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**GOVERNMENT NOTICE**

**DEPARTMENT OF WATER AFFAIRS AND FORESTRY  
DEPARTEMENT VAN WATERWESE EN BOSBOU  
NATIONAL WATER ACT, 1998**

**NO. R.**

**2005**

**DRAFT REGULATIONS FOR THE USE OF WATER FOR RECREATIONAL PURPOSES  
GENERALLY AND IN RESPECT OF A GOVERNMENT WATERWORKS AND  
SURROUNDING STATE-OWNED LAND**

The Minister of Water Affairs under sections 26(a), (g), and 116 read together with section 21(k) of the National Water Act, 1998 (Act No. 36 of 1998) (hereinafter referred to as “the Act”) intends to make the Regulations in the Schedule.

Interested parties are invited to submit written comments in connection with the proposed Regulations to the Director-General, Water Affairs and Forestry, Private Bag X313, Pretoria, 0001; Fax No. (012) 336 6608; e-mail [deb@dwaf.gov.za](mailto:deb@dwaf.gov.za), (for the attention of the Sub-directorate Environment and Recreation, Ms L. Fick.) by ..... 2005.

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

Date:

## SCHEDULE

### EXPLANATORY NOTE

*The purpose of these regulations is to ensure that recreational water use is undertaken in ways which take into account amongst other factors –*

- (a) The provisions of Section 2 of the Act;*
- (b) The need to apply precautionary approaches to recreational water use of the nation's water resources;*
- (c) The need to utilise recreational water use of the nation's water resources to achieve economic growth, human resource development, capacity building, employment creation and sound ecological balance consistent with the development objectives of national government;*
- (d) The need to protect the nation's water resources and the bio-diversity of aquatic and associated eco systems and to minimise pollution of those water resources;*
- (e) The need to achieve, to the extent practicable, broad and accountable participation in the decision making processes provided for in these regulations;*
- (f) The need to re-structure the commercial recreational water use industry to address historical imbalances and to achieve equity within the industry;*
- (g) The need to ensure compatibility of recreational water uses with other water uses, including other recreational water uses; and*
- (h) The need to ensure the safety of all recreational water uses*

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## CHAPTER 1

### INTERPRETATION AND FUNDAMENTAL PROVISIONS

#### 1. Definitions

- (1) In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act, shall have that meaning, and-
- (a) "**commercial recreational water use**" means recreational water use for financial gain, including organised sporting activities and events;
  - (b) "**high impact recreational water use**" means recreational water use which may, does or is likely to detrimentally impact a water resource or other water uses of that water resource;
  - (c) "**operational plan**" means a written plan, providing detailed information pertaining to the operation of a high impact or commercial recreational water use, approved by the Minister of Water Affairs and Forestry;
  - (d) "**the Department**" means the Department of Water Affairs and Forestry;
  - (e) "**recreational water use**" means the use of water for recreational purposes and includes all activities that require the use of water, including the surface of water for –
    - (i) the exclusive purpose of sport, tourism or leisure;
    - (ii) personal or commercial purposes; or
    - (iii) activities which contribute to the general health, well-being and skills development of individuals and society;
  - (f) "**vessel**" refers to any craft capable of navigation by water; and
  - (g) "**water 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 of Water Affairs and Forestry;
- (2) In these regulations, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression, have, unless the contrary intention appears from the relevant regulation, corresponding meanings.

#### 2. Compliance with the National Water Act and other laws

These regulations do not exempt a person undertaking recreational water use from compliance with any provision of the Act unless stated otherwise, or any other applicable law, regulation, ordinance or by-law.

#### 3. Principles of administrative justice

- (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), any administrative process conducted or decision taken in terms of these regulations

must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.

- (2) Any decision contemplated in sub-regulation (1) must be in writing and accompanied by written reasons for such decision.

#### **4. Area of applicability and compliance with other regulations**

- (1) These regulations are applicable throughout the Republic of South Africa.
- (2) Any person who undertakes a water use for recreational purposes must comply with Government Notice R.1352 in Gazette No. 20606 dated 12 November 1999 when that person is required to register the recreational water use concerned.

#### **5. Access to a water resource for recreational use of water**

A person who has lawful access to a water resource may use the water surface or body of that water resource for recreational water use-

- (a) subject to regulation 6 and 12;
- (b) if the water use does not detrimentally impact any other water use;
- (c) if the water use is not harmful or potentially harmful to human health and safety or the water resource;
- (d) if the water use is compliant with an approved recreational water use operational plan; and
- (e) subject to the requirements of any approved water resource management plan.

