

SUMMARY OF LEGAL REQUIREMENTS FOR PROSPECTIVE AND EXISTING DAM OWNERS IN SOUTH AFRICA

There are **three legal requirements** that must be met **before** a person may construct/alter/repair a dam, namely with regard to (1) dam safety, (2) entitlement to water use, and (3) the environment. The requirements for prospective as well as for owners of existing dams are summarised below:

1. DAM SAFETY LEGISLATION

The dam safety legislation is covered by chapter 12 of the National Water Act, 1998 (Act 36 of 1998) [NWA] and by dam safety regulations, published in Government Notice R. 139 of 24 February 2012. Only *dams with a safety risk* (that is dams with a maximum wall height exceeding 5,0 m **and** with a storage capacity exceeding 50 000 m³, or any other dam declared by the Minister as a dam with a safety risk) are subject to these Regulations. These Regulations are administered by the Dam Safety Office within the Department of Water Affairs (hereafter Department). The requirements of the dam safety regulations are summarised below:

1.1 New dams, enlargement, alteration or repair of existing dams

- The first step is to confirm the entitlement to water use at the relevant Regional Office (to prevent fruitless expenditure) – see section 2 below.
- The next step is to apply for classification of the dam on form DW 692E. The Department will then inform the applicant of the classification of the dam and of further procedures.
- If the dam is classified as a category I dam, apply for a licence to construct on form DW 694E and submit a design report and engineering drawings as specified in regulations 4 to 8. **Construction may only commence after the licence to construct has been issued.**
- If the dam is classified as a category II or III dam, the services of an approved professional person (**APP**) must first be obtained. The APP must apply for a licence to construct on behalf of the dam owner (this involves the submission of an application form, design report, engineering drawings and project specifications as specified in regulations 10 to 21). **Construction may only commence after the licence to construct has been issued.** The APP must also ensure that an adequate quality control programme is in place during the construction period. Before starting with storage of water, the APP must apply for a licence to impound water (this involves the submission of an operation & maintenance manual and emergency preparedness plan together with an application form DW 696E and construction progress report). After completion of all construction work, the APP must submit a completion report, completion drawings and a completion certificate stating that the work has been completed according to his/her specifications.

1.2 Existing dams

- All *dams with a safety risk* as defined in paragraph 1 above, must be registered on form DW 693E.
- The Department must be notified of any changes of particulars (ownership, address, telephone numbers, person in control, etc.)
- The dam must be operated and maintained in a responsible manner. Basically this requires that the owner, or the person appointed by the owner, must visit and inspect the dam on a regular basis (at least weekly). Maintenance work must be done regularly. In the case of unsafe conditions, emergency procedures and safety measures must be taken and the Department informed thereof.
- The dam owner must arrange for the execution of a formal dam safety evaluation including inspection when instructed to do so by the Department (at intervals between 5 and 10 years). In the case of category II and III dams the evaluation must be done by an APP. In the case of category I dams it is not prescribed by whom the evaluation must be done but it is in the owner's interest to appoint an experienced and qualified person to perform this task. If necessary, the dam safety

evaluation report should indicate what work must be done to upgrade the dam to acceptable safety standards.

2. ENTITLEMENT TO WATER USE (administered by the Regional Offices of the Department)

- Any new water use as defined in section 21 of the NWA is subject to licensing. Just “storing water” is also defined as a water use! There is no guarantee that a licence will be issued as it is subject to availability of water and a number of conditions and constraints in the NWA.
- **Before construction** of any new dam or enlargement/alteration/repair of an existing dam may start, a water use licence or written authorisation/confirmation must be obtained from the Regional Director of the relevant region of the Department.
- In the case of **dams that failed**, the existing lawful water use status (subject to verification) will normally be acknowledged but it is essential that confirmation be obtained in writing from the Regional Director in order to avoid fruitless expenditure.
- **Existing dams:** Section 21(b) of the NWA defines storage of water as a water use. Generally, if more than 10 000 m³ of water is stored per registered property, then that water use must be registered on a form that will be supplied by the Regional Director for this purpose. However, in some Water Management Areas the general authorisation does not allow any dam, irrespective of size, outside the licensing procedure and in those areas all dams must be registered.

3. ENVIRONMENTAL LEGISLATION (Administered by relevant provincial department)

- The provisions and regulations of Government Notices Nos. R. 543 to R. 547, dated 18 June 2010, promulgated in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) regarding control over activities which may have a detrimental effect on the environment, must be complied with. Normally it will be required that an environmental impact assessment (EIA) must be carried out **before** construction of a new dam or enlargement/repair of an existing dam will be authorised. Written authorisation must be obtained from the relevant provincial government department before commencing with the project.

4. CONTACT NUMBERS FOR ENQUIRIES

Website for information and application forms: www.dwa.gov.za (look under ‘Dam Safety Office’)

Contact numbers for enquiries

Province / Region	Water Use (Regional Office)	Dam Safety Office	Environmental Legislation
Limpopo	(015) 290 1200	(012) 336 8010	(015) 293 8515/16
North West	(012) 392 1300 (018) 387 9500	(012) 336 7509	(018) 387 7700
Mpumalanga	(013) 759 7300	(012) 336 8010	(013) 766 4004
Gauteng	(012) 392 1300	(012) 336 7509	(011) 355 1698
Free State	(051) 405 9000	(012) 336 7509	(051) 400 9410
KwaZulu Natal	(031) 336 2700	(012) 336 8010	(033) 355 9100
Eastern Cape	(043) 604 5400	(012) 336 7509	(043) 605 7000
Western Cape	(021) 941 6000	(012) 336 8010	(021) 483 4091
Northern Cape	(053) 830 8800	(012) 336 7509	(053) 807 7430