SUBSIDIARY LEGISLATION 423.32

BOREHOLE DRILLING AND EXCAVATION WORKS WITHIN THE SATURATED ZONE REGULATIONS*

7th October, 2008

LEGAL NOTICE 254 of 2008, as amended by Legal Notices 461 of 2011 and 147 of 2012 and Act XVII of 2024.

Citation and scope.

1. (1) The title of these regulations is the Borehole Drilling and Excavation Works within the Saturated Zone Regulations.

(2) The scope of these regulations is the establishment of a regulatory framework for borehole drilling and excavation works carried out partly or totally within the saturated zone.

Interpretation.
Amended by: L.N. 461 of 2011; XVII.2024.42.
Cap. 549.

2. In these regulations, unless the context otherwise requires:

"Act" means the Environment Protection Act;'

"aquifer" means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the extraction of significant quantities of groundwater;

"Authority" means the Environment and Resources Authority established by article 6 of the Act;

"body of groundwater" means a distinct volume of groundwater within any aquifer;

"borehole" means any means any shaft, adit, opening, hole, spring outlet or well artificially dug in the ground or artificially enlarged, which has access to groundwater or from which groundwater is extracted or can be extracted or which is vertically deeper than half the distance between the well head and the nearest water table at that point, but it does not include a water retaining cistern;

"borehole geological log" means a register containing information regarding the drilling of a borehole;

"casing" means a conduit, pipe, fixture or constructional element which is inserted and attached to the circumference of the borehole to prevent any transfer of fluid between the borehole and its surrounding geological formation;

"confined saline groundwater body" means a saline groundwater body that is overlain by a confining bed which confining bed has a significantly lower hydraulic conductivity than the aquifer formation sustaining the saline groundwater body;

"officer" includes any person engaged by, detailed for duty with, or in any manner whatsoever performing duties for or on behalf of

*These Regulations have been transposed to Cap 549. See S.L. 549.165. See Act XVII of 2024.

the Authority;

"permit" means a permit issued under these regulations to construct a borehole or to carry out any form of excavation works within the saturated zone;

"saturated zone" means that part of an aquifer in which all interconnected openings within the geological formation are completely filled with water;

"seawell" means a borehole:

(*a*) tapping the saline groundwater body lying underneath and in direct physical contact with a sea-level freshwater groundwater body and drilled at a distance of not more than 150 metres from the nearest point along the coastline, and which is cased in accordance with these regulations; or

(*b*) tapping a confined saline groundwater body which is not in direct physical contact with any freshwater groundwater body.

Applicability.

3. These regulations shall not apply to:

(*a*) any borehole constructed for the purposes of the installation of an earth electrode:

Provided that such a borehole does not reach the saturated zone;

(*b*) any borehole constructed for site investigation purposes:

Provided that such borehole does not reach the saturated zone;

(*c*) any borehole or excavation works constructed for the purposes of foundations to buildings or for other engineering works:

Provided that such borehole or excavation works do not reach the saturated zone.

Prohibition.

4. The drilling of a borehole or any form of excavation works carried out partly or totally within the saturated zone is prohibited, unless a permit to this effect is issued by the Authority.

Applications for a permit to drill a borehole or to carry out excavation works within the saturated zone.

5. (1) Any person who intends to drill a borehole or carry out any form of excavation works partly or totally within the saturated zone shall submit an application in writing to the Authority in such form and manner as the Authority may prescribe.

Such application shall at least include:

(*a*) details of the applicant, the person drilling the borehole or carrying out the excavation works and the qualified *perit* under whose supervision such borehole will be constructed or such excavation works will be carried out;

(*b*) full technical details of the location, size and depth of the borehole or excavation works;

(*c*) details of the purposes for construction of the borehole or excavation works and declarations to this effect from the applicant and the *perit*.

(2) A non-refundable application fee of two hundred and thirty euro (€ 230) shall be paid to the Authority with the application form submitted for the purposes of these regulations. Application fee.

