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GOVERNMENT NOTICE

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. R. 1426

7 December 2004

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

AMENDMENTS TO REGULATIONS PUBLISHED IN TERMS OF SECTION 44 OF THE
NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: CONTROL OF USE OF
VEHICLES IN THE COASTAL ZONE (GN REGULATION 1399 OF 21 DECEMBER 2001)

The Minister of Environmental Affairs and Tourism has amended the regulations that control vehicle use in the coastal zone (published in terms of section 44 of the National Environmental Management Act, 107 of 1998, on 21 December 2001) as set out in the Schedule. In addition, the Minister has published *Guidelines on the Implementation of Regulations Pertaining to the Control of Vehicles in the Coastal Zone: December 2004*.

Schedule

GENERAL EXPLANATORY NOTE:

[] Words in **bold ARIAL NARROW** and in **square brackets** indicate omissions from existing regulations.

_____ Words underlined indicate insertions in existing regulations.

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998 AMENDMENT TO REGULATIONS: GN REGULATION 1399 OF 21 DECEMBER 2001: CONTROL OF USE OF VEHICLES IN THE COASTAL ZONE

DRAFT AMENDMENT TO REGULATIONS

To amend the Regulations governing the control of vehicle use in the coastal zone, to better regulate permits and licence applications; and to provide for incidental matters.

Amendment of regulation 1 of GN Regulation 1399 of 21 December 2001

1. Regulation 1 of GN Regulation 1399 of 21 December 2001 (“the Regulations”), is hereby amended by:

(a) the substitution of the definition of “boat launching site” with the following definition:

“ ‘boat launching site’ means a site where members of the public or members of organised clubs use vehicles to launch boats or other vessels into the sea or into an estuary, and “licensed boat launching site” means a site that has a valid licence in terms of regulation 7.”;

(b) the insertion of the following definition:

“ ‘Deputy Director-General’ means the Deputy Director-General of the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management.”;

(c) the substitution of the definition of “estuary” with the following definition:

“ ‘estuary’ means a partially or fully enclosed body of water through which a river or fresh water source is open to the sea permanently or periodically, and in which the water level rises and falls as a result of the action of the tides whenever it is open to the sea, and / or within which sea water can be diluted to an extent which is measurable with fresh water drained from land.”;

(d) the insertion of the following definition:

“ ‘MEC’ means the member of the executive committee responsible for environmental affairs in the provincial sphere of government.”;

(e) the insertion of the following definition:

“ ‘private property’ does not include a property with unlawfully constructed buildings or improvements.”;

(f) the substitution of the definition “provincial authority” with the following definition:

“ ‘provincial authority’ means the head of the provincial department responsible for environmental affairs.”;

(g) the deletion of the definition “recreational use area”.

(h) the insertion of the following definition:

“ ‘tourism business’ means a commercial business using vehicles in the coastal zone for the purpose of promoting and handling of tours and which employs tourist guides.”;

(i) the insertion of the following definition:

“ ‘tourist guide’ means a tourist guide as defined in the Tourism Act. 72 of 1993.”

Amendment of regulation 2 of the Regulations

2. Regulation 2 of the Regulations is hereby substituted with the following:

Every person who causes, has caused or may cause pollution or degradation of the environment by the use of a vehicle in the coastal zone must take reasonable measures to prevent such pollution or degradation from continuing, recurring or occurring or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment at that person’s own cost.

Amendment of regulation 3 of the Regulations

3. Regulation 3 of the Regulations is hereby amended **as** follows:

“(c) is authorised in terms of an exemption granted by the Minister under regulation 20; or

(d) is lawful in **terms** of regulation 22.”

