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## GENERAL NOTICE

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### NOTICE 126 OF 2015

#### DEPARTMENT OF WATER AND SANITATION

#### NATIONAL WATER ACT, 1998 (ACT NO. 36 of 1998) READ WITH THE NATIONAL WATER AMENDMENT ACT, 2014 (ACT 27 OF 2014)

#### DRAFT REGULATIONS REGARDING THE PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS IN TERMS OF SECTION 26(1) (k) OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 of 1998):

I, Nomvula Paula Mokonyane, in my capacity as Minister of Water and Sanitation hereby give notice of intention, under the powers vested in me by section 69(1)(a), of the National Water Act, (Act No. 36 of 1998), to publish the regulations contained in this Schedule in respect of procedural requirements for water use licence applications.

Members of the public are invited to submit to the Minister, within 60 (sixty) days after the publication of the notice in the *Gazette*, written comments or inputs to the following addresses:

**By post to:**

The Director - General  
Department of Water and Sanitation  
Private Bag 313  
Pretoria  
0001

**By hand at:**

Department of Water and Sanitation,  
185 Francis Baard Street, Sedibeng  
Building, Room 914, Pretoria, 0001

**Marked for the Attention: MR ANIL SINGH – DDG: REGULATION COMPLIANCE  
AUTHORISATION**

by email: [singha3@dwa.gov.za](mailto:singha3@dwa.gov.za) or by fax to: (086 561 4745).

Any enquiries in connection with the draft regulations can be directed to Mr. A B Singh at (012) 336 7360.

Comments received after the closing date may not be considered.

NP MOKONYANE

03.12.14

MINISTER WATER AND SANITATION



### **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, no 36 of 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.

An integrated process has been designed to address issues relating to environmental laws in mining areas, which needs to be applied in a well co-ordinated, structured and synchronised manner, which will give effect to the “one environmental system”.

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## CHAPTER 1

### PURPOSE INTERPRETATION AND DEFINITIONS OF THESE REGULATIONS

#### Purpose of Regulations

1.

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 licences in order to avoid or minimize detrimental impacts on the water resources.

#### Interpretation and Definitions

2.

(1) Section 21 of the National Water Act, 1998 (Act No 36 of 1998), should be consulted for definitions of water use activity. In these Regulations, any other word or expression to which a meaning has been assigned in the Act shall have that meaning, and unless the context requires otherwise –

**“Act”** means the National Water Act, 1998 (Act 36 of 1998);

**“Amendment Act”** means the National Water Amendment Act, 2014 (Act 27 of 2014);

**“application”** means an application for—

- (a) a water use licence in terms of section 22, 40 and 41 of the Act;
- (b) transfer of water use licence in terms of section 25 of the Act;
- (c) a review and amendment to a water use licence in terms of section 49 and 50, of the Act including successors in title in terms of section 51 of the Act;
- (d) renewal of a water use licence in terms of section 52 of the Act;
- (e) compulsory licensing in terms of section 43 of the Act;

**"competent person"** means a person who has the requisite qualifications, training and experience in water resources management and /or regulation as recognized by the responsible authority;

**"cumulative impact"**, in relation to a water use, means the impact of a water use that in itself may not be significant, but may become significant when added to the existing and potential impacts eventuating from similar or diverse water use activities or undertakings in the area;

**"days"**, the refers to the 300 days cumulative period and constitutes 300 working days;

**"Integrated water use licence application"** means a water use licence application with two or more water uses that are interlinked, provided the application belongs to one person and the water uses are exercised by the one person - Section 43(1) of the Act

**"mining"** has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

**"production right"** has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

**"prospecting"** has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

**"reconnaissance"** has the meaning assigned to it in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);

**"Record of Recommendation"** means a recommendation document that is prepared by the assessor, which analyses and summarises information in the application documents submitted by the applicant; (Recommended for removal)

**"responsible authority"** means the authority delegated with making a decision on a water use licence application; (enhance as per the Act)

**“sector”** means an economic sector in which water is used, and for these regulations, the sectors include mining, industry, agriculture, forestry, infrastructure and local government developments;

**“State department”** means any department or administration in the national or provincial sphere of government exercising functions that involve the management of the environment; and;

**“the Act”** means the National Water Act, 1998 (Act No. 36 of 1998) including any amendments,

**“timeframes”** for the purpose of these Regulations means the period determined to make a decision on a water use licence application as per these Regulation

**“Days”** working days excluding 15 December to 02 January

(2) 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.

