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DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES

NO. 854

07 AUGUST 2020

**ANTARCTIC TREATIES ACT, 1996**

**(ACT NO. 60 OF 1996)**

**DRAFT ANTARCTIC TREATIES REGULATIONS**

I, Barbara Dallas Creecy, the Minister of Forestry, Fisheries and the Environment, hereby publish for public comment, the draft Antarctic Treaties Regulations in terms of sections 6(1)(b) and (c) of the Antarctic Treaties Act, 1996 (Act No. 60 of 1996), as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the draft amendments is invited to do so within 30 calendar days of the publication of this notice. The overall purpose of the regulations is to regulate activities within the Antarctic Treaty area in Antarctica in order to prevent and mitigate significant harm to that pristine environment so that the overall objectives of the Antarctic Treaty and its Protocol on Environmental Protection are adhered to. The regulations prioritise scientific research and conservation of Antarctica as the area to conduct such research. Comments received after this time may not be considered. All representations and comments must be submitted in writing to the Deputy Director-General of the national Department of Environment, Forestry and Fisheries, Branch: Oceans and Coasts:

**By hand:** The Deputy Director-General  
**Attention:** Mr Mbulelo Dopolo  
Department of Environment, Forestry and Fisheries  
Branch: Oceans & Coasts  
2 East Pier Building, East Pier Road  
Victoria & Alfred Waterfront, Cape Town  
**By e-mail:** [mdopolo@environment.gov.za](mailto:mdopolo@environment.gov.za)

**By post to:** The Deputy Director-General  
**Attention:** Mr Mbulelo Dopolo  
Department of Environment, Forestry and Fisheries  
Branch: Oceans & Coasts  
P.O. Box / Private Bag X4390  
Cape Town, 8002



**BARBARA DALLAS CREECY**  
**MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

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## CHAPTER 1 DEFINITIONS AND OBJECTS

### 1. Definitions

In these regulations, unless the context indicates otherwise, a word or expression that is defined in the Act has the same meaning in these regulations, and in addition—

“**Act**” means the Antarctic Treaties Act, 1996 (Act No. 60 of 1996);

“**alien**” has the meaning assigned to it in section 1 of the National Environmental management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“**Antarctic seal**” means the Southern Elephant seal (*Mirounga leonina*), Leopard seal (*Hydrurga leptonyx*), Weddell seal (*Leptonychotes weddelli*), Crabeater seal (*Lobodon carcinophagus*), Ross seal (*Ommatophaca rossi*) and the Southern fur seal (*Arctocephalus* sp.);

“**Antarctic Treaty**” means the Antarctic Treaty, signed in Washington DC, United States of America on 1 December 1959;

“**Antarctic Treaty area**” means the area south of 60 degrees South Latitude, including all ice shelves;

“**authorised operator**” means an operator who organises activities in the Republic to be carried out in the Antarctic Treaty area, and requires authorisation in terms of the Act, these regulations or any other law for the Antarctic Treaty area;

“**environmental emergency**” means any incident that has occurred, that results in, or imminently threatens to result in, any significant and harmful impact in the Antarctic Treaty area;

“**environmental management inspector**” has the meaning assigned to it in the National Environmental Management Act;

“**indigenous**” has the meaning assigned to it in section 1 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“**Management Plan**” means a plan to manage the activities within and protect a specially protected area as contemplated in Articles 5 and 6 of Annex 5 to the Protocol;

“**MARPOL 73/78**” means the International Convention for the Prevention of Pollution from Ships 1973/1978;

“**National Environmental Management Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“**operator**” means any person, governmental and non-governmental, which organises activities to be carried out in the Antarctic Treaty area, but does not include—

- (a) a natural person who is an employee, contractor, subcontractor, agent, or who is in the service of such person; and
- (b) a juristic person which is a contractor or subcontractor acting on behalf of any State, including the Republic;

“**reasonable**” as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and is based on the availability of objective criteria and information, including—

- (a) risks to the Antarctic environment, and the rate of its natural recovery;
- (b) risks to human life and safety; and
- (c) technological and economic feasibility;

“**response action**” means reasonable measures taken after an environmental emergency has occurred including to avoid, minimise or contain the impact of that

environmental emergency, which may include clean-up processes, and determining the extent of that emergency and its impact;

