

- (5) If the issuing authority intends to exercise the powers under subsection (4), subsection (2) shall apply with the necessary changes.
- (6) If the Minister or an issuing authority has reason to believe that it is urgently necessary to exercise powers under subsection (1), (3) or (4) in order to protect the coastal environment or human health and well-being, the Minister or issuing authority may, by notice to the holder of a coastal authorisation, temporarily suspend the coastal authorisation and then follow the procedure referred to in subsection (3).
- (7) A competent authority, when exercising the power to amend, withdraw or suspend an environmental authorisation in terms of the National Environmental Management Act, must consider the factors referred to in subsections (1), (4), (5) and (6) with the necessary changes.

*(Section 68 substituted by section 39 of Act 36 of 2014)*

## **CHAPTER 8 MARINE AND COASTAL POLLUTION CONTROL**

### **69. Discharge of effluent into coastal waters**

- (1) No person may discharge effluent that originates from a source on land into coastal waters except in terms of a general discharge authorisation contemplated in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the Minister responsible for water affairs in instances of discharge of effluent into an estuary.

*(Section 69(1) substituted by section 40(b) of Act 36 of 2014)*

- (2) The Minister may by notice in the *Gazette* authorise persons in general, or a category of persons, to discharge effluent into coastal waters, and in instances of discharge of effluent into an estuary, only after consultation with the Minister responsible for water affairs.
- (3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general discharge authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.

*(Section 69(3) substituted by section 40(c) of Act 36 of 2014)*

- (4) Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general discharge authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit -

*(Words preceding section 69(4)(a) substituted by section 40(d) of Act 36 of 2014)*

- (a) within 24 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or
  - (b) within 36 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use within the meaning of section 32 or 33 of the National Water Act.
- (5) Unless a person referred to in subsection (4) is directed otherwise by a person acting in terms of this Act or the National Water Act, it is not an offence for that person to discharge effluent that originates from a source on land into coastal waters if-
- (a) that person has made an application under subsection (4) but has not yet been notified whether the application has been granted or refused; or
  - (b) the applicable period referred to in subsection (4)(a) or (b) has not yet expired.
- (6) A person who discharges effluent into coastal waters -
- (a) must not waste water;
  - (b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;
  - (c) must discharge the effluent subject to any condition contained in the relevant authorisation;
  - (d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 29 of the National Water Act or any Act of Parliament specifically dealing with waste, unless the conditions of the relevant authorisation provide otherwise; and
  - (e) must register the discharge with the department responsible for water affairs.
- (7) The Minister, and in instances of discharge of effluent into an estuary, with the concurrence of the Minister responsible for water affairs, must, when deciding whether or not to issue a general discharge authorisation contemplated in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including-
- (Words preceding section 69(7)(a) substituted by section 40(e) of Act 36 of 2014)*
- (a) the interests of the whole community;
  - (b) the socio-economic impact if the disposal -
    - (i) is authorised;

- (ii) is not authorised;
  - (c) the coastal management programmes and estuarine management plans applicable in the area;
  - (d) the likely impact of the proposed disposal on the coastal environment, including, the cumulative effect of its impact together with those of existing point and non-point discharges.
  - (e) the Republic's obligations under international law;
  - (f) the factors listed in section 27 of the National Water Act; and
  - (g) any other factors that may be prescribed.
- (8) The Minister may not grant an application in terms of subsection (3) for a coastal waters discharge permit if doing so is likely -
- (a) to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
  - (b) to prejudice significantly the achievement of any coastal management objective contained in a coastal management programme; or
  - (c) to be contrary to the interests of the whole community.
- (9)
- (a) The Director-General must within five years of the date of commencement of this Act -
    - (i) review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters; and
    - (ii) in consultation with the director-general of the department responsible for water affairs undertake a joint review of all authorisations issued before the commencement of this Act that authorised the discharge of effluent into estuaries, in order to determine the extent to which those authorisations comply with the requirements of this Act and of other applicable legislation.
  - (b) After any such review the Director-General must make recommendations to the Minister and to the Minister responsible for water affairs as to whether or not-
    - (i) the discharge should be prohibited;
    - (ii) in the case of a discharge into the sea, whether or not a permit should be issued under subsection (1);

(iii) in the case of a discharge into an estuary, whether or not the discharge should be authorised in terms of a permit issued under subsection (1) and a permit issued under the National Water Act.

(10) The Minister, and in instances where the discharge takes place into an estuary, with the concurrence of the Minister responsible for water affairs, must as soon as possible after recommendations contemplated in section (9)(b) have been received, decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions that will apply to any permits issued, but before doing so, must give the holders of the authorisations a reasonable opportunity of making representations.

(11) .....

*(Section 69(11) deleted by section 40(f) of Act 36 of 2014)*

(12) The Minister may, when performing functions in terms of subsections (1), (7) and (10), enter into an agreement with any member of Cabinet.