(3) 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.

(4) 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 timeframes

**“water management institution”** means a catchment management agency, a water user association, a body responsible for international water management or any person who fulfils the functions of a water management institution in terms of the Act;

**“water use”** means water uses as outlined in section 21 of the Act;

## CHAPTER 2

### RESPONSIBLE AUTHORITY

#### Responsible authority

3.

(1) All applications in terms of these Regulations must be decided upon by the responsible authority.

(2) Any dispute or disagreement in respect of who the responsible authority should be in relation to any specific application, must be resolved by the Minister.

#### Where to lodge an application

4.

(1) The application for a water use licence must be submitted to;

(a) the respective provincial office of the Department of Water and Sanitation, or such other offices as maybe specified by the provincial office, or

(b) the Catchment Management Agency, where the water resource management and / or water use licensing functions have been delegated to the Catchment Management Agency.

(2) If the Minister, in terms of section 63 of the Act, delegated any powers or duties of a responsible authority in relation to an application for a water use licence, the application must be submitted to that delegated agency.

(3) If the Catchment Management Agency is the responsible authority in respect of a specific application, the application must be submitted to the relevant Catchment Management Agency offices.

**Consultation between responsible authority and State departments administering a law relating to a matter affecting the environment**

5.

(1) Where an application in terms of these Regulations must also be made in terms of other legislation and that other legislation requires that information must be submitted or processes must be carried out that are substantially similar to information or processes required in terms of these Regulations, and where an agreement has been reached in order to give effect to Chapter 3 of the Constitution and section 41 of the Act (as amended), the application must be dealt with in accordance with such agreement.

(2) The Minister, or identified responsible authority must consult with every State department that administers a law relating to a matter affecting the water uses relevant to that application for a water use licence when he or she considers the application.

(3) A State department consulted in terms of sub-regulation (2) must submit its comments within 30 days from the date on which the Minister, or identified responsible authority requests such State department, in writing to, submit comments.

(4) Where comments submitted in terms of sub-regulation (3) constitute an objection as contemplated in the relevant legislation of the commenting State department, the relevant State department must provide a copy of such objection to the applicant.

**Responsible authority's right of access to information**

6.

(1) A responsible authority is entitled to all information that reasonably has or may have the potential of influencing any decision with regard to an application unless access to that information is protected by law.

(2) Unless access to the information contemplated in sub-regulation (1) is protected by law, an applicant or duly appointed representative of the applicant in possession of that information must, on request by the responsible authority, disclose that information to the responsible authority, whether or not such information is favourable to the applicant.

**Criteria to be taken into account by responsible authority when considering applications**

7.

When considering an application the responsible authority must have regard to sections 27, 28, 29, 30, 40 and 41 of the Act, as amended by Act no 27 of 2014 as well as the need for and desirability of the water uses contemplated.

**CHAPTER 3****APPLICATION FOR A WATER USE LICENCE*****Part 1: Pre –application process*****Notice of intent to apply for a water use licence**

8.

(1) Any person intending to apply for a water use licence shall submit a written notice of such intent to apply to the department.

(2) Upon receipt of the written notice of intent to apply for a water use licence, the responsible authority shall, within five days, issue a letter acknowledging the written notice of intent to apply for a water use licence to the applicant, indicating subsequent processes to be followed.