**“Rotary Biological Contacter process”** is a biological treatment process used in the treatment of wastewater after primary treatment, and is a type of secondary biological treatment, that allows wastewater to come in contact with a biological medium in order to remove pollutants in the wastewater before discharge of the treated wastewater into a body of water such as the sea;

**“Seals Convention”** means the Convention for the Conservation of Antarctic Seals London, 1972;

**“specially protected area”** means an Antarctic specially protected area designated in terms of Annex 5 to the Protocol;

**“specific environmental management Act”** has the meaning assigned to it in section 1 of the National Environmental Management Act; and

**“the Protocol”** means the Protocol on Environmental Protection to the Antarctic Treaty, Madrid, 1991.

(2) Unless the context indicates otherwise the words and phrases defined in Article 1 of Annex 2 and Annex 4 to the Protocol shall have the same meaning in these regulations.

## 2. **Objects**

The objects of these regulations are—

- (a) To protect the Antarctic environment, its dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values;
- (b) to prevent, minimise and contain the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

- (c) to prioritise scientific research and to preserve the value of Antarctica as the area to conduct such research;
- (d) to regulate and manage activities that take place within the Antarctic Treaty area;
- (e) to provide for protection of certain areas and species within the Antarctic Treaty area; and
- (f) to prevent, minimise and mitigate pollution within the Antarctic Treaty area.

## **CHAPTER 2**

### **ENVIRONMENTAL PROTECTION**

#### **3. Prohibition on mining**

No person may conduct any prospecting, mining, exploration, production or related activities in the Antarctic Treaty area.

#### **4. Prohibition on nuclear testing and waste disposal**

No person may undertake any nuclear testing, explosions, or dispose of any radioactive material or waste within the Antarctic Treaty area.

#### **5. Environmental Impact Assessment**

- (1) Any activity undertaken in the Antarctic Treaty area relating to scientific research, tourism and any other activity for which advanced notice is required in terms of Article 7(5) of the Antarctic Treaty, must follow the prior assessment process set out in Annex 1 to the Protocol to assess the impacts of these activities on the Antarctic environment or any dependent or associated ecosystems, prior to the commencement of such activity.
- (2) The assessment procedure in sub-regulation (1) must also be applied to any change in any activity, whether such change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility or otherwise.

- (3) Unless an activity contemplated in sub-regulation (1) is required to be subjected to a Comprehensive Environmental Evaluation as provided for in Annex 1 to the Protocol, all such activities must at least undergo an Initial Environmental Evaluation as provided for in Article 2 of Annex I to the Protocol to determine if such activity has a less than minor or transitory impact.
- (4) If an Initial Environmental Evaluation as contemplated in sub-regulation (3) determines that a proposed activity is likely to have no more than a minor or transitory impact, the Minister may issue authorise that activity to proceed with a permit which may be issued subject to any conditions which the Minister may deem appropriate.
- (5) No person may undertake any activity contemplated in sub-regulation (4) except on the authority of a permit issued by the Minister.
- (6) If an Initial Environmental Evaluation indicates or it is otherwise determined that a proposed activity is likely to have a more than minor or transitory impact, a Comprehensive Environmental Evaluation must be prepared and processed in terms of Article 3 of Annex 1 to the Protocol.
- (7) If after the completion of a Comprehensive Environmental Evaluation, an activity is authorised to proceed in terms of the processes set out in Article 3 of Annex 1 to the Protocol, the Minister must issue a permit before the activity can commence.
- (8) The Minister may in respect of any permit issued in terms of this regulation, impose any conditions deemed necessary including-
  - (a) measures to monitor environmental indicators;
  - (b) measures to verify and assess the impact of the activity; and
  - (c) the provision of any other information necessary to report on or continuously assess the impact of the activity.



