



ELA ANNUAL CONFERENCE 2015

Champagne Sports Resort, KZN

**Pre-conferencing training
Water and waste**

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(with appreciation to Reece Alberts & Theunis Meyer for their input)



Water use applications

National Water Act 36 of 1998

Definitions – s 1

E.g. "Pollution"

"waste"

"watercourse"

"water resource"

"wetland"



National Water Act 36 of 1998

Public trustee

National Water Resource Strategy (2013 Review – comment)

Principles

Determination of the Reserve

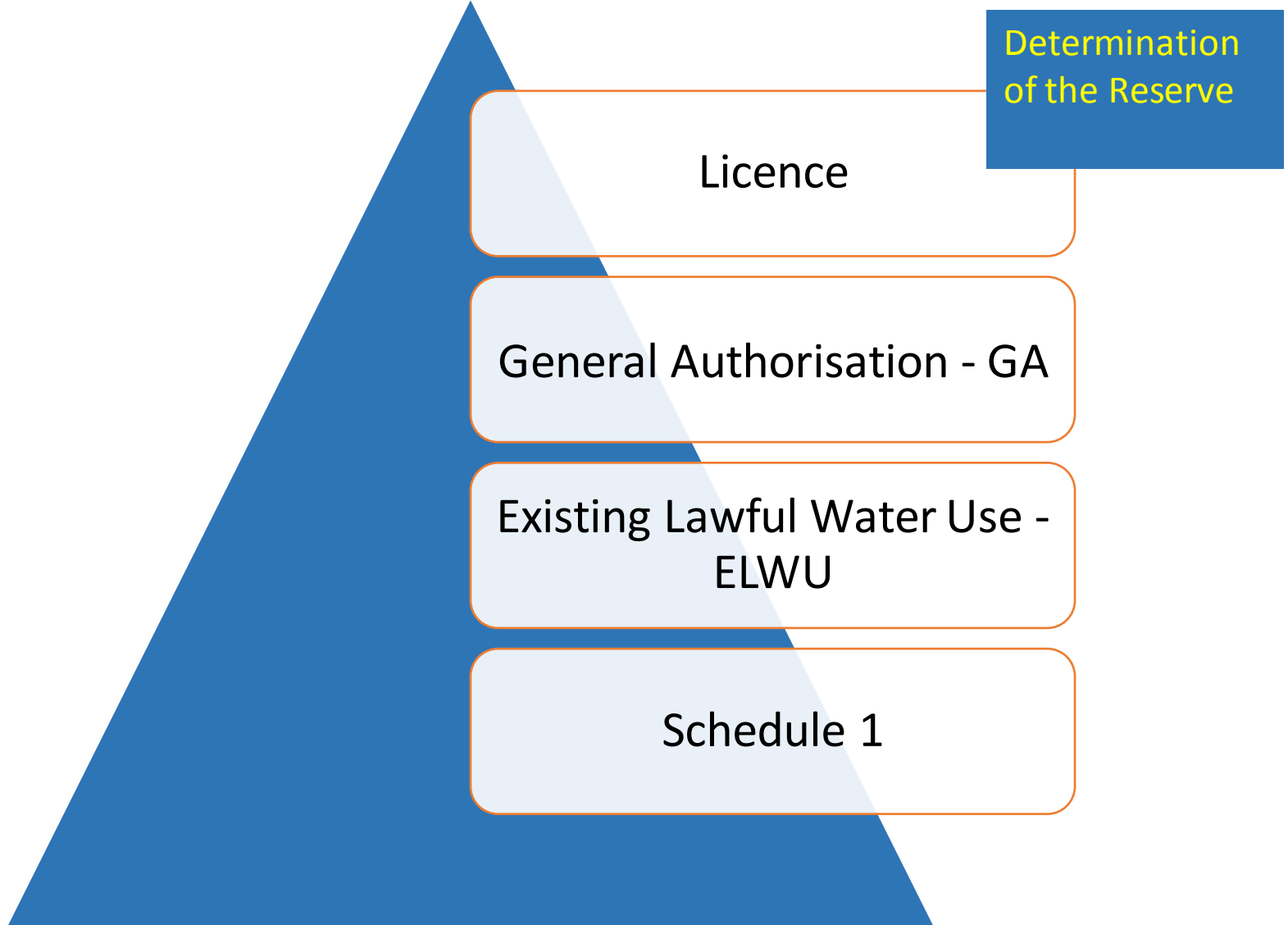
Catchment management agencies

Authorisations



Authorisations

Entitlement to water use – ss 4 and 22



Schedule 1 water use

- S 4(1): "a person may use water in and from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use, as set out in Schedule 1"
- Schedule 1:
 - Reasonable domestic use – directly from any resource that has lawful access
 - Take water to use on land owned/occupied – domestic, small gardening, watering of animals
 - Store and use run-off water from roof
 - In emergency situations take water from any water resource for human consumption / firefighting
 - Recreational purposes – lawful access / portage boat. Canoe on any land adjacent to watercourse to continue boating on that course
 - Discharge waste / water containing waste or run-off water (including stormwater) into a canal, sea outfall or conduit – if that waste/water is to be purified
 - Does not override any other law

Existing lawful water use – s 32

- "a water use (a) which has taken place at any time during a period of 2 years immediately before the date of commencement of this Act and which was
- Authorised by or under any law that was in force before the date of commencement of the NWA
- Is a stream flow reduction activity ito s 36(1) (lawful 2 years before)
- Is a controlled activity ito of s 37 (lawful 2 years before)
- Has been declared an existing lawful water use"

- May apply ito of s 33 to have a water use declared an ELWU
- Binding to successors-in-title

General authorisation – s 27

- A responsible authority may issue General Authorisations with permission of Minister and taking into account
 - Existing lawful uses
 - Need to address past discrimination
 - Efficient and beneficial use of water in the public interest
 - Socio-economic impact of the water use if authorised / impact of non-authorisation
 - Catchment management strategies
 - Effect of the water use on the water resource and other water users
 - Investments by the water user
 - Strategic importance of the water use
 - Quality of the water to be reserved of the Reserve and international obligations
 - Duration of water use
- Water use – generally / with regard to geographic area
 - E.g irrigation of land with waste water, diverting the flow of a river etc
 - Less bureaucratic actions

Examples