(3). For a water use licence application related to mining activities;

(a) a written letter of acceptance of the respective prospecting permit or mineral rights application from the Department of Mineral Resources shall form part of the notice of the intent to apply for the water use licence.

(b) the written notice from the Department of Mineral Resources must be submitted to the responsible authority within a period of 5 days from date of issuance by the Department of Mineral Resources.

(c) such water use activities for mining activities shall only be processed on submission of proof of acceptance from Department of Mineral Resources of the prospecting or mineral rights application.

#### **Pre-application meeting and site inspection**

9.

(1) The applicant must conduct compulsory pre-application processes with the responsible authority, involving meetings and site inspection of facilities of proposed water uses following from the notice of intent to apply in Regulation 8.

(2) The undertaking of the pre-application consultations with the responsible authority must comprise the following;

(a) at least one meeting between the applicant and the responsible authority to clarify the water uses contemplated;

(b) at least one inspection of the site and any facilities proposed for water uses

(3) The pre-application process must be concluded within a period of 30 days from the date of lodging of the notice of intent to apply for a water use licence.

- (4) The applicant is responsible to making himself/herself available within the stipulated timeframe.

## ***Part 2: Application compilation and submission***

### **Compilation and submission**

10.

The applicant shall compile and submit the application to the responsible authority in a period of **100 days** following the conclusion of the pre-application process contemplated in Regulation 8 and 9.

### **Requirements**

11.

- (1) An application for a water use licence must be made to the responsible authority referred to in Regulation 3.
- (2) An application must-
- (a) be made on an official application form obtainable from the relevant responsible authority for the different water uses; and
  - (b) be supported by supporting technical documents as specified and required by the responsible authority;
  - (c) be accompanied by the prescribed non-refundable 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;

**Power of attorney authorising an agency**

12.

Should the applicant prefer to utilise the services of any other person to manage the application, the application must be accompanied by a power of attorney from the applicant authorising that person to act and manage the application on behalf of the applicant.

**Suitably Qualified person to compile specialist reports**

13.

Specialist Reports must be compiled by a suitably qualified person who must be registered with the requisite professional body.

**Submission of applications**

14.

(1) Applications shall be submitted electronically.

(2 ) The Responsible Authority may offer assistance in lodging the water use licence application to deserving previously disadvantaged persons on merit and after due assessment.

**Compliance with formal requirements**

15.

(1) Upon receipt of an application, the responsible authority to which the application is submitted must check whether the application-

- (a) is properly completed and that it contains the all information required in the application forms; and
- (b) is accompanied by any reports, other documents and fees as required in terms of these Regulations; and

(2) The information requirements in respect of the application shall be as per information requirements identified at the pre-application meeting as well as any applicable guidelines and templates provided by the responsible authority at the pre-application consultation.

(3) The responsible authority must, within **10 days** of receipt of the application, and in writing-

- (a) acknowledge receipt of and accept the application, if the application is in order; or
- (b) acknowledge receipt and reject, the application if it does not meet the information requirements in terms of regulation 15(2).

(4) The applicant or duly appointed applicant's representative managing an application that has been rejected in terms of regulation (3) (b) may correct that application and resubmit it to the responsible authority within a period of **10 days** from the date of rejection.

(5) Should the applicant fail to submit the corrected application in sub-regulation (3) within the timeframe stipulated in sub-regulation (4), the applicant shall be decided on the available information.

(6) Corrected application that has been resubmitted to the responsible authority in terms of Sub-regulation (4) shall again be subjected to the provisions of Sub-regulations (1) and (2).

### **Integration of water use licence applications and water use activities**

16.

(1)

If an applicant intends undertaking two or more interrelated water uses in the same general area within the area of operation and jurisdiction of the responsible

authority, the responsible authority may consolidate the water uses into an integrated licence application in respect of all the water uses.

(2) If the responsible authority grants permission in terms of sub-regulation (1), the application must be dealt with as an integrated process in respect of all the water uses covered by the application, but the potential cumulative impacts of each water use activity must be considered in terms of the location where the activity is to be undertaken.