## **6. Conservation of Antarctic flora and fauna**

- (1) No person shall take, destroy or engage in harmful interference in relation to any indigenous flora and fauna in the Antarctic Treaty area, except on the authority of a permit issued by the Minister.
- (2) The Minister may issue a permit contemplated in sub-regulation (1) in the following circumstances:
  - (a) to provide specimens for scientific research;
  - (b) to provide specimens for museums, herbaria, zoological and botanical gardens or other educational or cultural institutions or uses; or
  - (c) to provide for unavoidable consequences of scientific activities not authorised in paragraphs (a) or (b), or of the construction and operation of scientific support facilities.
- (3) When considering a permit application in terms of sub-regulation (2), the Minister must have regard to the criteria and factors detailed in Article 3(3) of Annex 2 to the Protocol and the provisions of the National Environmental Management Act and any specific environmental management Act as it may relate to Antarctic flora and fauna.
- (4) All the species listed in Appendix A of Annex 2 to the Protocol are hereby designated as Specially Protected Species.
- (5) The Minister may not issue a permit relating to a Specially Protected Species except if such activity—
  - (a) is for a compelling scientific purpose;
  - (b) will not jeopardise the survival or recovery of that species or local population of that species; and
  - (c) makes use of non-lethal techniques.

- (6) Subject to sub-regulations (7) and (8), no person may introduce any alien plant or animal onto land, any ice shelf or the water within the Antarctic Treaty area except on the authority of a permit issued by the Minister.
- (7) Any dog, whether on land or on any ice shelf, is prohibited within the Antarctic Treaty area.
- (8) A permit contemplated in sub-regulation (6) may only be issued for those species listed in Appendix B of Annex 2 to the Protocol.
- (9) Sub-regulation (6) does not apply to the introduction of food into the Antarctic Treaty area, provided no live animals are introduced for the purposes of food. All plants and animal parts and products must be kept under controlled conditions and may only be disposed of in accordance with Annex 3 to the Protocol and Appendix C to Annex 2.
- (10) No person may fly or land a helicopter or any other aircraft, use a vessel, vehicle, firearm or explosive in a manner that disturbs any concentration of indigenous birds or marine mammals including seals.
- (11) The Minister may direct a person that has introduced any plant or animal without a permit in terms of these regulations, to remove or destroy these species, including any trace of them, unless removing or destroying such species will cause more damage to the environment than allowing them to remain.
- (12) If the directive in sub-regulation (11) is not complied with, the Minister may take measures to remove the plant or animal and claim the costs of such removal including rehabilitation, from the responsible person.

## 7. Protection of Antarctic seals

- (1) Subject to sub-regulation (2), no person may within the Antarctic Treaty area, kill, capture or cause any harm to an Antarctic seal except on the authority of a permit issued by the Minister.
- (2) No person may kill, capture or cause harm to any Ross seal (*Ommatophaca rossi*), Southern elephant seal (*Mirounga leonina*) or fur seal (*Arctocephalus* sp.).
- (3) A permit contemplated in sub-regulation (1), may only be issued for a Crabeater seal (*Lobodon carcinophagus*), Leopard seal (*Hydrurga leptonyx*) or Weddell seal (*Leptonychotes weddelli*) and only for the following purposes:
  - (a) To provide food for any person or animal where no other reasonable alternative is available; or
  - (b) for scientific research.
- (4) When considering an application for a permit contemplated in sub-regulation (3) and when imposing conditions on such permit, the Minister must have regard to the provisions of Annex 1 to the Seals Convention.

## 8. Antarctic specially protected areas and sites

- (1) No person may enter an Antarctic specially protected area except on the authority of a permit issued by the Minister.
- (2) The Minister may only issue a permit contemplated in sub-regulation (1) in accordance with the requirements of the Management Plan for that specially protected area.
- (3) Where a specially protected area does not have a Management Plan, the Minister may only issue a permit to enter such area, for a compelling scientific purpose, which cannot be served elsewhere and which will not jeopardise the natural ecological system in the specially protected area.

- (4) A permit contemplated in sub-regulation (1) must at last contain the following details:
  - (a) The extent and location of the specially protected area;
  - (b) the specific activities that are authorised, the time period, location and by whom such activities may be undertaken;
  - (c) relevant conditions within the Management Plan; and
  - (d) any other conditions which the Minister may deem necessary.
- (5) A permit holder must at all times carry a certified copy of a permit while in a specially protected area.
- (6) No person may damage, remove or destroy any listed Historic sites and Monuments designated in terms of Annex 5 to the Protocol.