- GN 665 in GG 36820 of 13 September 2013 – engaging in a controlled activity (s 37(1)(a): irrigation of land with waste / water containing waste generated through an industrial activity / by a waterwork
- GN 1199 in GG 32805 of 18 December 2009 – impeding or diverting the flow of a river / altering the bed and banks of a river

S 21 Water uses

- (a) taking water from a water resource
- (b) storing water
- (c) impeding or diverting the flow of water in a watercourse
- (d) engaging in a stream flow reduction activity – s 36
- (e) engaging in a controlled activity – s 38
- (f) Discharging waste or water containing waste in to a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource
- (h) disposing in any manner of water which contains waste from , or which has been heated in, any industrial or power generation process;
- (i) altering the beds, banks, course or characteristics of a watercourse;
- (j) 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
- (k) using water for recreational purposes

Trees

Hydraulic Fracturing
Irrigation with Industrial waste water
Alter the flow
Recharge aquifer with waste

Licences - general

- Procedure for application of a licence – ss 40-41
- Alignment of application procedures with the NEMA and MPRDA procedures
- Draft regulations published
- Licences may be reviewed/amended – ss 49-50
- Dispense of licence – s 22(3) - Only if the authority is satisfied that the requirement will be met by another licence, permit, authorisation
- May require security from the application – s 30
- Compulsory licencing for areas under water stress – s 43ff

Determination of the Reserve – ss 16-17

- Until system of classification of water resources has been prescribed / determined
- Minister must before authorising a water use under s 22 make a reserve determination
- What is the Reserve – s 1:
 - "Quantity and quality of water required to satisfy basic human needs" – now and in the reasonable future
 - "to protect the aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource"

Reasons for integrated system?

General: 10 Eskom coal suppliers lose water licences

At least 10 mining companies that supply coal to Eskom have had their water licences suspended in recent weeks, says a report in **The Herald**. **Despite the lack of licences, the mines have continued to operate, in violation of the law.** It appears the Department of Water Affairs has failed to resolve the issuing of licences, some of which have been pending for up to two years. The move has drawn criticism from Mineral Resources Minister Ngoako Ramatlhodi, who said the Department of Water Affairs had suspended the licences without consulting with his department. He said it was important that his department be consulted and notified if a decision like this was taken. 'I want to be given a chance, together with my colleague in Water Affairs, for us to look into solutions to issuing of water licences.'