Amendment of regulation 4 and renumbering of regulation 4(a)(vii) of the Regulations

4. Regulation 4 of the Regulations is hereby amended by the amendment of the following sub-regulations, the insertion of the following sub-regulation and sub-regulation 4(a)(vii) is renumbered as 4(a)(vi):

- “(a) the use by any person of any vehicle –
 (ii) on private land by the owner or with the permission of the owner or lawful occupier of that land;
- (b) the use of any vehicle within a boat launching site in accordance with the licence issued in terms of regulation 7 for that boat launching site, provided that a vehicle may be used on a private slipway in respect of which a lease has been granted in terms of the Seashore Act, 1935 (Act No. 21 of 1935);
- (e) the use of a vehicle in the coastal zone by members of the National Sea Rescue Institute or Lifesaving South Africa in the public interest.”

Amendment of regulation 5 of the Regulations

6. Regulation 5 of the Regulations is hereby amended by substituting references to the [Director-General] with the Deputy Director-General, by substituting references to section [24(7)] with section 24(4) and by deleting sub-regulation (6).

Amendment of regulation 6 of the Regulations

7. Regulation 6 of the Regulations is substituted with the following:

“Permits to use vehicles in the coastal zone

6 (1) A permit to use a vehicle in the coastal zone may be issued by the Deputy Director-General for the purpose of –

- (a) carrying on a non-recreational activity in terms of a right, permit or exemption granted under the Marine Living Resources Act, 18 of 1998;
- (b) scientific research;
- (c) carrying on a tourism business;
- (d) accessing private property provided there is no reasonable alternative access to the property;
- (e) producing an advertisement, feature film, still photograph or a television programme;
- (f) access by a physically disabled person;
- (g) carrying on an organised recreational sport fishing competition.

(2) All applications for permits shall be directed to the Deputy Director-General on a stipulated form.

(3) When issuing a permit, the Deputy Director-General may impose such conditions as he or she considers conducive to the achievement of the objectives of the Regulations.

J4 (a) A permit may be issued in terms of sub-regulation 6(1)(a) if the applicant-

- (i) pays the application fee stipulated by the Deputy Director-General;
- (ii) demonstrates that the use of a vehicle is required in the coastal zone to effectively carry on the non-recreational activity authorised in terms of the Marine Living Resources Act, 18 of 1998;
- (iii) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone; and
- (iv) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.

(b) Such a permit may be issued for any period, provided that the permit shall expire upon the expiration or reversion of the right, permit or exemption granted under the Marine Living Resources Act.

(c) The Deputy Director-General may authorise this permit to be transferred if sound reasons exist.

(5) (a) A permit may be issued in terms of sub-regulation 6(1)(b) if the applicant-

- (i) demonstrates that the use of the vehicle is required to effectively carry out the scientific research;
- (ii) provides a detailed research proposal approved by a recognised institute established for the purpose of scientific research;
- (iii) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone; and
- (iv) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.

(b) Such a permit may be issued for a maximum period of twelve months, provided that it may be renewed on application to the Deputy Director-General. This permit is not transferable.

(6) (a) A permit may be issued in terms of sub-regulation 6(1)(c) if the applicant-

- (i) pays the application fee stipulated by the Deputy Director-General;
- (ii) provides proof of registration of its tourist guides and copies of all applicable marketing material in respect of the intended tour or tours in the coastal zone;
- (iii) has complied with the requirements of section 24(4) of the Act;
- (iv) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone; and
- (v) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.

(b) Such a permit shall be issued for a maximum period of sixty months and shall not be transferable, but may be renewed on application to the Deputy Director-General against the stipulated fee.

7(a) A permit may be issued in terms of sub-regulation 6(1)(d) if the applicant-

- (i) provides proof that the property is lawful;
- (ii) demonstrates that no reasonable alternative access route to the property exists;
- (iii) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone: and
- (iv) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.

(b) Such a permit may be issued for a maximum period of sixty months, provided that it may be renewed on application to the Deputy Director-General.

(8) (a) A permit may be issued in terms of sub-regulation 6(1)(e) if the applicant-

- (i) pays the application fee stipulated by the Deputy Director-General;
- (ii) provides an independent environmental report on the possible effects of the proposed vehicle use on the coastal zone;
- (iii) provides a detailed description of the proposed advertisement, production or filming activity and the purpose of the proposed vehicle use;
- (iv) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone: and
- (v) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.