### CHAPTER 3

## LIABILITY ARISING FROM ENVIRONMENTAL EMERGENCIES

### 9. Preventative Measures

- (1) Any authorised operator operating in or located within the Antarctic Treaty area must implement the following preventative measures:
  - (a) Specialised structures or equipment incorporated into the design and construction of facilities or means of transportation;
  - (b) specialised procedures incorporated into the operation or maintenance of facilities or means of transportation; and
  - (c) specialised training of personnel; and
  - (d) any other measures,provided for by the Minister in any norms and standards, guideline or policy.

## **10. Contingency Plans**

- (1) Any authorised operator operating in or located within the Antarctic Treaty area, shall compile a contingency plan for responding to any incident which has or may have an adverse effect on the Antarctic Treaty area or dependent and associated ecosystems, which plan must be approved by the Minister and must include the following:
  - (a) procedures for conducting an assessment of the nature of the incident;
  - (b) notification protocols;
  - (c) identification and mobilisation of resources;
  - (d) response plans;
  - (e) training;
  - (f) record keeping;
  - (g) demobilization; and
  - (h) any other information required.
- (2) If an environmental emergency occurs, the master of a vessel and an authorised operator shall immediately notify the Department's Director of Marine Pollution of the incident.
- (3) If a contingency plan requires the support of other operators, research programmes or other Parties to the Antarctic Treaty, the signed agreements relating to such support must be submitted to the Minister 60 calendar days before the activity starts.

## **11. Response Action**

- (1) Any authorised operator, operating in or located within the Antarctic Treaty area who causes or is responsible for an environmental emergency shall take immediate steps as contemplated in section 30 of the National Environmental Management Act. For the purposes of these regulations the term 'relevant authority' in section 30 shall mean the Minister.

- (2) Any other State that wishes to take response action to an environmental emergency must notify the authorised operator and the secretariat of the Antarctic Treaty prior to taking any such response action, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case the relevant State shall notify the authorised operator and the secretariat of the Antarctic Treaty as soon as possible.
- (3) Such other State contemplated in sub-regulation (2), shall not take response action to an environmental emergency unless:
  - (a) A threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action; or
  - (b) the authorised operator has failed within a reasonable time to notify the secretariat of the Antarctic Treaty that it will take the response action itself; or
  - (c) where that response action has not been taken within a reasonable time after such notification.
- (4) Where an authorised operator takes response action itself, but is willing to be assisted by another State, the authorised operator shall coordinate the response action as directed by the Minister in terms of sub-regulation (1).
- (5) If any authorised operator takes any response action in respect of any other State's operator or other person, which has caused or was responsible for an environmental emergency, it shall notify the Minister, who shall notify the other State and the secretariat of the Antarctic Treaty of the intention to assist or take action beforehand, except where a threat of significant and harmful impact to the Antarctic Treaty area is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case such authorised operator shall notify the Minister as soon as possible.
- (6) An authorised operator shall not take response action to an environmental emergency contemplated in sub-regulation (5) unless:

- (a) A threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action; or
  - (b) the responsible person or State has failed within a reasonable time to notify the secretariat of the Antarctic Treaty that it will take the response action itself; or
  - (c) where that response action has not been taken within a reasonable time after such notification.
- (7) Where it is unclear which person or State is the responsible person for the environmental emergency, or it appears that there may be more than one person or State responsible, if the authorised operator takes response action, it shall notify the Minister who must consult and notify the secretariat of the Antarctic Treaty of the circumstances.
- (8) If any authorised operator takes response action it shall consult and coordinate their action as directed by the Minister and shall, where practicable, take into account all relevant expert guidance which has been provided to the Antarctic Treaty Consultative Meeting.

## **12. Liability**

- (1) Any authorised operator operating in or located within the Antarctic Treaty area that fails to take prompt and reasonable response action to environmental emergencies arising from its activities, shall be liable to pay the costs of response action taken by the Republic and any other person or State who took the required response action.
- (2) When a South African government operator should have taken response action but failed to do so, and no response action was taken by any other country, the government operator shall be liable to pay the costs of the response action which should have been undertaken. Such money shall be paid directly into the Fund as detailed in Article 12 of Annex 6 to the Protocol.

- (3) When a non-governmental authorised operator should have taken response action but failed to do so, and no response action was taken by any other person, the non-governmental authorised operator shall be liable to pay an amount of money that reflects the costs of the response action that should have been taken. Such money is to be paid directly to the Fund as detailed in Article 12 of Annex 6 to the Protocol.
- (4) Liability for any environmental emergency in the Antarctic Treaty area shall be strict liability.
- (5) When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency resulted from its activities, shall be liable in respect of that part only.