[Full report in The Herald \(subscription needed\)](#) *Legalbrief Today* 6 August 2015



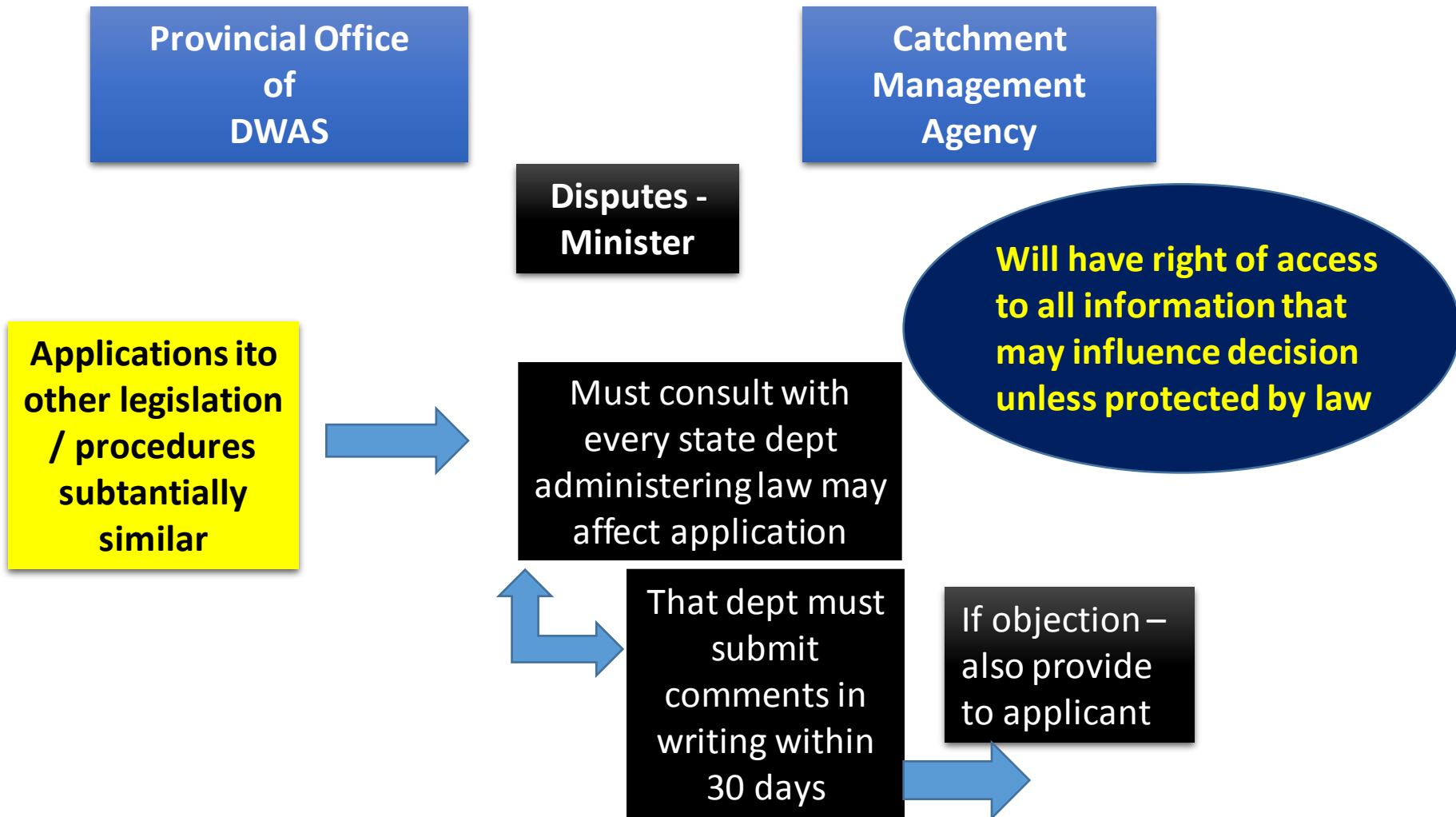
Draft NWA Regulations

Gen Notice 126 in GG 38465 of 12 February 2015

- Purpose:
- To regulate the
 - Submission
 - Processing
 - Consideration
 - Decision
- On water use licences in order to avoid or minimise detrimental impacts on water resources – regulation 1