6. (1) For a minimum period of twelve months from the date of entry into force of these regulations or until such further period of time as the Authority may subsequently decide, the Authority shall not accept or process any application for the drilling of any borehole or excavation works to be carried out within the saturated zone and the Authority shall not issue any permit for such purposes. Moratorium of borehole drilling. *Amended by: L.N. 461 of 2011; L.N. 147 of 2012.*

(2) The provisions of sub-regulation (1) shall not apply to the following:

(*a*) any borehole constructed for the purposes of the installation of an earth electrode within the saturated zone;

(*b*) any borehole constructed for site investigation purposes within the saturated zone;

(*c*) any borehole or excavation works carried out for the purposes of the construction of foundations to buildings or for the purposes of other engineering works, and where such borehole or excavation works lie partly or totally within the saturated zone;

(*d*) any seawell; and

(*e*) any borehole to be drilled in replacement of an irretrievably collapsed borehole which was duly notified or registered with the Authority as a groundwater source used for agricultural purposes under the Registration of Groundwater Sources Regulations, 1997, or under the Notification of Groundwater Sources Regulations. L.N. 120 of 1997. S.L. 423.12

Such replacement borehole is to be drilled within the same "reference parcel" (as defined under the Single Payment Scheme Regulations) as the irretrievably collapsed borehole: S.L. 146.07

Provided that such borehole shall be certified to be "irretrievably collapsed" by means of a signed declaration of a *Perit* and be declared to be so "irretrievably collapsed" by means of a declaration under oath of the user of the irretrievably collapsed groundwater source.

(3) Any person when drilling a sea-well shall:

(*a*) if the sea-well is located at a distance of not more than 50m from the nearest point along the coastline construct a casing for the sea-well for a minimum depth of 10 meters below sea-level; or

(*b*) if the sea-well is located at a distance of between 50 and 100m from the nearest point along the coastline construct a casing to the sea-well for a minimum depth of 25 meters below sea-level; or

(*c*) if the sea-well is located at a distance of between one hundred metres and one hundred and fifty metres from the nearest point along the coastline construct a casing to the sea-well for a minimum depth of fifty metres below sea-level; or

(*d*) if the sea-well is tapping a saline groundwater body which is not in direct physical contact with any freshwater groundwater body, construct a casing along the seawell from the surface to a minimum depth of six metres below the blue clay - globigerina limestone interface.

(4) Upon drilling a sea-well, the person who has applied with the Authority for a permit for the drilling of a sea-well in terms of regulation 5(1) shall immediately ensure that appropriate water quality tests which establish the electrical conductivity of the water extracted from the seawell are carried out by an accredited laboratory and that such results are forthwith submitted to the Authority. Such water quality tests shall also be carried out by the user of the sea-well on a regular basis, as directed by the Authority. Where, in terms of such water quality tests, the electrical conductivity of such water results to be less than 50,000 µS/cm, the user of the sea-well shall immediately inform the Authority of the quality of the water extracted and shall cease to extract water from such seawell for such period of time as the Authority may decide.

(5) The Authority may at any time, order the cessation of abstraction of water from a source and, or order the closure of a seawell, when the Authority determines that the extraction of water from any seawell which can have a negative impact on the quantitative and, or the qualitative status of a fresh-water groundwater body.

Determination procedure of applications.

7. (1) The Authority shall establish its procedure for determining an application for a permit to drill a borehole or for excavation works within the saturated zone.

(2) The Authority shall communicate to the applicant in writing within eight weeks from the date of receipt of a valid application containing all such information and documentation requested by the Authority and accompanied by the appropriate application fee, any decision taken concerning an application for a permit to drill a borehole or carry out excavation works within the saturated zone.

(3) An application for a permit issued under these regulations shall be determined by the Authority in accordance with the following criteria. The Authority shall have to be satisfied that by granting the permit:

(*a*) there will be no significant impact on water resources;

(*b*) water resources will be used efficiently in the course of any activities carried out under the permit;

(*c*) the water environment is protected including the limitation of discharges to the environment;

(*d*) the public interest in general is safeguarded.

(4) In the case of a refusal to grant a permit, the Authority shall give reasons for its decision.

Powers to impose conditions of permit.

8. (1) The Authority shall have the power, through the permit, to establish such conditions as the Authority considers requisite or necessary.

(2) The permit holder shall at all times comply with these regulations and with the conditions of the permit.

