

National Water Act 36 of 1998 Act (NWA)

Topic: Environmental

IN A CALABASH

Introduction

The National Water Act regulates the manner in which persons obtain the right to use water, and it provides for the just and equitable utilisation of water resources.

Objectives of the Act

The objective of the NWA is to ensure that the nation's water resources are protected, used, developed, conserved and managed.

Following this the NWA seeks to control the manner in which water is distributed and used.

These mechanisms are in place to ensure that our country is able to–

- meet the basic human need for water;
- ensure that water is preserved and sustained for present and future generations;
- promote equitable access to water;
- redress the results of past racial and gender discrimination;
- promote the efficient, sustainable and beneficial use of water in the public interest;
- provide for the growing demand for water use;
- protect aquatic and associated ecosystems and their biological diversity;
- reduce and prevent pollution and degradation of water resources;
- meet international obligations;
- promote dam safety; and
- manage floods and droughts.

Application of the Act and its implication to Tourism

The Act, without exception, applies to all persons and, in particular, to all users of water, persons who have dams and persons who use water other than for ordinary or domestic purposes.

Summary of the provisions of the Act

Responsible use of water

Water use by all persons must be responsible and water should not be wasted. Any person must make all effort to ensure that any use of water is done in a responsible manner and that, where possible, water is recycled and re-used.

The NWA provides for two types of water usage–

- normal domestic use; and
- use of water under an authorisation.

The domestic use of water has been defined under the NWA to include the use of water for reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use. This type of use is referred to as 'normal/domestic' water use and does not require a licence.

If a person uses water for any other purpose than for normal or domestic use, then the person using the water must apply for and obtain a general water authorisation or licence.

This type of use will include–

- taking water from a water resource;
- storing water;
- impeding or diverting the flow of water in a watercourse;
- engaging in a stream flow reduction activity;
- engaging in a controlled activity;
- discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- disposing of waste in a manner which may detrimentally impact on a water resource;
- disposing of water which contains waste from, or which has been heated in, any industrial or power generation process;
- altering the bed, banks, course or characteristics of a watercourse;
- removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- using water for recreational purposes.

Any person wanting to use water for purposes other than 'normal or domestic' purposes must apply to the authorities for a water permit or authorisation. The procedure to follow is set out under the NWA regulations.

Any person who uses water in terms of a general authorisation or in terms of a licence must ensure that the use of water is in line with any condition which may have been imposed in terms of that authorisation or licence.

Furthermore, where any person intends to discharge or dispose of waste or water containing waste under an authorisation, such discharge must comply with any applicable waste standards or management practices laid down by a local authority, unless the conditions of the relevant authorisation provide otherwise.

Waste water and effluent

Where a person has used water which is no longer required, such water or seepage, run-off or water containing waste emanating from that use must be returned to the water resource from which the water was taken, unless the local authority or municipality in the area where the water is used and/or disposed of directs otherwise or the relevant authorisation provides otherwise.

In general, any disposal of water, once used, must be in line with any standards laid down by the authorities in terms of the Water Services Act (WSA) and by-laws.

Pollution of water resources

The NWA provides for situations where the pollution of a water resource occurs as a result of activities on land. The person who owns, controls, occupies or uses the land in question is responsible for taking all reasonable measures to prevent any pollution of a water resource from occurring, continuing or recurring. If these measures are not taken by such person, the catchment management agency concerned may do whatever is necessary to prevent the pollution or to remedy its effects. The catchment management agency may then recover all the costs incurred as a result of its preventative or remedial actions from such person. In recovering these costs, the catchment management agency may also claim from any person who would have benefited from the measures taken by it.

Prevention and remedying effects of pollution

Should you not comply with the duty to preserve water and a water source, an authorised official may recover all costs to rehabilitate and prevent any further pollution of the water resource from those persons who have been responsible for the pollution, jointly and severally.

The costs claimed must be reasonable and may include, without being limited to, labour, administrative and overhead costs.

Control of emergency incidents

In terms of the NWA, a responsible person, or any other person involved in the incident or any other person with knowledge of the incident must, as soon as reasonably practicable after obtaining knowledge of the incident, report the incident to–

- the National Water Department;
- the South African Police Service or the relevant fire department; or
- the relevant catchment management agency.

A responsible person must, in addition–

- take all reasonable measures to contain and minimise the effects of the incident;
- undertake clean-up procedures;
- remedy the effects of the incident; and
- take such measures as the catchment management agency or water affairs official may direct either verbally or in writing within the time specified by such institution.