### **Criteria for consideration of applications**

17.

When considering an application the responsible authority shall have regard to the need for and desirability of the water uses.

### **Assessment of a water use licence application**

18.

(1) An application for a water use licence shall be subjected to an administrative, technical and legal assessment to arrive at a decision.

(2) The assessment shall be finalized in 153 days

(3) The assessment shall be summarized in a record of proceedings, called the Record of Recommendation (RoR).

(4) The assessment shall follow 6 broad steps comprising:

(a) Initial assessment to validate the content of the applicant's submission;

(b) Review of any specialist reports submitted by the applicant and consideration of the Reserve;

- (c) Any request for outstanding information, within the prescripts of Regulation 15;
- (d) Final assessment of any new information submitted by the applicant within prescripts of Regulation 15 for Review and recommendation by the Water Use Authorisation Assessment Advisory Committee (WUAAAC);
- (e) Decision by the responsible authority

### **Requirement of additional information**

19.

- (1) The applicant may request an extension of time at any point of the application process to provide additional information that may be required to supplement the application;
- (2) The request will be considered and a decision taken by the Responsible Authority.
- (3) Where a request of extension is granted, the number of days to finalise the application shall be extended by the same number of days as granted in the response to the request;
- (4) In case of outstanding information being required, the applicant shall provide such in a maximum of 30 days. The applicant may request extension to submit the required information. In such a case the Responsible Authority shall not be held responsible to finalize the application in the stipulated time frame;

### **Parties and structures undertaking the water use licence assessment**

20.

A water use licence application shall be allocated to an official of the Department for the assessment of the application. 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

#### **Comments and review by responsible authority's specialists**

21.

Relevant technical and legal components shall be afforded an opportunity to review on the water use licence applications,

#### **Water use assessment advisory committee**

22.

As provided for in regulation 18 (4) (d) all applications shall be presented to a water use assessment advisory committee

#### **Timeframes for responsible authority**

23.

(1) The responsible authority shall process and make a decision on the applications accepted as complete in terms of Regulation 15 (3) (a), in a period of 143 days from the date of acknowledgement of the application acceptance.

(2) A responsible authority and applicant must meet timeframes applicable in these Regulations, as guided by table 1.

Table 1: Timeframes for processing of water use licence applications

<b>Stages of water use licence application process</b>	<b>Days required</b>	<b>Cumulative days</b>
<b>Inception of application at relevant State department (if so required)</b>	7 days for mining	7
<b>Applicant to inform responsible authority of the intent to apply</b>	Within 5 days of acceptance for mining related applications	12
<b>Responsible authority acknowledges receipt of notice of intent to apply</b>	5 days	17
<b>Meetings and site inspection and grant permission to proceed with application</b>	30	47
<b>Compile application / Submission /</b>	100	147
<b>Reject / Accept Application</b>	10	157
<b>Final processing and recommendation</b>	120	277
<b>Decision and communication to applicant</b>	23	300

(3) Where the applicable timeframes contemplated in regulations 9 (3), 15 (3), as the case may be, are not met by the responsible authority for reasons attributable to the applicant, the Regulation 19 shall apply

(4) Where the applicable timeframes contemplated in regulations 9 (3), 15 (3), as the case may be, are not met by the responsible authority for other reasons timeframes are automatically extended by **40 days**.

(5) If additional information is required during the rejection and or acceptance of an application as per Regulation 15 (3), such information shall be provided within the stipulated timeframes

(6) Upon the lapsing of an extension contemplated in sub regulation (2) for decisions contemplated in Regulations 9 (3), 15 (3), the responsible authority shall base his or her decision on the available information.

(7) The responsible authority may request for any additional information to assist with the processing of the application at any time during the water use licence application assessment process, in line with the timeframes in Table 1.