(3) The conditions included in the permit may contain, but not necessarily be limited to, provisions regarding:

(*a*) the grant and term of the permit;

(*b*) compliance requirements to conditions for drilling the borehole or carrying out the excavation works including directions, standards, guidelines, codes of good drilling practice or rules issued by the Authority;

(*c*) prevention of groundwater pollution by means of the discharge of substances in the course of drilling operations and in the course of any activity carried out under the permit;

(*d*) submission of data regarding the borehole's geological log and other such information as the Authority may require;

(*e*) inspection, making of copies and taking of extracts from records held by the permit holder and, or driller with respect to the drilling of the borehole or carrying out of the excavation works.

Rights of use with respect to groundwater extraction.

9. The issue of a permit to drill a borehole or to carry out excavation works within the saturated zone does not in any way give any right to draw water from such a source or to dispose of any material whether liquid or solid.

Corrective measures to safeguard groundwater resources.

10. Where the Authority determines that a borehole drilled or that excavation works which are carried out partly or totally within the saturated zone have a significant impact on a body of groundwater or other source or sources of groundwater, the Authority may:

(*a*) order the immediate cessation of such activity and water extraction or the reduction in the amount of water being extracted;

(*b*) order the closure of such borehole or cessation of such works.

Suspension, revocation or cancellation of permits.

11. The Authority may, at any time order the suspension, revocation or cancellation of a permit where the Authority is satisfied that:

(*a*) there is a significant impact on a body of groundwater or other source or sources of groundwater arising from any activity carried out under a permit issued under these regulations;

(*b*) the permit holder has failed or is failing to abide by any conditions of the permit or by these regulations; or

(*c*) the permit holder does not possess all other relevant permits and licences that are issued by any other authority or regulatory body; or

(*d*) the permit holder is contravening any requirement imposed by law; or

(*e*) the permit holder fails to comply with any direction given by the Authority as to such matters as are specified in the permit or are of a description so specified; or

(*f*) any information submitted in the application for a permit and for which the permit has been issued is determined to be false or incorrect.

Register of permits and applications.

12. (1) The Authority shall keep a register or registers of permits issued under these regulations which shall include records of:

(*a*) all permits granted under these regulations; and

(*b*) all applications for a permit received and refused.

(2) The register or registers of permits shall be kept under review and up to date.

Enforcement orders.

13. (1) Without prejudice to regulation 11, where the Authority is satisfied that -

(*a*) a permit holder is contravening any condition of the permit; or

(*b*) a permit holder is contravening any requirement imposed by law; or

(*c*) any person is carrying out any activity referred to in these regulations without being authorised to do so by the Authority,

the Authority may issue an enforcement order taking such measures as are requisite for the purpose of securing compliance with the conditions or requirements, as the case may be, or to cease such unauthorised activity.

(2) An enforcement order mentioned in sub-regulation (1):

(*a*) shall require the person to do, or not to do, such things as are specified in the order, or are of a description so specified, including but not necessarily limited to:

(i) cessation of drilling of the borehole or of the

excavation works;

(ii) permanent backfilling of the borehole or excavation works;

(iii) sealing of the borehole or excavation works;

(*b*) shall take effect at such time, being the earliest practicable time, as is determined by or under the order;

(*c*) shall be published in such a manner as the Authority considers appropriate for the purpose of bringing the matters to which it refers, to the attention of persons likely to be affected by it;

(*d*) may be revoked at any time by the Authority.

Non-liability.

14. The Authority shall not be liable for any damages, actual or potential, arising out of any activity permitted under these regulations.

Offences.

15. (1) Any person who, solely or jointly with others, drills a borehole or carries out any excavation works within the saturated zone without a permit issued by the Authority in terms of these regulations shall, on conviction be liable to:

(*a*) a fine (*multa*) of not less than twenty thousand euro (€20,000) but not exceeding fifty thousand euro (€50,000) or to imprisonment for a term from twelve months to eighteen months, or to both such fine and imprisonment;

(*b*) confiscation of the equipment used for the drilling of a borehole or for carrying out the excavation works;

(*c*) reimbursment to the Authority for any inspection, enforcement and monitoring costs incurred.

(2) The fine (*multa*) and costs referred to in subregulation (1) shall be payable within a period of time as the Court in passing sentence shall determine.

(3) The fine (*multa*) and confiscation of equipment shall be without prejudice to any other punishment for which such person may be liable under any other law or regulation.