A verbal directive must be confirmed in writing within 14 days, failing which it will be deemed to have been withdrawn.

In other words, whenever an 'incident' or accident occurs on one's property in which a substance pollutes or has the potential to pollute a water resource or has, or is likely to have, a detrimental effect on a water resource, one, as the responsible person, must ensure that it is reported and that one has taken all reasonable measures to contain any effects of the pollution. A failure to comply may lead to the responsible person being issued with a directive by an official from the Department of Water Affairs.

Where a responsible person fails to comply, or inadequately complies with a directive, or where it is not possible to give the directive to the responsible person timeously, a catchment management agency or water affairs official may take the necessary measures to–

- contain and minimise the effects of the incident;
- undertake clean-up procedures; and
- remedy the effects of the incident.

The catchment management agency/water affairs official may then recover all reasonable costs incurred by it as a result of its remedial and clean-up activities from every responsible person, jointly and severally.

The costs may include, without being limited to, labour, administration and overhead costs.

If more than one person is liable, the catchment management agency/water affairs official must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of them of their joint and several liability for the full amount of the costs.

Safety of dams

Before considering this responsibility, the reader must familiarise himself or herself with the following definitions:

'Dam' includes any existing or proposed structure which is capable of containing, storing or impounding water (including temporary impoundment or storage), whether that water contains any substance or not.

'Dam with a safety risk' means any dam which can contain, store or dam more than 50 000 cubic meters of water, whether that water contains any substance or not, and which is of certain specified dimensions or which belongs to a category of dams declared to be dams with a safety risk.

'Owner of a dam' or **'owner of a dam with a safety risk'** includes the person in control of that dam.

The NWA contains measures aimed at improving the safety of new and existing dams with a safety risk with a view to reducing the potential of harm to the public or damage to property or to resource quality which may be caused by such dam.

To reduce the risk of a failure to a dam, control measures require an owner to comply with certain directives and regulations, such as to submit a report on the safety of a dam, to repair or alter a dam or to appoint an approved professional person to undertake these tasks.

Detailed requirements pertaining to dams have been set out under the Act for any person who has a dam to consider in detail.

Note that the measures to provide for the safety of dams housed under the NWA are in addition to the owners' common law responsibility to ensure the safety of their dams.

Registration of dam with safety risk

The owner of a dam with a safety risk must register that dam.

An application for registration must be made within 120 days–

- after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;
- after the date on which an already completed dam is declared to be a dam with a safety risk; or
- after publication of a notice declaring a category of dams to be dams with a safety risk.

A successor-in-title to an owner of a dam with a safety risk must promptly inform the Director-General of the succession for the substitution of the name of the owner.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Non-compliance with the NWA is a criminal offence and, if convicted, a non-compliant person will be liable on the first conviction to a fine or imprisonment for a period of up to five years, or to both a fine and imprisonment. In the case of a second or subsequent conviction, a person will be liable to a fine or imprisonment for a period of up to ten years or to both a fine and imprisonment.

Enquiry in respect of compensation for harm, loss or damage suffered

Where any person is convicted of an offence and another person has suffered harm or loss as a result of the act or omission constituting the offence, or where damage has been caused to a water resource, the court may make an enquiry to determine the extent of the harm, loss or damage. After making a decision the court may–

- award damages for the loss or harm suffered by the person against the accused;
- order the accused to pay for the cost of any remedial measures; and
- order that the remedial measures to be implemented be undertaken either by the accused or the relevant water management institution.

Offences in relation to employer and employee relationships

Whenever an act or omission by an employee or agent amounts to an offence in terms of the NWA and takes place with the express or implied permission of the employer or principal, the employer or principal is, in addition to the employee or agent, liable to conviction for that offence. Alternately, this would also constitute an offence by the employer or principal in terms of the NWA and that employee or agent will, in addition to that employer or principal, be liable to conviction for that offence.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Conservative and Responsible Use of Water;
- Awareness of Type of Water Usage and Water Licences;
- Prevention of water pollution;
- Report Emergency Incidents;
- Zero Tolerance on Water Wastage; and
- Registration and safe operation of Dams.

FURTHER INFORMATION

Regulators

Department of Water and Forestry (DWAF)
Department of Agriculture, Forestry and Fisheries

Websites

www.dwaf.gov.za
www.nda.agric.za