

**REGULATIONS IN RESPECT OF SUBTERRANEAN
WATER CONTROL AREAS - SOUTH-WEST AFRICA**

The Minister of Water Affairs has, under the powers vested in him by section 30 (2) of the Water Act, 1956 (Act 54 of 1956), read with Proclamation 151 of 1971, made the following regulations in respect of areas in the Territory of South-West Africa declared to be subterranean water control areas in terms of section 28 (1) of the said Act and in respect of areas declared to be artesian areas in terms of section 3 of the Artesian Water Control Ordinance, 1955 (Ordinance 35 of 1955), of South-West Africa:

DEFINITIONS

1. In these regulations, unless the context otherwise indicates -

"artesian water" means water flowing naturally from a borehole or well;

"Board" means the Advisory Water Board for South-West Africa established under regulation 2 of the regulations promulgated in terms of section 180 (3) of the Act;

"borehole" means a hole made into the earth by means of a water-boring machine for the purpose of obtaining subterranean water;

"Director" means the Director of the South-West Africa Branch of the Department of Water Affairs or his authorised representative;

"the Act" means the provisions of the Water Act, 1956 (Act 54 of 1956), applicable in the Territory of South-West Africa;

"use for domestic purposes" includes use for sanitary purposes, the watering and dipping of stock and the irrigation of crops on an area of land not exceeding one hectare;

"water table" means the highest level, measured from the surface of the surrounding land, to which water rises naturally in a borehole or well;

"well" means a hole made into the earth by artificial means other than a water-boring machine for the purpose of obtaining subterranean water;

"yield" of a borehole or well, means the maximum quantity of water per hour capable of being abstracted from a borehole or well during the last half-hour of a period of not less than nine hours during which water has been abstracted at a rate equal to the rate at which the water supply of the borehole or well is replenished from underground sources, and, of a spring, the rate at which water flows naturally therefrom;

and any other expression to which a meaning has been assigned in the Act bears the same meaning.

CONTROL AND USE OF SUBTERRANEAN WATER

2. Subject to the provisions of the Act and of these regulations, any person who at the date of promulgation of these regulations is using subterranean water may continue to use the quantity of subterranean water reasonably required by him for domestic purposes and may continue for a period not exceeding 12 months to use the quantity of subterranean water reasonably required by him for other purposes: Provided that if the Minister is of opinion that such person uses more water than he reasonably requires for the said purposes or does not use water beneficially, the Minister may determine the quantity of water he may so use or impose conditions governing the use of such water, and thereafter such person shall not use a larger quantity of water than the quantity so determined or shall not use water otherwise than in accordance with the conditions so imposed.

3. Except as provided in regulation 2 or under the authority of a permit issued by the Minister under regulation 5 and on such conditions as may be specified in that permit, no person shall sink, enlarge, deepen or alter any borehole or well, or open up or clean any spring, or abstract or use subterranean water.

4 (1) Any person desiring a permit from the Minister to enable him to sink, enlarge, deepen or alter any borehole or well, or to open up or clean any spring, or to abstract or use subterranean water, shall apply in writing therefor to the Director, stating the following particulars:

- (a) His full name and address;
- (b) the full name and address of the registered owner of the property on which the borehole, well or spring is or will be situated;
- (c) a description of the said property, including the extent thereof, and the number and date of the title deed concerned;
- (d) a scale plan indicating the boundaries of the property and the location of all proposed or existing boreholes, wells and springs mentioned in the application and of all other existing boreholes, wells and springs on the property;
- (e) so far as may be known the date on which every such borehole or well was made or such spring came into existence and the original and present yield, depth and water table thereof;
- (f) a description of any pumping installation or other equipment with which water is or will be abstracted from the boreholes, wells or springs and the quantity of water in cubic metres per hour which such pumping installation or other equipment is capable of abstracting;
- (g) the extent of the land which is or will be irrigated annually with subterranean water on the property concerned, the types of crops cultivated or to be cultivated and the quantity of water in cubic metres per annum required for the purpose;
- (h) any other purposes for which subterranean water is or will be used and the quantity of water in cubic metres per annum required therefor;

and shall, if requested by the Secretary to do so, also furnish any other particulars which the Director may require.

(2) Such person shall, whenever such borehole or well is or will be situated within the area of jurisdiction of a local authority and the Director is of opinion that artesian water is or will be found in that borehole or well, give notice in the *Gazette* and in a newspaper circulating in the area concerned of his intention to apply for a permit, and shall, in the notice concerned, furnish a description of the property on which the borehole or well is or will be situated, indicating the quantity of water in cubic metres per annum which he intends to abstract or to use and the purpose for which it will be used, and shall state that any objection to the application must be lodged with the Director within 14 days.