Responsible authority



Procedure – pre-application

- Written notice to department
- Department within 5 days – letter acknowledge the notice and indicate the processes to be followed
 - If mine – then need written letter of acceptance of prospecting permit / mineral rights application
 - Such letter must be submitted within 5 days of issuance of such letter by the DMR
- Pre-application meeting and site inspection with authorities (30 days from notice of intent)
 - Clarify water uses
 - Inspection of site and facilities proposed for water uses

Public participation – reg 38

- Authority may require a public participation process (s 41(4) of NWA & guidelines)
- Proper notice – notice board on fence/site/alternative sites / written notice/adverts/alternative methods etc
- I&As, land claimants as recognised in GG – must be provided an opportunity to support / object to application
- Register of I&As & record of comments

Application compilation & submission

- Compile & submit application within 100 days following conclusion of pre-application process
- On official form
- Supported by technical documents compiled by qualified persons registered by professional bodies
- Non-refundable application fee
- Power of attorney if application is managed by someone else than applicant
- Submit electronically

Application compilation & submission

- Responsible authority must check if the application comply with requirements
- Must within 10 days acknowledge receipt / reject if does not meet formal requirements
- If rejected – may correct within 10 days & resubmit

Integrated water use application

- More than 1 water use / two or more interrelated water uses in the same general area
- Responsible authority may consolidate them in 1 integrated licence application
- The cumulative impacts of each water use activity must be considered

Criteria for consideration

- Over and above the sections in the NWA
- Also
- Need for and desirability of the water uses.



Assessment of application

- Administrative, legal and technical assessments
- 153 days to finalise in record of proceedings: Record of Recommendation (RoR)
- In this time additional information may be requested
- All applications will be submitted to a water use assessment advisory committee
- Final decision: within 143 days (?) from the day of acknowledgement of the application acceptance
- Table 1: Time frames – 300 days.... (possibility for extension)

Integrated system?

Day timeframes

NEMA

calendar days

300 = 10 months

NWA

working days

300 = 13+ months



Integrated system

- Water use
 - DMR application form
 - Applicants are required to apply for the necessary water use licence and any other authorisations or licences ... as required by the relevant legislation.
 - Upon acceptance of an application for a right/permit in terms of the MPRDA, applicants will be required to provide evidence ... that a water use licence has been applied for.

Integrated system

- Application processes
 - NEMA EIA regs
 - An application for an environmental authorisation may only be submitted after the acceptance of an application for any right or permit in terms of the MPRDA (2002);
 - DMR application form
 - This application must be submitted through the SAMRAD online application system of the Department of Mineral Resources under “Other documents to upload”.
 - The RM will respond to the application & provide the reference and correspondence details of the Competent Authority in the event that the application for a right or permit is accepted, together with the date by which the relevant environmental reports must be submitted.
 - Notwithstanding anything that may appear to be stated to the contrary in the acceptance letter, the timeframes are in fact aligned and the prescribed timeframes for the submission of documents as regulated by the NEMA regulations must be strictly adhered to.



Waste applications

<http://sawic.environment.gov.za/?menu=75>

National Environmental Management: Waste Act 59 of 2008

- S 19:
 - Minister may by notice in GG list activities in GG
 - That have or are likely to have a detrimental effect on the environment
- S 20
 - If listed – then must apply for a waste management licence into s 45
- S 48
 - Factors to be considered
- Competent authority (s 43)
- Minister of EA / Provincial authority / statutory body / Minister of MR
- S 44: Cooperative governance – NEMA application or other legislation by other organs of state



Listed Activities

- GN 921 in GG 37083 of 29 November 2013
- Category A – Basic Assessment
- Category B – Scoping & EIA
- Category C – comply with prescribed standards



Applications

- Apply on www.sawic.org.za
- All applications forms
- Manuals

- See also Waste Management activities Licencing Frequently Asked Questions



Mines

- Minister of MR competent authority if directly related to
 - Prospecting, exploration of mineral or petroleum resource
 - Extraction of processing of mineral or petroleum resource
 - Residue stockpiles and residue deposits from prospecting, mining, exploration and production
- Aquarius Case – no regulations for residue stockpiles and residue deposits – therefore NEMLAA not in operation ...