(b) Such a permit shall be issued for the duration of the production up to a maximum of thirty days and cannot be transferred.

(9) (a) A permit may be issued in terms of sub-regulation 6(1)(f) if the applicant-

- (i) pays the application fee stipulated by the Deputy Director-General;
- (ii) provides written confirmation from the National Council for Persons with Physical Disabilities in South Africa that he or she is a physically disabled person;
- (iii) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone: and
- (iv) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.

(b) Such a permit may be issued for a maximum period of three years, provided that it may be renewed on application to the Deputy Director-General.

- (10) (a) A permit may be issued in terms of sub-regulation 6(1)(g) if the applicant-
- (i) pays the application fee stipulated by the Deputy Director-General;
 - (ii) demonstrates that the event is an organised recreational sport fishing event held under the auspices of a recognised national or provincial sport fishing organisation;
 - (iii) demonstrates that the intended vehicle use will not cause significant harm to the coastal zone; and
 - (iv) demonstrates that members of the public will be able to continue to safely use and enjoy that part of the coastal zone.
- (b) Such a permit may be issued for a maximum period of one year, provided that the permit shall only be issued for specified organised recreational sport fishing competitions.
- (11) When considering an application for a permit submitted in terms of this regulation to use a vehicle in the coastal zone under the jurisdiction of a manager of a coastal protected area, the Deputy Director-General shall only issue a decision on the application after consulting with the manager of the coastal protected area.
- (12) Notwithstanding anything to the contrary in this regulation, the Deputy Director-General may require an applicant to fulfil the requirements of section 24(4) of the Act in respect of the investigation, assessment and communication of the potential impact of the activity concerned.”

Amendment of regulation 7 of the Regulations

8. Regulation 7 of the Regulations is hereby substituted with the following:

“Licence for boat launching sites

- 7.** (1) No person shall be entitled to use a vehicle in the coastal zone for the purpose of launching or landing vessels from a boat launching site that is not licensed in terms of this regulation, unless such use is a permissible use.
- (2) An application for a licence shall be made to:
- (a) the manager of the coastal protected area, if the boat launching site is situated in a coastal protected area that has been designated an area of national or international significance or if the boat launching site is under the jurisdiction of the South African National Parks authority, provided that where the applicant for a licence is a manager of a coastal protected area, the application shall be made to the Deputy Director-General; or
 - (b) the provincial authority, if the boat launching site is situated in any other area or jurisdiction.

(3) When issuing a licence, the manager of the coastal protected area, the Deputy Director-General or a provincial authority may impose any condition considered to be conducive to the achievement of the objectives of the Regulations.

(4) A licence shall only be issued by the manager of the coastal unprotected area, the Deputy Director-General or the provincial authority, as the case may be, if the applicant-

- (i) pays an application fee of R 5000.00 (five thousand rand) for each boat launching site sought to be licenced;
- (ii) complies with the requirements of section 24(4) of the Act relating to the investigation, assessment and communication of the potential impact of the activities associated with boat launching at the site;
- (iii) demonstrates that vehicle use in the boat launching site area will not cause significant harm to the coastal zone; and
- (iv) submits an environmental management plan.

(5) A licence shall be issued for a maximum period of sixty months and shall be capable of being renewed on application and against payment of a fee of R100000 (one thousand rand)

Amendment of regulation 8 of the Regulations

9. Regulation 8 of the Regulations is hereby amended by substituting references to section ~~24(7)~~ with section 24(4) and the insertion of the following in sub-regulation 8(1):

“8. An applicant for a permit under regulation ~~6(6)~~ or for a licence under regulation 7 must fulfil the requirements of section 24(4) of the Act in respect of the investigation, assessment and communication of the potential impact of the activity concerned.”