### **13. Exemptions from Liability**

- (1) An operator shall not be liable in terms of regulation 12, if it proves that the environmental emergency was caused by:
  - (a) An act or omission which was reasonable in the circumstances, to protect human life or safety;
  - (b) an event constituting a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities of the operator.
- (2) An operator, or its agents, contractors or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it to the extent that such response action was reasonable in the circumstances.



#### **14. Limits of Liability**

- (1) The maximum amount, for which each operator may be liable, in respect of each environmental emergency, shall be determined as provided for in Article 9 of Annex 6 to the Protocol, as amended by any Resolution, Decision, Measure or other means.
- (2) Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

#### **15. Insurance and other financial security**

- (1) Any authorised operator other than a government operator, operating in or located within the Antarctic Treaty area shall maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under these regulations up to the applicable limits contemplated in regulation 14.
- (2) An authorised operator other than a government operator, must also have sufficient insurance or provide an equivalent guarantee for costs of any kind incurred by an organ of state or other person in connection with any searches, rescue operations or medical transport that have to be carried out in relation to the activity in the Antarctic Treaty area. The insurance or guarantee must cover such expenses irrespective of any negligence by the authorised operator or any other person in the expedition or involved in the activity.
- (3) The Minister must determine whether the insurance or guarantee provided in terms of sub-regulation (2) is sufficient.

## CHAPTER 4 WASTE DISPOSAL AND MANAGEMENT

### 16. Waste removal and incineration

- (1) The wastes listed in Article 2 of Annex 3 to the Protocol shall be removed from the Antarctic Treaty area by the generator of such waste in the manner and in accordance with the conditions provided for in such Article.
- (2) No person shall incinerate any waste or any other material within the Antarctic Treaty area.

### 17. Disposal of waste on land

- (1) Waste not disposed of in terms of regulation 16, shall not be disposed of into ice-free areas or any freshwater system.
- (2) Sewage, domestic liquid wastes and other liquid wastes not removed from the Antarctic Treaty area, shall not be disposed of onto sea ice, ice shelves or the grounded ice-sheet.
- (3) Waste generated by a station located inland on ice shelves or on the grounded ice-sheet may be disposed of in deep ice pits where such disposal is the only practicable option; and such pits shall not be located on known ice-flow lines, which terminate at ice-free areas or in areas of high ablation.
- (4) Wastes generated at field camps shall be removed by the generator of such wastes to the supporting station or ship for disposal.

### 18. Disposal of waste at sea

- (1) Sewage and domestic liquid waste may be directly discharged into the sea, provided that such discharge—
  - (a) occurs where conditions exist for initial dilution and rapid dispersal; and

- (b) of large quantities of such wastes shall be treated by at least maceration, and large quantities include waste generated at a station where the average weekly occupancy over the austral summer between 15 October and 15 March, is 30 individuals or more.
- (2) The bi-product of the treatment of sewage by the Rotary Biological Contacter process or similar process may be disposed of into the sea, provided that such disposal does not have an adverse effect on the local environment and complies with Annex 4 to the Protocol.

## **19. Prohibited substances**

No person shall introduce onto land, any ice shelf or into the water within the Antarctic Treaty area, the substances listed in Article 7 of Annex 3, except for scientific, medical or hygiene purposes.

## **20. Waste management plans**

- (1) The Minister shall, in accordance with Article 8 of Annex 3 to the Protocol—
  - (a) develop a waste classification system;
  - (b) prepare and annually review a waste management plan; and
  - (c) prepare an inventory of past activities,in respect of any station, camp or ship owned or operated by the State.
- (2) The possession, use or disposal of poly-vinyl chlorides are prohibited within the Antarctic Treaty area.

## CHAPTER 5

### MARINE POLLUTION FROM SHIPS

This chapter applies to all South African flagged vessels and to all authorised operators within the Antarctic Treaty area.

#### **21. Discharge of oil**

Any discharge of oil or oily mixtures shall comply with the provisions of Article 3 of Annex 4 to the Protocol.

#### **22. Discharge of noxious liquid substances**

The discharge of any noxious liquid substance or any chemicals is prohibited within the Antarctic Treaty area.