(8) Upon the lapsing of an extension contemplated in sub-regulation (2) regarding decisions to grant or refuse the licence contemplated in regulations 24 or 37, as the case may be, the provisions of section 6(2)(g) and (3) of the Promotion of Administrative Justice Act, 2000 will apply.

### ***Part 3: Water use licence***

#### **Issuance of a water use licence**

24.

(1) If the responsible authority decides to grant a water use licence, the responsible authority must issue a water use licence complying with section 28 and 29 of the Act.

(2) If in the case of an application referred to in Regulation 16, the responsible authority decides to grant a water use licence in respect of more than one water use, the responsible authority may issue an integrated water use licence for all the water uses.

(3) The licence shall be effective from the date of signature and any water use charges in respect of the licence shall be applicable from the same date.

### **Content of a water use licence**

25.

(1) A water use licence must specify-

- (a) the name, address of the person to whom the licence is issued;
- (b) a description of the activity that is authorised;
- (c) a description of the property on which the water use is to be undertaken and the location of the activity on the property, or if it is, a linear activity, a description of the route of the activity; or
- (d) the period for which the water use licence is valid, if granted for a specific period;
- (e) Conditions as stipulated in Section 29 of the Act subject to which the activity may be undertaken.

## **CHAPTER 4**

### **TRANSFER OF A WATER USE LICENCE**

#### **General**

#### **Guide**

26 .

The transfer of a water use authorization is guided by Section 25 of the Act.

***Part 1: Procedure for temporary transfer of a water entitlement*****Submission to water management institution**

27 .

- (1) An application for a temporary transfer of a use authorization shall be submitted to the applicable water management institution.
- (2) The application shall procedures as set and determined by the relevant water management institution.

**Term of a temporary transfer**

28 .

The term of the temporary basis under these regulations shall be one year.

***Part 2: Transfer by holders of a water use authorisation*****Procedure**

29 .

- (1) The procedural process for applications for a permanent transfer of a water use as contemplated in section 25 (2) of the Act shall be as prescribed in Chapter 3 of these Regulations.
- (2) The person who surrenders an entitlement to facilitate a licence application must also submit a water use licence application in terms of the regulations in chapter 3.

## **CHAPTER 5**

### **COMPULSORY LICENSING**

#### **Procedure for compulsory licence application**

30.

The procedure for compulsory licensing process shall be as set out in sections 43, 44, 45, 46, 47 and 48 of the Act, and any other Regulations that may be promulgated by the responsible authority in terms of the Act.

#### **Consideration of allocation schedules in the water use licence assessment advisory committee**

31.

Before publishing the in the government gazette, the proposed allocation schedules and preliminary allocation schedules shall be considered in the water use licence assessment advisory committee.

## **CHAPTER 6**

### **REVIEW AND AMENDMENT OF A WATER USE LICENCE**

#### **Period after which an amendment maybe submitted**

32.

A holder of a water use licence shall submit an application for an amendment to water use licence after 90 days from the date of issuance of that licence.

**Application to responsible authority**

33.

An application for an amendment of a water use licence must be made to the responsible authority referred to in Regulation 3.

**Timeframes for amendments**

34.

The application for amendment of a water use licence shall be subject to the timeframes in these regulations.

**CHAPTER 7****RENEWAL OF A WATER USE LICENCE****Responsible authority**

35.

An application for a renewal a water use licence must be made to the responsible authority referred to in Regulation 3.

**Period of submission before expiry of a licence**

36.

(1) A holder of a water use licence shall submit an application for the renewal of water use licence.

(2) The duration for submission and assessment of an application for renewal of a water use licence shall be as stipulated in 23 (2).

### **Timeframes for renewal**

37.

The application for renewal of a water use licence shall be subject to the timeframes in these regulations.

## **CHAPTER 8**

### **PUBLIC PARTICIPATION PROCESS**

#### **Public participation process**

38.

(1) Following site inspection during the pre-consultation meeting, the Responsible Authority may require the applicant to undertake public consultation in terms of section 41 (4) of the Act, including land claimants.

