once established, must monitor the implementation of a resource management plan.

(2) The Minister may reserve as part of a resource management plan an area in a government waterwork, whether on land or on water, for the use of specified groups or persons, and no person shall be permitted in the area reserved for the use of such group or person, except with the permission of the Minister, which will be subject to a zoning plan contemplated in a resource management plan and the approval process contemplated in Regulation (6).

(3) Minister may reserve an area in government waterwork for specific purposes and no person may make use of such defined areas for any purpose other than the purposes for which they have been reserved.

Access to government waterworks

5. (1) No person may enter a government waterwork without the written approval of the competent authority.

(2) Any person entering a government waterwork or any part thereof must, if requested by the competent authority, furnish his or her full contact details.

(3) Any person who wishes to enter any part of a government waterwork where an access point does not exist must get written approval from the competent authority.

- (4) Any person who wishes to enter a government waterwork in any vessel must ensure that he or she and the vessel comply with the requirements of the Merchant Shipping (National Small Vessel Safety) Regulations, 2007, published under Government Notice No.R. 705 of 2007 of 8 August 2007.
- (5) Failure to produce any required documentation in terms of the Merchant Shipping (National Small Vessel Safety) Regulations, 2007 and to provide safety appliances and equipment for the specific vessel, shall lead to refusal of access to the government waterwork.
- (6) Invasive alien species strategies must be complied with at all times.
- (7) A person who engages in water use for recreational purposes must ensure that –
- (a) he or she takes responsibility to exercise due care to other users;
 - (b) he or she is familiar with the Resource Management Plan information and any conditions of that government waterwork before accessing the government waterwork and must obtain relevant information from the Department of Water and Sanitation or the competent authority;
 - (c) cooperation is given to any authorised personnel, including, but not limited to the Department of Water and Sanitation personnel, implementing agencies, safety officers, wash bay operators, the South African Police Services or any other emergency personnel;
 - (d) all applicable safety rules and notices, warnings, navigational aids and signals are obeyed;
 - (e) any reservation of areas for specified purposes are complied with;
 - (f) a water resource and the associated ecosystem are not detrimentally affected;
 - (g) buoyage for restricted areas for security zones at the dam wall, containment of invasive and alien species or for conservation purposes are respected, observed and not tampered with;
 - (h) scouring, erosion or sedimentation of the watercourse is prevented;
 - (i) indigenous riparian vegetation is not removed or damaged;
 - (j) the habitat of aquatic biota is not disturbed; and
 - (k) waste or water containing waste is lawfully disposed of.
- (8) A person in control of any vessel or surface water sport in or on a submerged area -
- (a) must not be under the influence of alcohol or a drug having a narcotic effect; and
 - (b) is responsible for the safety of any passengers
- (9) No person other than an authorised official or any other person acting under the specific authority of a competent authority shall be in possession of any dangerous object in a government waterwork.
- (10) The competent authority reserves the right to search vehicles and persons for dangerous objects and may refuse a person access to the government water work if such dangerous objects are found.

Application and approval of impacting and commercial recreational water use

6. (1) A person who intends to engage in any activity that may impact on a government waterwork, must apply in writing for the approval of an operational plan for such recreational water use to the competent authority before commencing with the activity.

(2) A person who is currently engaging in any activity that may impact on a government waterwork, under the auspices of a lease agreement or any other appropriate permit, must apply in writing for approval of an operational plan for such recreational water use within 60 days of the date on which he or she is notified in writing by the competent authority to do so.

(3) The competent authority must, as soon as reasonably practicable but not more than 90 days after the submission of the operational plan by the applicant, consider that plan for approval, if the applicant has demonstrated the capacity, or has provided for the capacity, to mitigate and manage negative impacts on the water resource.

(4) The competent authority may call for additional information from the person who engages in water use for recreational purposes contemplated in subregulations (1) and (2) above, and may direct that the operational plan in question be adjusted in the way that the responsible authority may require.

(5) If the competent authority deems the recreational use unfit for the government waterwork, it may refuse the proposed activity or require that an existing activity be terminated.

(6) Any person who intends to engage, or is currently engaging in, commercial activities on a government waterwork, state land, or on private land using the water surface of the government waterwork, must comply with Treasury Regulation 16, issued under the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Application and approval of events and competitions

7. (1) Events and competitions may only take place with the written permission of the Minister.

(2) The competent authority or an event organiser, must adhere to the requirements set out in the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010) to ensure the physical safety and security of persons and the property at an event.

Photography, film production and advertising

8. A competent authority may impose charges for entrance to and the use of the facilities at government waterwork in relation to photography, film production and advertising.

Fires

9. No person shall make a fire in an undesignated area.

Hygiene and waste management

10. (1) No person shall, in a government waterwork deposit, leave any litter, bottle, broken glass, pottery, plastic article, rubbish, refuse, seeds, fruit or vegetable matter or other waste material, except in an area or receptacle provided for that purpose

(2) No person shall dump or discharge in any place on land or into the water of a government waterwork, any refuse, waste or material of any kind whatsoever.

(3) All effluent from boats and accommodation facilities within 1:100 floodline must be contained and disposed of to a licensed facility.

Camping and accommodation

11. (1) No person may stay overnight in a government waterwork except in official accommodation or on sites reserved or is available for that purpose.

(2) No night-time activities are allowed on the water surface of a government waterwork and licensed vessels providing accommodation must be moored at night at designated areas.

Damage to property

12. A person who intentionally or negligently causes damage to any government waterwork or other property within a government waterwork is liable for the damage.

Protection of biodiversity

13. (1) Any person entering a government waterwork may not hunt, kill, injure, capture or disturb any fauna or destroy the nest or eggs of any fauna and aquatic fauna must be protected at all times.

(2) Any person entering a government waterwork may not cut, uproot or destroy any flora or remove any flora from such area without the permission of the competent authority.

(3) Any person who wishes to access any part of a government waterwork for bioprospecting or breeding of any species must obtain prior approval from the competent authority.

(4) In the event of indigenous species threatening the operation and maintenance of a government waterwork, the competent authority must apply to the responsible environmental authority for the removal of such species.

(5) Any person who enters government waterwork may not introduce plant or animal species without written approval from the competent authority.

Rules and prohibited activities

14. (1) The Minister may make general or specific rules for the safety of the public in a specific government waterwork and cause them to be posted up at the entrance of that government waterwork.

(2) Where an electric or mechanical driven infrastructure is sited on a government waterwork, recreational activities may only occur at a minimum distance of 50 meters away.

(3) No person may undertake or pursue any activity which endangers the operation or safety of the infrastructure at a government waterwork.

(4) Commercial fishing is prohibited at a government waterworks unless approved by the Minister.

Offences and Penalties

15. Any person who contravenes or fails to comply with regulations 4, 5,6,7,8,9,10,11,12,13, and 14 is guilty of an offence and liable, on conviction, to a fine or imprisonment to a period not exceeding five years.

Repeal

16. The Regulations published under Government Notice No. R.654 of 1 May 1964 is hereby repealed.

Application of other laws

17. Any person who has been granted permission by the Minister to access and use a government waterwork is not exempted from having to comply with the provisions of any other laws.

Commencement

18. These Regulations shall come into effect on the date of publication thereof in the *Gazette*.