

2. LEGAL CONTEXT

Legal principles form the basis for the creation of Bills and Acts and other legal instruments which govern the activities of the nation. There are a number of Acts which are relevant to the broader environmental management field. For those who are not legally orientated, the good news is that there are only two Acts which are directly relevant to the RHP, namely the **National Water Act (NWA) Act No. 36 of 1998** and the **National Environmental Management Act (NEMA) Act No. 107 of 1998**. Both of these stem from **Section 24 of the Constitution of South Africa (Act No. 108 of 1996)** which states that citizens have a right to a clean and healthy environment and advocates the protection of the environment for the benefit of present and future generations through:

- (i) the prevention of pollution and ecological degradation
- (ii) promotion of conservation
- (iii) securing of ecologically sustainable development and use of natural resources while promoting justifiable economic and social development

NOTE:

It is vital that those involved with implementing RHP become familiar with relevant Acts and take cognizance of the provisions and implications of these. These Acts are powerful legal instruments which can be used to justify stakeholder's investment in your RHP (particularly government departments) and your RHP to interested and affected parties for example.

2.1 NATIONAL WATER ACT (NWA)

The NWA is the main Act relevant to the RHP. The NWA, which came into effect in October 1999, heralded a major change in approach from controlled supply and demand management to participatory water resource management. Under the new Act, the National Government is the public trustee of the nation's water resources.

2.1.1 Sections of the NWA relevant to the RHP

Chapter 2: Water Management Strategies

Part 1: National Water Resource Strategy

The Act charges the Minister with establishing a National Water Resource Strategy (NWRS) through public consultation for the use, protection, development, management, conservation and control of the nation's water resources.

Part 2: Catchment Management Strategies

Every Catchment Management Agency (CMA) is required to develop a catchment management strategy for the water resources within its water management area. The RHP could conceivably contribute directly to the catchment management strategy of the CMA and indirectly to the national water resource strategy.

Chapter 3: Protection of Water Resources

Part 2: Determination of class of water resources and resource quality objectives:

A component of determining the class of water resources and resource quality objectives is consideration of: the characteristics and quality of the water resource and the instream and riparian habitat; the characteristics and distribution of aquatic biota. The RHP can play a direct role in both of these aspects.

Part 3: Determination of The Reserve (Ecological Reserve and Human Reserve):

The Ecological Reserve refers to the water quality and quantity required to protect the aquatic ecosystems of the water resource, which is related to the class of the water resource. The RHP can guide this process.

Chapter 7: Catchment Management Agencies

The NWA advocates the establishment of Catchment Management Agencies (CMAs) to oversee the management of the nineteen demarcated Water Management Areas (WMAs) in South Africa.

Catchment Management Agencies are composed of a number of River Forums, which in turn comprise representatives of Water User Associations (WUAs) and a number of other stakeholders from industry, government, local councils and communities. This is an exciting and novel development of taking water management to the people.

As River Fora and CMAs are catchment-based, they have the potential to play a significant role in implementing the RHP. In the future, CMAs may play the lead role in RHP implementation rather than the current provincial RHP arrangement.

Chapter 14: Monitoring, Assessment and Information

Part 1: Establishment of National Monitoring Systems

The Minister must establish national monitoring systems on water resources for the collection of appropriate information, *inter alia*, on the quantity and quality of water resources and the health of aquatic ecosystems. This is the most applicable aspect of the NWA to the RHP as the objectives of the RHP are almost identical.

Part 2: National information systems on water resources

This includes, *inter alia*, a water resource quality information system. The objectives of the National information system include the storage and provision of information for the protection, sustainable use and management of water resources. The national RHP can contribute significantly to this information system.

2.2 NATIONAL ENVIRONMENTAL MANAGEMENT ACT (NEMA)

The NEMA is essentially an enabling piece of legislation largely governing the sustainable use of the environment (including the aquatic environment) and the protection of ecosystems. It also advocates the principle of co-operative environmental governance between government departments and stakeholders, with integrated environmental management being the key underlying principle.

2.2.1 Relevant sections of NEMA for the RHP

Chapter 5: Integrated Environmental Management

The general objectives of this section include the identification, prediction and evaluation of the actual and potential impacts on the environment, risks, consequences and alternatives and options for mitigation of activities. This section also deals with the monitoring and management of environmental impacts, and the effectiveness of the implementation of mitigating measures. The RHP could contribute to this through the monitoring of sites where potential or actual environmental impacts are occurring.

Chapter 7: Compliance, Enforcement and Protection:

Part 2: Information, enforcement and compliance

Organs of State and individuals are entitled to access to information held by the State on the state of the environment and actual and future threats to the environment. The RHP therefore has an obligation to make its information available to relevant parties, particularly if this information is being held by an organ of State such as Nature Conservation and Water Boards.

NOTE:

These and other pieces of legislation (1993 onwards) are available on the internet on the South African government website: www.polity.org.za. It is strongly advocated that prospective RHP implementers become familiar with the key sections of the new legislation.

2.3 PROVINCIAL ORDINANCES

Provincial Ordinances may be relevant to your local RHP and it is worth investigating whether their are specific implications for your programme. The main provincial ordinances are the Cape Nature and Environmental Conservation Ordinance (No.19 of 1974), Transvaal Nature Conservation Ordinance (No.12 of 1983), Orange Free State Nature Conservation Ordinance (No.8 of 1969) and the Natal Nature Conservation Ordinance (No.15 of 1974). It is also worth noting that provincial ordinances promulgated in another province, can be applied within your own province. With the establishment of the new provinces of South Africa, it is anticipated that a range of new provincial ordinances will be promulgated in the near future. In some cases, ordinances from the erstwhile homelands (former TVBC States) are still valid (unless repealed). Depending on whether the geographical location of the catchment falls within the boundaries of a former TVBC State, these may be applicable to your RHP.

2.4 LEGAL POWERS OF THE RHP

As the RHP is basically a tool for monitoring of the ecological and environmental condition of rivers, it does not have any legal standing in itself i.e. it is not specifically mandated by any South African Act. What this means is that the results obtained from the various biomonitoring indices (eg SASS4 score) cannot *per se* be used in a court of law as evidence to prosecute an organisation or individual. However, the RHP can invoke certain legal principles contained in NEMA and NWA, such as the Polluter Pays Principle and Duty of Care Principle, where there is irrefutable evidence of environmental degradation or a violation of permit conditions.