5. Upon receipt of an application in terms of regulation 4(1) the Minister may issue a permit authorising the applicant to sink, enlarge, deepen, alter, open up or clean any borehole, well or spring mentioned in the application or to abstract therefrom and use a specific quantity of water for the purposes and subject to the conditions specified in the permit: Provided that, if the Director is of opinion that artesian water is or will be found in a borehole or well, the Minister shall not consider an application unless it is recommended by the Board.

6. The Board shall not consider any application before expiration of the period of 14 days referred to in regulation 4 (2).

7. When the Board considers the recommendation of a permit in terms of regulation 5, the Director shall make available such data, information or plans as may be required by the Board to enable it to decide upon an equitable distribution of water in the public interest, and the Board may request an owner or lessee of land, a consumer of water, bondholder or other person who in the opinion of the Board is likely to be affected by any permit under consideration, to appear before the Board within a period indicated by the Board or to make available in writing or otherwise such data, information or plans as the Board may require, or to give reasons why any permit should not be issued, or to make recommendations on the conditions which should be imposed in connection with the issue of any permit.

8. If such owner, lessee, consumer, bondholder or person fails to comply with the Board's request within the period indicated by the Board, the Board shall make such recommendation as it may deem fit.

9. The Minister may, when issuing a permit under regulation 5, impose such conditions, whether generally or in respect of different periods in any year, as he may deem necessary for an equitable distribution of water in the public interest or for the conservation of water supplies or for the protection of water sources, including conditions in respect of -

- (i) the sealing or casing of any borehole, well or spring for the purpose of preventing the escape or loss therefrom of water;
- (ii) the measurement and regulation of the quantity of subterranean water abstracted;
- (iii) the temporary increase or reduction of the quantity of subterranean water which may during any period be abstracted by any person;

- (iv) the prevention of pollution of subterranean or other water;
- (v) the sending in of representative samples of material obtained during the sinking of a borehole or well;
- (vi) the construction, sealing or lining of any reservoir for the efficient use of subterranean water;

and the Minister may at any time amend, suspend or cancel such conditions.

10. A permit issued under regulation 5 shall lapse if the sinking, enlargement, deepening, alteration, opening up or cleaning of the boreholes, wells or springs authorised thereby is not completed within a period of three years after the date of the permit or within such further period as the Minister may approve.

11. (1) If at any time the Minister is of opinion that subterranean water abstracted in terms of these regulations is not used beneficially, or that a condition imposed under regulation 9 is not complied with, he may cancel any right granted under regulation 2 or withdraw any permit issued under regulation 5, or he may, in writing, direct the person who is entitled to use such water to seal any borehole partly or completely, as directed by the Minister, or so to alter or repair any water work, or to construct such additional water works or to take such other steps as the Minister may determine and as will, in his opinion, result in such water being used more beneficially.

(2) Such person shall within a period determined by the Minister and at his own expense comply with the Minister's direction and, if he fails to do so, the Minister may cause such borehole to be sealed or alteration to be made or repairs to be carried out or additional water works to be constructed, as the case may be, and recover the cost thereof from such person.

12. Notwithstanding any provisions of these regulations to the contrary the Minister may, if he deems it expedient in the public interest, by notice in the *Gazette* or by notice in writing to any person, control, regulate, limit or prohibit the abstraction and use of subterranean water for any purpose.

13. (1) No person shall use a water-boring machine or other apparatus to sink a borehole unless he is in possession of a permit from the Director and such permit shall not be issued unless such machine or apparatus is, in the opinion of the Director, suitable for the purpose and the person to whom the permit is issued complies in respect of experience, knowledge and ability with the requirements determined by the Minister by notice in the *Gazette*.

(2) The requirements published in Government Notice 2329 of 24 December 1970 shall be deemed to have been determined in terms of subregulation (1).

14(1) Any person who abstracts or uses subterranean water in contravention of any provision of these regulations or a right or an obligation acquired or imposed by means of a permit, determination, direction or condition shall be guilty of an offence and liable on conviction to the penalties prescribed in section 170(1) of the Act.

(2) Subsections (4) and (5A) of section 170 of the Act shall apply *mutatis mutandis* to

these regulations.

DELEGATION OF THE MINISTER'S POWERS

15. The Minister may by notice in the *Gazette* delegate to the Secretary or any other officer of the Department any power conferred upon him by these regulations.

GENERAL

16. Any licence issued under the provisions of the Artesian Water Control Ordinance, 1955 (35 of 1955), of the Territory of South-West Africa shall be deemed to be a permit issued under regulation 5 and any other act performed under the said Ordinance shall be deemed to have been performed under the corresponding provision, if any, of these regulations or the Act.

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