*(Section 69 amended by the substitution for the term “general authorisation”, wherever it occurs, of the term “general discharge authorisation” by section 40(a) of Act 36 of 2014)*

## **70. Prohibition of incineration or dumping at sea**

(1) Subject to subsection (2), no person may -

(a) incinerate at sea, including aboard a South African vessel, aircraft, platform or other structure, any waste or other material;

*(Section 70(1)(a) substituted by section 41 of Act 36 of 2014)*

(b) import into the Republic any waste or other material to be dumped or incinerated at sea, including aboard a South African vessel, aircraft, platform or other structure;

*(Section 70(1)(b) substituted by section 41 of Act 36 of 2014)*

(c) export from the Republic any waste or other material to be dumped or incinerated -

(i) on the high seas; or

(ii) in an area of the sea under the jurisdiction of another state;

(d) load any waste or other material to be dumped or incinerated at sea onto any vessel, aircraft, platform or other structure at any place in the Republic, including the exclusive economic zone, unless the master of the vessel, aircraft, platform or other structure produces written proof that

the dumping at sea of that waste or other material has been authorised in terms of a dumping permit granted under section 71;

- (e) except on the authority of a dumping permit granted under section 71—
    - (i) dump at sea any waste or other material; or
    - (ii) dump from a South African vessel, aircraft, platform or other structure at sea, any waste or other material; or  
*(Section 70(1)(e) substituted by section 41 of Act 36 of 2014)*
  - (f) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material in any area of the sea under the jurisdiction of another state, except with the written permission of that state.
- (2) It is a defence to a charge in terms of subsection (1)(e)(i) or (ii) to show -
- (a) that adverse weather conditions necessitated the dumping or incineration at sea in order to secure the safety of human life or of the vessel, aircraft, platform or structure in question; or
  - (b) that there was a danger to human life or a real threat to the vessel, aircraft, platform or structure in question, that there appeared to be no reasonable alternative to dumping or incineration at sea, and that it is probable that the adverse effects arising from the dumping or incineration at sea were less than would otherwise have occurred; and
  - (c) that in either case, the dumping or incineration at sea was conducted in a manner that minimised any actual or potential adverse effects and was reported to the Department without delay.

## **71. Dumping permits**

- (1) A person who wishes to dump at sea any waste or other material must -
- (a) apply in writing to the Minister in the form stipulated by the Minister for a dumping permit that authorises the waste or other material to be loaded aboard a vessel, aircraft, platform or other structure and to be dumped at sea; and
  - (b) pay the prescribed fee.
- (2) When deciding an application for a dumping permit contemplated in subsection (1), the Minister must have regard to -

- (a) the Waste Assessment Guidelines set out in Schedule 2;
  - (b) any coastal management programme applicable in the area;
  - (c) the likely environmental impact of the proposed activity;
  - (d) national legislation dealing with waste;
  - (e) the interests of the whole community;
  - (f) transboundary impacts and international obligations and standards; and
  - (g) any other factors that may be prescribed.
- (3) The Minister may not grant a dumping permit that authorises the dumping of any waste or other material, other than -
- (a) dredged material;
  - (b) sewage sludge;
  - (c) fish waste, or material resulting from industrial fish processing operations;
  - (d) vessels and platforms or other man-made structures at sea;
  - (e) inert, inorganic geological material;
  - (f) organic material of natural origin;  
*(Section 71(3)(f) amended by section 42(a) of Act 36 of 2014)*
  - (g) bulky items primarily comprising iron, steel, concrete and similarly non-harmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping at sea; or  
*(Section 71(3)(g) amended by section 42(a) of Act 36 of 2014)*
  - (h) waste or other material which may be prescribed.  
*(Section 71(3)(h) added by section 42(a) of Act 36 of 2014)*
- (4) The Minister may not issue a dumping permit if -
- (a) the waste or other material proposed for dumping contains -

- (i) levels of radioactivity greater than as defined by the International Atomic Energy Agency and adopted by the contracting parties to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter adopted on 7 November 1996; or
  - (ii) material which is capable of creating floating debris or otherwise contributing to the pollution of the marine environment and which could be removed from the material proposed for dumping;
- (b) dumping the waste or other material in question -
- (i) is likely to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
  - (ii) would cause a serious obstacle to fishing or navigation;
  - (iii) would prejudice the achievement of any coastal management objective contained in a coastal management programme;
  - (iv) would be contrary to the obligations of the Republic under international law; or
  - (v) would be contrary to the interests of the whole community.
- (5) The Minister, may issue a dumping permit for a period of not more than five years whereafter a new application must be made.

*(Section 71(5) substituted by section 42(b) of Act 36 of 2014)*

## **72. Emergency dumping at sea**

- (1) The Minister may in relation to any application for a dumping permit referred to in section 71 dispense with any prescribed procedure, including any consultation and public participation processes, if -
- (a) the dumping at sea of a quantity of any particular waste or other material is necessary to avert an emergency that poses an unacceptable risk to the environment or to human health or safety; and
  - (b) there is no other feasible solution.
- (2) Before issuing a permit in the circumstances contemplated in subsection (1), the Minister must consult with -

- (a) any foreign state that is likely to be affected by the proposed dumping at sea; and
  - (b) the International Maritime Organisation.
- (3) The Minister must-
- (a) as far as reasonably possible in the circumstances, follow any recommendations received from the International Maritime Organisation when imposing permit conditions regarding the procedures to be followed in conducting the loading or dumping at sea of the relevant quantity of waste or other material; and
  - (b) inform the International Maritime Organisation of any action taken under this section within a reasonable period thereafter.

### **73. National action list**

- (1) The Minister must progressively and subject to available resources, develop a national action list to provide a mechanism for screening waste and other material on the basis of their potential effect on human health and the marine environment.
- (2) The national action list must -
  - (a) be developed in accordance with the Waste Assessment Guidelines set out in Schedule 2; and
  - (b) contain the prescribed information.

## **CHAPTER 9 APPEALS**

### **74. Appeals**

- (1) A person to whom a coastal protection notice or coastal access notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued, may lodge a written appeal against that notice with-
  - (a) the Minister, if the notice was issued by an MEC or by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
  - (b) the MEC of the province concerned, if the notice was issued by a municipality in that province or by a person exercising powers delegated by the MEC in terms of this Act.