(2) In conducting the public participation, the applicant must take into account any applicable guidelines, and direction in terms of section 41 of the Act.

(3) All interested and affected parties including recognised land claimants as published in the Government Gazette must be provided with an opportunity to provide their view regarding supporting or objecting to the application in question.

(4) Notice of the application must be provided to interested and affected parties by;

(a) fixing a written notice board at a conspicuous place to the public at the boundary or on the fence of;

- i. the site where the water use activity to which the application relates is or is to be undertaken, and ;
- ii. any alternative site mentioned in the application

(b) giving written notice to

- i. the owner or person in control of that land, if the applicant is not the owner or person in control of that land
- ii. the occupiers of the site where the water use is or is to be undertaken or an alternative site where the water use is to be undertaken;
- iii. owners and occupiers of land adjacent to the site where the water use is or is to be undertaken or an alternative site where the water use is to be undertaken
- iv. the municipal councillor of the ward in which the water use is or is to be undertaken or an alternative site where the water use is to be undertaken and any organization of ratepayers that represent the community in the area
- v. any organ of state having jurisdiction in respect of any aspect of the water use activity, and
- vi. any other party as required by the responsible authority

(c) placing an advertisement in –

- i. one local newspaper, or
- ii. any official Gazette that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations

(d) placing an advertisement in at least one provincial newspaper or national newspaper, if the water use has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is undertaken; Provided that this paragraph need not be complied with in an advertisement has been placed in an official Gazette referred to in sub-regulation (c ) (ii); and

(e) using reasonable alternative methods, as agreed to by the responsible authority, in those instances where a person is desiring of but unable to participate in the process due to;

- i. illiteracy
- ii. disability; or
- iii. any other disadvantage.

(5) A notice, notice board or advertisement referred to in sub-regulation (4) must –

(a) give details of the application which is subject to public participation; and

(b) state

- i. that the application has been submitted to the responsible authority in terms of these regulations as the case maybe,
- ii. the nature and locality of the water uses to which the application refers,
- iii. the water uses,
- iv. where further information on the application or water uses maybe obtained; and
- v. the manner in which and the person to whom representations in respect of the application can be made,

(6 ) A notice board referred to in sub-regulation (4) must, -

(a) be of a size at least 60 cm by 42 cm; and

(b) display the required information in lettering and in a format as may be determined by the responsible authority

(7) When complying with this regulation, the person conducting the public participation process must ensure that –

(a) information containing all relevant facts in respect of the application is made available to potential and affected parties; and

(b) participation by potential and affected parties is facilitated in such a manner that all potential and affected parties are provided with reasonable opportunity to comment on the water use licence application.

#### **Register of interested and affected parties**

39 .

(1 ) The applicant must open and maintain a register which contains the names and contact details and addresses of –

(a) all persons, who as a consequence of the public participation process conducted in respect of that application in terms of regulation 38, have submitted written comments or attended meetings with the applicant or the applicant's nominated representative,

(b) all persons who, after completion of the public participation process, have requested the applicant or the applicant's nominated representative managing the application, in writing, for their names to be placed on the register; and

(c) all organs of state which have jurisdiction in respect of the water use activity to which the application relates.

**Registered interested and affected parties entitled to comment on submissions**

40 .

(1) A registered and affected party is entitled to comment in writing on all written submissions made on the application, and to bring to the attention of the responsible authority any issues which that party believes maybe of significance to the consideration of the application, provided that

(a) comments are submitted within –

- i. the approved timeframes, or
- ii. any extensions of a timeframe set by the responsible authority

(b) a copy of the comments submitted directly to the responsible authority is made to the applicant,

(c) the interested and affected party discloses any direct business, financial, personal or other interest which that party that may have in the final decision of the application

(2) Registered interested and affected parties

**Comments of interested and affected parties to be recorded in reports submitted to Responsible authority**

41 .