Deletion of regulation 9 of the Regulations

10. Regulation 9 of the Regulations is deleted.

Deletion of regulation 10 of the Regulations

11. Regulation 10 of the Regulations is deleted.

Amendment and re-numbering of regulation 11 of the Regulations

12. Regulation 11 of the Regulations is re-numbered as regulation 9, is amended by substituting the reference to section ~~24(7)~~ with section 24(4) and by the insertion of the following:

Amendment and re-numbering of regulation 12 of the Regulations

13. Regulation 12 of the Regulations is re-numbered as regulation 10, is amended by substituting the reference to section [24(7)] with section 24(4) and by the insertion of the following:

“10. (1) The relevant authority referred to in regulation 6 or 7(2) may refuse to consider an incomplete application for a permit or licence.

- (3) The relevant authority referred to in regulation 6 or 7(2) [, or in the case of a matter referred to in regulation 9, the Director-General,] must refuse the application if it reasonably believes -
- (4) If the said authorities [or the Director-General] decide
- (5) [A permit under regulation 6 must not be granted for a period of more than 12 months and a boat launching site licence under regulation 7 must not be granted for a period of more than 36 months.]”

Amendment and re-numbering of regulation 13 of the Regulations

14. Regulation 13 of the Regulations is hereby re-numbered as regulation 11 and amended by the insertion of the following:

“11. (1) The relevant authority referred to in regulation 6 or 7(2) [, or in the case of a matter referred to in regulation 9, the Director-General,] must issue a written record of the decision...”

- (2) (i) the signature of the person who represents the relevant authority [or the Director-General];”

Amendment and re-numbering of regulation 14 of the Regulations

15. Regulation 14 of the Regulations is hereby re-numbered as regulation 12 and is substituted with the following:

“Appeals

12. (1) An appeal against a decision by the Deputy Director-General or manager of a coastal protected area taken in terms of regulation 5, regulation 6 or regulation 7(2)(a), as the case may be, shall be made to the Minister.

(2) An appeal against the decision of the provincial authority taken in terms of regulation 7(2)(b) shall be to the MEC of that province.

- (3) The decision of the appeal authority shall be final.

(4) An appeal must be lodged in writing and shall state the grounds on which it is based and may be accompanied by documents that are certified as true copies of the original.

(5) An appeal must be lodged within 30 days after the date of the record of decision issued in terms of regulation 11."

Amendment and re-numbering of regulation 15 of the Regulations

16. Regulation 15 of the Regulations is re-numbered as regulation 13 and is amended as follows:

"13. [(1) Subject to sub-regulation (2), a permit or licence issued under these regulations may at any time be suspended, cancelled or amended.]

(1) The relevant authority that issued the permit or licence may only suspend, cancel or amend it if -

- (a) the relevant authority [or Director-General] is satisfied [on the basis of information that was not considered when the permit or licence was issued,] that the permit holder or licence holder is in breach of a condition imposed by the relevant authority; [it is necessary or desirable to suspend, cancel or amend the permit or licence to prevent deterioration or further deterioration of the quality of the environment within the coastal zone;]
- [(b) other similar permits or licences held by other persons in the same vicinity have **also** been reviewed and the suspension, cancellation or amendment does not unfairly discriminate against the holder in relation to other holders **of** similar permits or licences in the same vicinity;]
- (b) after the holder of the permit or licence was given an opportunity to comply with the condition, and failed to do so: and
- (c) the holder of the permit or licence was given an opportunity to make written representations to the relevant authority.

[(2) A permit or licence may not be amended in such a way that the period for which it is valid exceeds the maximum period for which it may be issued.]

(2) If the Minister has reason to believe that a permit or licence issued by [an] the relevant authority under these regulations is inconsistent with the national environmental management principles in Chapter 1 of the Act or with any other provision of the Act or these regulations, the Minister may intervene and [direct the authority to review the decision and within a specified period either -

- (a) **to] suspend, cancel or amend the permit or licence, [;** or
- (b) **to give reasons to the Minister why it does not intend doing so.]"**

Amendment and re-numbering of regulation 16 of the Regulations

17. Regulation 16 of the Regulations is re-numbered as regulation 14 and is amended as follows:

“14(1)(c) at any time within 30 days of the alleged commission of the offence, issue summons in terms **[of section 54]** of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) to any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations.