#### **23. Disposal of garbage**

- (1) The disposal of all garbage into the sea is prohibited including the following:
  - (a) all plastics including synthetic ropes, fishing nets and bags; and
  - (b) paper products, rags, glass, metal, bottles, crockery, incineration ash, dunnage, lining and packing material.
- (2) Food waste may only be disposed of into the sea if it has been passed through a comminuter or grinder and is capable of passing through a screen with openings of a maximum of 25 millimetres. Such disposal into the sea may only occur at least 12 nautical miles from land or any ice shelf, unless authorised under Annex 5 of MARPOL 73/78.
- (3) If any substance or material covered by this regulation is mixed with any other substance or material for discharge or disposal, the more stringent or restrictive disposal or discharge requirements must apply.

- (4) The provisions of sub-regulation (1) do not apply to—
  - (a) The escape of garbage as a result of damage to a vessel or its equipment, provided all reasonable measures were taken before and after such damage to prevent or minimise such escape; or
  - (b) the accidental loss of synthetic fishing nets, provided all reasonable measures were taken to prevent such loss.
  
- (5) All vessels shall keep a garbage record book which contains the following information:
  - (a) Type of substance being disposed of;
  - (b) date of disposal;
  - (c) amount or volume being disposed of; and
  - (d) GPS location of disposal.

#### **24. Discharge of sewage**

- (1) The discharge of untreated sewage into the sea within 12 nautical miles from land or any ice shelf, within the Antarctic Treaty area is prohibited.
  
- (2) Beyond 12 nautical miles from land or any ice shelf within the Antarctic Treaty area, sewage may only be discharged into the sea at the rate specified in Annexure 1 to these regulations, and while a vessel is travelling at a speed of not less than 4 knots.
  
- (3) Sub-regulation (1) and (2) does not apply to any vessel certified to carry not more than 10 persons.
  
- (4) All vessels and land based stations shall keep a sewage record book which contains the following information:
  - (a) Type of substance being disposed of;

- (b) date of discharge;
- (c) amount or volume being discharged;
- (d) GPS location of discharge; and

## **25. Ship capacity and reception facilities**

- (1) Every vessel entering the Antarctic Treaty area shall be fitted with sufficient capacity to—
  - (a) Retain all sludge, dirty ballast, tank washing water and other oily residues and mixtures;
  - (b) retain garbage; and
  - (c) retain noxious liquid substances.
- (2) All vessels must discharge the substances in sub-regulation (1)(a) and (b) at a reception facility after leaving the Antarctic Treaty area.

## **26. Entry to Antarctica**

- (1) No person may enter or remain in the Antarctica Treaty area, except on the authority of a permit issued by the Minister.
- (2) Sub-regulation (1) does not apply to—
  - (a) a member of an expedition organised by the Department; or
  - (b) a person referred to in section 5 of the Act.
- (3) No South African vessel or aircraft may enter the Antarctic Treaty area, except on the authority of a permit issued by the Minister.
- (4) Sub-regulation (3) does not apply to—
  - (a) a vessel or aircraft travelling to an immediate destination outside Antarctica; or

- (b) a vessel or aircraft belonging to the Republic; or
- (c) a vessel or aircraft duly chartered by the Republic.

## **CHAPTER 6**

### **PERMITS**

#### **27. Application for a permit**

- (1) An application for a permit or renewal of a permit, in terms of these regulations must—
  - (a) be made to the Minister on the application form obtained from the Department;
  - (b) be accompanied by proof of payment of the application fee if prescribed;
  - (c) be accompanied by all supporting documents required to assess the application including those required by the application form and these regulations;
  - (d) be submitted—
    - (i) electronically, or by hand as required; and
    - (ii) with the original, or certified copies of the documentation in support of the application, as required; and
  - (e) be completed in full and signed by the relevant person or persons as indicated in the application form.
- (2) An application for a permit must be submitted at least 180 calendar days prior to the date of departure to the Antarctic Treaty area.
- (3) If an applicant fails to fully complete all required parts of, or provide all information required by, the application form or these regulations; the application will be rendered incomplete and will not be considered.

- (4) The Department must, within 10 working days after receipt of an application for or renewal of a permit, acknowledge receipt of the application in writing.