(1) The applicant must ensure that the comments of interested and affected parties are recorded in reports, and that such written comments, including records of meetings, are attached to the report submitted to the responsible authority;

(2) Where a person is desiring but unable to access written comments due to –

- i. lack of skills to read or write;
- ii. disability;

iii. any other disadvantage, reasonable alternative methods of recording comments must be provided for.

(3) Notwithstanding the provisions of section 148, any applicant for a -

i. Water use licence arising out of the integration process contemplated in subsection (5), who is aggrieved by a decision of the responsible authority, may lodge an appeal to the Minister against the decision.

## CHAPTER 9

### APPEALS

#### Application of this Chapter

42 .

(1) This Chapter applies to -

(a) Notwithstanding the provisions of Section 148 of the Act, any applicant who is aggrieved by a decision on a water use licence application, arising out of the integrated process, contemplated in the National Water Amendment Act (Act 27 of 2014), by the responsible authority, may in terms of these regulations lodge appeals in terms of Section 41(6) of the Amendment Act,

(2) No appeal in terms of this Chapter is available if the Minister took decisions herself in her capacity as the competent authority for the application for a water license or authorisation.

(3) Decisions that-

(a) are subject to an appeal to the Minister in terms of section 41(6) of the Amendment Act; and

- (b) were taken by an organ of state acting under delegation in terms of the integrated licensing process outlined in the Amendment Act, in the exercise of a power or duty vested by the Amendment Act or these Regulations in a competent authority.

### **Jurisdiction of Minister or Delegated Authority to decide appeals**

43.

Notwithstanding the provisions of section 148 of the Act an appeal must be decided as provided for in section 41(6) of the Amendment Act read with regulation 51.

### **Notice of intention to appeal**

44.

- (1) A person affected by a decision referred to in these regulations who wishes to appeal against the decision, must submit a notice of intention to appeal with the Minister, within 20 days after the date of the decision.
- (2) If the appellant is an applicant, the appellant must provide each person and organ of state which was a registered interested and affected party in relation to the applicant's application, within 10 days of having submitted the notice contemplated in subregulation (1), with-
  - (a) a copy of the notice referred to in subregulation (1); and
  - (b) a notice indicating that the appeal submission will be made available on the day of lodging it with the Minister and where and for what period the appeal submission will be available for inspection by such person or organ of state.

- (3) If the appellant is a person other than an applicant, the appellant must provide the applicant, within 10 days of having lodged the notice contemplated in subregulation (1), with-
- (a) a copy of the notice referred to in subregulation (1); and
  - (b) a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.
- (4) The Minister, may, , in writing, on good cause extend the period within which a notice of intention to appeal must be submitted.

#### **Submission of appeal**

45.

- (1) Notwithstanding the provisions of section 148 of the Act an appeal lodged against a decision made in terms of the integrated licensing process must be submitted to the appeal authority as indicated in section 41(6) of the Amendment Act.
- (2) An appeal must be-
- (a) submitted in writing; and
  - (b) accompanied by-
    - (i) a statement setting out the grounds of appeal;
    - (ii) supporting documentation which is referred to in the appeal and which is not in the possession of the Minister;

- (iii) a statement by the appellant that regulation 44 (2) or (3) has been complied with together with copies of the notices referred to in that regulation; and
  - (iv) the prescribed appeal fee, if any.
- (3) The appellant must take into account any guidelines applicable to appeals as contemplated in section 38 of the Act.

#### **Time within which appeal must be lodged**

46.

- (1) An appeal as contemplated in regulation 45(1), must be submitted within 30 days after the lapsing of the 20 days contemplated in regulation 44(1).
- (2) The Minister, may, in writing, on good cause extend the period within which an appeal must be submitted.

#### **Responding statement**

47.

- (1) A person or organ of state that receives a notice in terms of regulation 44(2), or an applicant who receives a notice in terms of regulation 44(3), may submit to the Minister, a responding statement within 30 days from the date the appeal submission was lodged with the Minister or Minister of Mineral Resources.