14(2) Any person issued with a summons in terms of sub-regulation **[16] 14(1)(c)** may in terms **[of section 54]** of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), pay an admission of guilt fine of R2000.”

Amendment and re-numbering of regulation 17 of the Regulations

18. Regulation 17 of the Regulations is re-numbered as regulation 15 and is amended as follows:

15 (3) Any person who has been granted a permit to use a vehicle in the coastal zone under these regulations, or any person whose application for **an** exemption under regulation **[22] 20** has been granted, must immediately produce such permit or proof of such exemption if requested to do so by an authorised officer.”

Amendment and re-numbering of regulation 18 of the Regulations

19. Regulation 18 of the Regulations is re-numbered as renulation 16 and is amended as follows:

16 (2) If any vehicle has been seized in terms of regulation **[16] 14** and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within 90 days of the seizure, the Director-General may apply to the court for it to be forfeited to the State and the court shall make any order it considers appropriate.”

Re-numbering of regulation 19 of the Regulations

20. Regulation 19 of the Regulations is re-numbered as regulation 17.

Amendment and re-numbering of regulation 20 of the Regulations

21. Regulation 20 of the Regulations is re-numbered as regulation 18 and is amended as follows:

“18 (a) a person was sitting behind the wheel or at the controls of a vehicle. whether or not the vehicle was stationary. [,that person is presumed, unless the contrary is proved,] it shall be prima facie proof that the person was using that vehicle in that place.

(b) a person used a vehicle in the coastal zone other than on a public road, [, that person is presumed, unless the contrary is proved, to have used] it shall be prima facie proof that the vehicle was used in a manner that was not permissible under regulation 4; was not authorised in terms of a permit granted under regulation 6 or an exemption under regulation [22] 20, and was not lawful in terms of regulation [24] 22.”

Re-numbering of regulation 21 of the Regulations

22. Regulation 21 of the Regulations is re-numbered as regulation 19.

Amendment and re-numbering of regulation 22 of the Regulations

23. Regulation 22 of the Regulations is re-numbered as regulation 20 and substituted with the following:

“20 Any person, including an organ of state, may apply in writing to the Minister for exemption from complying with any of the requirements specified in regulations 6, 7 or 8 for the granting of a permit, licence or the carrying on of an environmental assessment in terms of section 24(4) of the Act, respectively, and the Minister shall only issue an exemption if satisfied that granting such exemption will not result in significant harm to the coastal zone, will not seriously affect any rights of the general public to enjoy the coastal zone, and is in the public interest, alternatively in the interests of protecting the environment.”

Re-numbering of regulation 23 of the Regulations

24. Regulation 23 of the Regulations is re-numbered as regulation 21 and substituted with the following:

“Conflict and Repeal

21. (1) The regulations will prevail if there is any conflict between any of the provisions in them and any other regulations, by-laws or other subordinate legislation relating to the use of vehicles in the coastal zone made under any Act, prior to these regulations coming into force.

(2) The General Policy published in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989): Control of Vehicles in the Coastal Zone, promulgated as Government Notice No. 858 in the Government Gazette of 29 April 1994 is hereby repealed.”

Amendment and re-numbering of regulation 24 of the Regulations

25. Regulation 24 of the Regulations is renumbered as regulation 22 and substituted with the following:

“Transitional provisions

22. Any part of the coastal zone designated a recreational use area under regulation 5 of the Regulations, any permit issued under regulation 6 of the Regulations, any licence issued under regulation 7 of the Regulations and any exemption granted under regulation 20 of the Regulations shall remain valid until revocation of the designation, expiry of the record of decision or the expiry of the exemption, as the case may be.”

Re-numbering of regulation 25 of the Regulations

26. Regulation 25 of the Regulations is hereby re-numbered as regulation 23.

Title and Commencement

27. These Regulations are called the Amendments to the Regulations that Control Vehicle Use in the Coastal Zone, 2004, and shall commence on 03 December 2004.