## **28. Assessment of applications**

- (1) The Minister may, after receiving an application submitted in terms of these regulations—
- (a) request the applicant to provide specific information by a specified date;
  - (b) request the applicant to carry out further investigations and to provide that information within a specified time; or
  - (c) request the applicant to consult with specific organisations, authorities, persons or interested parties and submit the reports of the required consultations within a specified time.
- (2) In assessing an application for a permit or renewal of a permit the Minister may, in addition to those factors detailed in these regulations, also have regard to the following—
- (a) whether or not the applicant has been convicted of contravening the Act, the National Environmental Management Act or any other specific environmental management Act; or
  - (b) whether the applicant has contravened conditions of prior or existing permits or authorisations granted to the applicant in terms of the Act, the National Environmental Management Act or any other specific environmental management Act, including these regulations.
- (3) A failure to comply with any request made in terms of sub-regulation (1) renders the application incomplete and it will not be considered.



## 29. Decision on applications

- (1) The Minister may, in relation to an application for a permit or renewal of a permit in terms of these regulations—
  - (a) issue a permit subject to conditions; or
  - (b) refuse the application.
- (2) A permit must be issued in writing and must include the following details:
  - (a) The identity and contact details of the permit-holder;
  - (b) the geographic location of the infrastructure or activity to be undertaken;
  - (c) the validity period of the permit; and
  - (d) the conditions included in the permit.
- (3) A decision to refuse a permit must include—
  - (a) the reasons for the decision; and
  - (b) the date of the decision.
- (4) The Minister's decision on an application for a permit or renewal of a permit must be made within 60 calendar days from the date that all documentation and information required by, or requested in terms of, these regulations was received by the Minister.
- (5) A permit may be issued for a maximum period of up to 36 months.

- (6) A permit may be issued subject to conditions.
- (7) Any permit issued in terms of these regulations is not transferable.

### **30. Permit renewal**

- (1) A permit-holder may apply to the Minister for a renewal of any permit issued in terms of these regulations, for a maximum period of 12 months, whereafter a new application for a permit must be made.
- (2) In an application for a renewal of a permit, the Minister may consider—
  - (a) whether the activity has varied significantly, in relation to the parameters set in the original permit's conditions; and
  - (b) any other relevant consideration.

### **31. Suspension, amendment and cancellation of permits**

- (1) Subject to sub-regulations (2) and (3), a permit issued under these regulations may at any time be suspended, cancelled or amended.
- (2) A permit may be suspended, cancelled or amended by the Minister, if—
  - (a) the Minister is satisfied on the basis of information that was not considered when the permit was issued, that it is necessary or desirable to suspend, cancel or amend the permit to prevent deterioration or further deterioration of the environment within the Antarctic Treaty area;
  - (b) other similar permits held by other persons 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;

- (c) the permit holder is in breach of a condition contained in the permit;
  - (d) the permit holder provided incorrect or false information in the application for the permit;
  - (e) the holder of a permit has been convicted of an offence in terms of the Act, the National Environmental Management Act or a specific environmental management act or any regulations issued thereunder;
  - (f) the reason for the issuing of the permit no longer exists; or
  - (e) it is necessary to meet the Republic's international obligations.
- (3) A permit may be amended by the Minister—
- (a) if an error needs to be corrected or rectified;
  - (b) at the request of the applicant;
  - (c) for the proper management and implementation of these Regulations; or
  - (d) where the conditions or circumstances have changed since the original permit was issued.

## **CHAPTER 7**

### **GENERAL PROVISIONS**

#### **32. Emergencies**

The provisions of regulations 5, 6, 7, 8 and Chapters 4 and 5, shall not apply to activities undertaken in instances of emergency relating to the safety of human life, ships, aircraft or equipment and facilities of high value or the protection of the environment.

#### **33. Observers and inspections**

All areas within the Antarctic Treaty area, including all stations, installations and equipment within those areas, and all vessels and aircraft at points of discharging or embarking cargo or personnel, shall be open at all times to inspection by any Departmental official, any person designated in terms of section 5(1) of the Act, or observers designated in accordance with Article 7 of the Antarctic Treaty.