## **CHAPTER 2**

### **PRECAUTIONARY PRACTICES, OPERATIONAL AND WATER RESOURCE MANAGEMENT PLANS**

#### **6. Precautionary practices**

A recreational water user must ensure that-

- (a) the owner or skipper of a vessel at all times-
  - (i) operates or handles the vessel safely;
  - (ii) is not under the influence of intoxicating liquor or any substance having a narcotic effect;
  - (iii) the vessel, when not in use, is securely anchored or moored so as not to endanger other vessels or persons on the water or along the banks of the relevant water resource;
  - (iv) the number of persons aboard a vessel does not exceed the carrying capacity of that vessel; and

- (v) has the standard of knowledge and experience for navigating or otherwise operating or handling the vessel;
- (b) all vessels are constructed of suitable materials of good quality with regard to sound design practise and methods of construction;
- (c) safety equipment adequate for the safety of the maximum number of persons, in particular flotation aids and lifejackets, is provided and maintained to industry standards;
- (d) relevant safety rules and lawful notices, warnings, water traffic signs and signals are obeyed;
- (e) a water resource and the associated ecosystem are not detrimentally affected;
- (f) scouring, erosion or sedimentation of the watercourse is prevented;
- (g) indigenous riparian vegetation is not removed or damaged;
- (h) the habitat of aquatic biota is not interfered with;
- (i) waste or water containing waste is not disposed into a watercourse or on the surrounding land, except at such places provided for the purpose;
- (j) the recreational water use is not harmful or potentially harmful to human health and safety;
- (k) other water users and any other persons are not detrimentally impacted upon; and
- (l) information is obtained from the Department, relevant water management institution or authority regarding-
  - (i) any dangerous conditions;
  - (ii) safety rules; and
  - (iii) relevant water resource management plans.

**7. Application and approval of a high impact and commercial recreational water use operational plan**

- (1) The Minister may require a high impact or commercial recreational water user to apply for the approval of a operational plan for a high impact or commercial recreational water use within 180 (one hundred and eighty) days of the date on which he or she is notified by the Minister to do so.
- (2) An applicant who prepares a operational plan pursuant to sub-regulation (1) must-
  - (a) establish baseline information concerning the water use, associated facilities, water resource, and environment concerned;
  - (b) assess and evaluate the impact of his or her high impact or commercial recreational water use on the-
    - (i) water resource;
    - (ii) environment; and
    - (iii) socio-economic conditions of any person who might be directly affected by the high impact or commercial recreational water use;

- (c) describe the manner and extent to which he or she has consulted with interested and affected parties on the contents of the operational plan;
  - (d) describe the manner and time period in which he or she intends to achieve stakeholder equity in the commercial recreational water use concerned;
  - (e) describe the manner in which the applicant intends to-
    - (i) inform his or her employees, and in the case of a tourism enterprise, the applicant's guests, of any environmental, health and safety risks which may result from their work and recreation water use, where applicable; and
    - (ii) deal with risks in order to avoid harm to human health and to the environment; and
  - (f) describe the manner in which the applicant intends to-
    - (i) modify, remedy, control or limit any action, activity or process which may detrimentally impact on the water resource and the environment;
    - (ii) contain or remedy the cause of any negative impact on the water resource and the environment; and
    - (iii) comply with any prescribed waste standard or environmental management standards or practises.
- (3) The Minister must, as soon as reasonably practicable, after the lodgement of the operational plan by the applicant, consider that plan for approval, if-
- (a) it complies with the requirements of sub-regulation (2); and
  - (b) the applicant has demonstrated the capacity, or has provided for the capacity, to mitigate and manage negative impacts on the water resource.
- (4) The Minister may call for additional information from the water user contemplated in sub-regulation (2) and may direct that the operational plan in question be adjusted in such way as the Minister may require.
- (5) Upon approval of the operational plan by the Minister, the water user must comply with the provisions of the approved operational plan.