(2)

- (a) A person, organ of state or applicant who submits a responding statement in terms of subregulation (1), must within 10 days of having submitted the responding statement, serve a copy of the statement on the appellant.
  - (b) If the responding statement introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister, within 30 days of being served a copy in accordance with subregulation (2)(a).
  - (c) The appellant must, within 10 days of having submitted the answering statement, serve a copy of the answering statement on the respondent who submitted the new information.
- (3) The Minister may, in writing, and on good cause shown, extend the period within which responding statements in terms of subregulation (1) or an appellant's answering statement in terms of subregulation (2)(b) must be submitted.

### **Processing of Appeal**

48.

- (1) Receipt by the Minister, of an appeal, responding statement or answering statement must be acknowledged within 10 days of receipt of the appeal, responding statement or answering statement.
- (2) An appellant and each respondent is entitled to be notified of-

- (a) a Directive in terms of section 19, section 20 and section 53 of the Act, if the Minister, delegate or delegated organ of state, as the case may be, issues such a Directive; and
- (b) the appointment of an Appeal Panel in terms of section 41 (5) and (6) of the Amendment Act, if the Minister, appoints an appeal panel for purposes of the appeal.

(3) The Minister, may request the appellant or a respondent to submit such additional information in connection with the appeal as the Minister may require.

### **Appeal Panel**

49.

(1) The Appeal Panel is hereby established.

(2) The Appeal Panel is an independent body which –

- (a) has jurisdiction in all the provinces of the Republic; and
- (b) may conduct hearings anywhere in the Republic.

(3) The Appeal Panel consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary.

(4) Members of the Appeal Panel must have knowledge in law, engineering, water resource management or related fields of knowledge.

(5) The chairperson, the deputy chairperson and the additional members of the Appeal Panel are appointed by the Minister.

(6) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the additional members must be appointed in a part-time capacity.

(7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Appeal Panel in consultation with the Minister of Finance.

(8) The Minister may, after giving the member an opportunity to make representations and considering such representations, for good reason –

(a) terminate the appointment of any member of the Appeal Panel.

(9) A member of the Appeal Panel must be independent.

(10) The Minister must furnish the Appeal Panel with a written instruction concerning–

(a) the issues in respect of which the panel must make recommendations;  
and

(b) the period within which recommendations must be submitted to the Minister.

11) An Appeal Panel must submit its recommendations to the Minister, in writing.

### **Decision on Appeal**

50.

(1) The Minister in making a decision on an appeal, as the case may be, may combine his decision on appeals contemplated in regulation 44 where such appeals pertain to the same matter.

(2) The Minister when making a decision on an appeal, must reach a final decision on the appeal or appeals submitted, within 90 days of receipt of all relevant information, including any statements, supporting documentation, reports or any other additional information requested, or recommendations of an advisory panel which may assist the Minister, in the decision making process.

(3) When the Minister has reached a decision on an appeal, the appellant and each respondent must be notified of the decision within 10 days of the decision being reached and of the extent to which the decision appealed against is upheld or overturned in writing.

(4) The decision contemplated in subregulation (3) must contain reasons for such decision.

## **CHAPTER 10**

### **GENERAL MATTERS**

#### **Failure to comply with requirements for consideration of application**

51.

An application in terms of these Regulations lapses if the applicant, after having submitted the application, fails for a period of 60 days to comply with a requirement in terms of these Regulations.

**Resubmission of similar application**

52.

- (1) No applicant may submit an application which is substantially similar to a previous application which has been refused, unless –
- (a) the new application contains new or material information not previously submitted to the responsible authority; or
  - (b) a period of two years has lapsed since the refusal

**CHAPTER 11****Short title and commencement**

53.

These Regulations are called the Water use licence Regulations, 2014, and take effect on a date determined by the Minister by notice in the Gazette.

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