#### **34. Powers of inspectors**

- (1) The Minister may designate an environmental management inspector, as an inspector in terms of section 5(1)(a) or (c) of the Act, and such inspector shall have the powers and functions as detailed and determined for environmental management inspectors in the National Environmental Management Act.
- (2) An identity card issued in terms of section 5(2) of the Act, must include the following information:
  - (a) The name of the designated person;
  - (b) type of designation;
  - (c) rank, post or position, where relevant;
  - (d) unique identity card number;
  - (e) date of issue;

- (f) details of issuing authority; and
- (g) any other information required.

### **35. Notification**

- (1) Any person, South African flagged vessel or authorised operator, must 180 calendar days prior to departure, notify the Minister, of:
  - (a) All expeditions to the Antarctic Treaty area;
  - (b) the activity to be undertaken in the Antarctic Treaty area;
  - (c) all stations in Antarctica occupied or intended to be occupied by South African citizens; and
  - (d) any military personnel or equipment intended to be introduced.
  
- (2) The Minister may condone a shorter notification period in appropriate circumstances including—
  - (a) emergencies where the notification period in sub-regulation (1) was not able to be complied with; or
  - (b) any other circumstance deemed appropriate by the Minister.
  
- (3) The notification contemplated in sub-regulation (1), must include—
  - (a) the name of the responsible person or operator;
  - (b) the scope of the activity, including an initial environmental evaluation, contemplated in regulation 5;
  - (c) the technology and measures that will be used to limit any harmful effects;
  - (d) information on how the requirement of insurance or an equivalent guarantee contemplated in regulation 15 is to be met before the activity starts;
  - (e) contingency plans contemplated in regulation 10; and
  - (f) any other information requested by the Minister.

**36. Postponing, amending or prohibiting an activity**

- (1) The Minister may amend, postpone or completely prohibit an activity contemplated in regulation 33, if its implementation may result in adverse effects on the Antarctic environment or dependent and associated ecosystems or the safeguarding of life and health which are contrary to -
  - (a) the objects of these Regulations;
  - (b) the provisions of these Regulations; or
  - (c) international resolutions, advice or recommendations adopted by the Republic.
- (2) The Minister may postpone or amend an activity to ensure that an environmental evaluation is carried out in accordance with regulation 5.
- (3) If an activity which has commenced leads to unforeseen adverse effects on the Antarctic environment or dependent and associated ecosystems, the Minister may make amendments to the activity, postpone the activity, or completely prohibit the activity if this is necessary to prevent, mitigate or contain the unforeseen adverse effects.

**37. Reporting**

- (1) An authorised operator must prepare and submit a report to the Minister every six months relating to the activity and the use of any permit issued in terms of these Regulations, including a final report within 30 calendar days of the conclusion of the activity.
- (2) The report shall be in the form and contain the information obtainable from the Department.

**38. Offences and Penalties**

In addition to any offence contained in section 9 of the Act, any person who contravenes or fails to comply with regulations 3, 4, 5(1) to (3), 5(5) to 5(7), 6(1), 6(6), 6(7), 6(9), 6(10), 7(1), 7(2), 8(1), 8(5), 8(6), 10(1), 10(2), 11(1), 11(4), 11(6),

11(8), 15, 16, 17, 18, 19, 21, 22, 23(1) to (3), 23(5), 24(1), 24(2), 24(4), 25, 26(1), 26(3), 35(1) and 37(1) in these regulations is guilty of an offence and liable on conviction to—

- (a) imprisonment for a period not exceeding five years; or
- (b) a fine.

### **39. Short title and commencement**

These regulations are called the Antarctic Treaties Regulations, 2020, and commences on the date of publication in the *Gazette*.

**ANNEXURE 1**

The permissible rate of discharge for untreated sewage as prescribed in Resolution MEPC.157(55)

<b>DISCHARGE RATE (m<sup>3</sup>/h)</b>					
<b>Speed (knots)</b>	<b>4</b>	<b>6</b>	<b>8</b>	<b>10</b>	<b>12</b>
<b>Draft (m)</b>					
<b>5</b>	4.63	6.95.	9.26	11.58	13.89
<b>6</b>	5.56	8.33	11.11	13.89	16.67
<b>7</b>	6.48	9.72	12.96	16.21	19.45
<b>8</b>	7.41	11.11	14.82	18.52	22.22
<b>9</b>	8.33	12.50	16.67	20.48	25.00