## **8. Compilation and regulating of a water resource management plan**

- (1) The Minister may require that a water resource management plan be compiled and approved for a water resource or for government waterworks to be utilised for recreational purposes.
- (2) A water resource management plan, pursuant to sub-regulation (1) must be compiled in terms of the Department's Guidelines on Integrated Water Resource Planning for Using Water for Recreational Purposes, dated January 2005, as amended from time to time.
- (3) The Minister must, before approving a water resource management plan under these regulations -

- (a) publish a suitable notice in newspapers and/or other media and take any other steps to bring the plan to the attention of interested persons-
    - (i) setting out the draft water resource management plan; and
    - (ii) inviting written comments to be submitted on the proposed plan within 60 (sixty) days after publication of the notice; and
  - (b) consider all comments received.
- (4) After complying with sub-regulation (3), the Minister may-
- (a) amend the draft water resource management plan; and
  - (b) subject to sub-regulation (3), publish the final water resource management plan in newspapers and/or other media within reasonable proximity of the water resource concerned.

#### **9. Record keeping and disclosure of information**

- (1) Any person using water for recreational water use purposes may be requested to keep records of aspects relating to the water use and make the information available to the responsible authority.
- (2) Any information on the occurrence of any incident that causes, or may cause or is likely to cause, detrimental impacts on the water resource quality must be provided to the responsible authority in terms of section 20 of the Act.

### **CHAPTER 3**

#### **ACCESS TO AND RECREATIONAL USE OF GOVERNMENT WATERWORKS**

#### **10. Access to and use of government waterworks for recreational purposes**

- (1) The Minister may allow or refuse any person access to any part of a government waterworks and may prohibit-
  - (a) the holding or giving of any public entertainment;
  - (b) the collection of any money from the public; or
  - (c) any other activity which the Minister, for good reason, considers necessary and desirable to ensure compliance with the Act and these regulations.
- (2) The Minister may determine general or specific rules for the safety of the public at a government waterworks and the surrounding state-owned land made available by the Minister for recreational water use and must cause the rules to be posted up in places approved by the Minister for such purpose.

- (3) The Minister may in respect of any government waterworks and the surrounding state-owned land that has been made available by the Minister for recreational purposes, from time to time generally or specifically, publish rules relating to-
- (a) access to the government waterworks and surrounding state-owned land;
  - (b) the use of the government waterworks and surrounding state-owned land and the conduct persons in such areas;
  - (c) water and land speed limits applicable to the government waterworks and surrounding state-owned land;
  - (d) reservation of certain areas for use for specified purposes;
  - (e) hygiene;
  - (f) times during which the government waterworks and surrounding state-owned land will be open to the public;
  - (g) access to the government waterworks and the surrounding state-owned land;
  - (h) reasonable charges payable for access to or for the use of the amenities or other facilities provided in the government waterworks and the surrounding state-owned land;
  - (i) water-based recreation activities; and
  - (j) any other matters which the Minister considers necessary or expedient to determine in order that the objects of the Act and of these regulations may be achieved.

#### **11. Publication of rules**

- (1) The Minister must, before making any rules under these regulations-
- (a) publish a suitable notice in newspapers and/or other media and take any other steps to bring the notice to the attention of interested persons –
    - (i) setting out the draft rules; and
    - (ii) inviting written comments to be submitted on the proposed rules within 60 (sixty) days after publication of the notice; and
  - (b) consider all comments received.
- (2) After complying with sub-regulation 1, the Minister may –
- (a) amend the draft rules; and
  - (b) subject to sub-regulation 1, publish the rules in final form in newspapers and/or other media within reasonable proximity of the water resource concerned and post those rules at or near a suitable place at the government waterworks and the surrounding state land concerned.

#### **12. Precautionary practices**

- (1) The provisions of regulations 6, 7, 8, and 9 apply to recreational use of a government waterworks.

- (2) In the case of a government waterworks for which an approved water resource management plan does not exist-
- (a) no recreational facilities or structures may be established on surrounding state land without the written approval of the Department or any other relevant authority;
  - (b) no recreational water use involving the use of vessels for overnight accommodation purposes may take place without the written approval of the Department;
  - (c) no recreational activities may take place at the minimum distance of 100 metres from the dam wall and outlet works or spillway without the written approval of the Department; and
  - (d) no recreational water use may take place, where cruising speed is involved within 70 metres from the water's edge and in the river inlet areas to the dam.

## **CHAPTER 4**

### **OFFENCES AND GENERAL PROVISIONS**

#### **13. Offences**

Any person who contravenes any provision of these regulations is guilty of an offence and is subject to the penalty set out in section 69(2) of the Act.

#### **14. Repeal of regulations made under the Water Act, 1956**

The regulations published in Government Notice R.654 dated 1 May 1964, in terms of the Water Act, 1956 (Act No 54 of 1956) are hereby repealed.