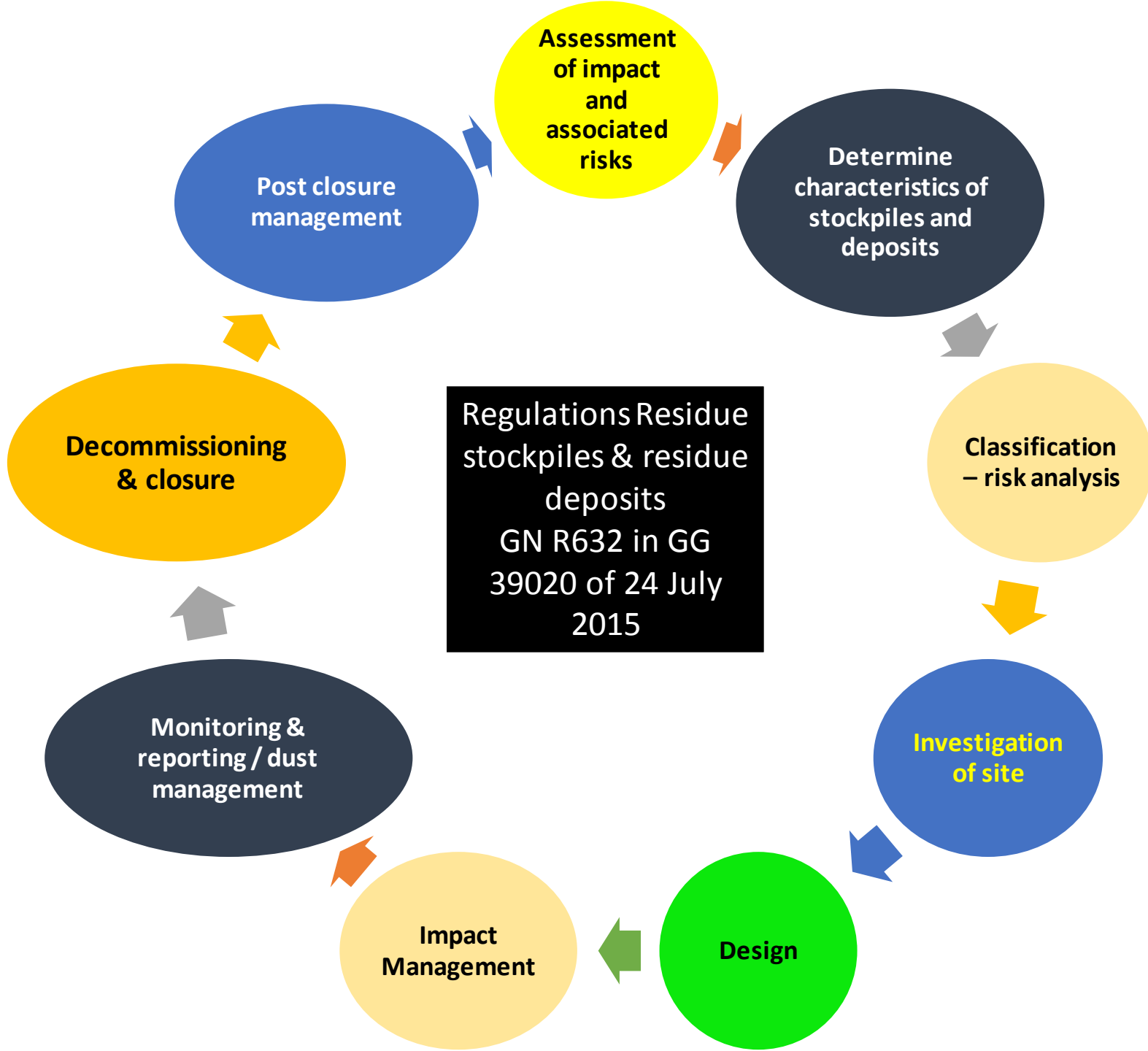


Mines – NEMWA & listed activities

GN R633 in GG 39020 of 24 July 2015 amended
GN 921

- Includes residue stockpiles & residue deposits – prospecting / mining permit – Category A
- If mining right/exploration/production right – Category B





Waste & NWA

- REMEMBER
- If you trigger a listed activity for waste management licence
- Changes are
 - You will also trigger a s 21 water use!
- E.g. Residue stockpiles and residue deposits ?
- Which s 21 water uses do you think will be triggered with the new listed activity?

Conclusion

- Integrated process
 - NEMA
 - NWA
 - NEMWA
 - MPRDA
- Need to align your application from the beginning
- Speak to the officials
- Read the Manuals
- Adhere to the time frames as far as possible
- Make use of specialists in the field
- Get legal or expert advice if needed



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