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## GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

No. R. 1478

24 December 2004

#### REGULATIONS UNDER SECTION 25(3) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: ESTABLISHMENT OF A DESIGNATED NATIONAL AUTHORITY FOR THE CLEAN DEVELOPMENT MECHANISM

The Minister of Environmental Affairs and Tourism has under section 25(3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) made the regulations in the Schedule. Comments can be forwarded to DEAT, Directorate Air Quality, P/BAG X447, Pretoria 0001, or Fax 012 320 1167 for Attention Ms Kelebogile Moroka [kmoroka@deat.gov.za](mailto:kmoroka@deat.gov.za) or Mr Itumeleng Mabalane [imbalane@deat.gov.za](mailto:imbalane@deat.gov.za) on or before 11 February 2005.

#### SCHEDULE

To give effect to the Clean Development Mechanism established under Article 12 of the Kyoto Protocol. To establish a Designated National Authority as required by the Protocol. To establish an intra-governmental Steering Committee for the Designated National Authority and related matters.

#### DEFINITIONS

In these regulations any word or expression given a meaning in the National Environmental Management Act, 1998, has that meaning, unless such word or expression is defined in this regulation for the purposes of these regulations, and, unless the context indicates otherwise –

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

“**Clean Development Mechanism**” or “**CDM**” means the mechanism referred to in Article 12 of the Kyoto Protocol;

“**Clean Development Mechanism Project**” or “**CDM Project**” means a project activity proposed or established under the rules adopted under the UNFCCC and the Kyoto Protocol for the CDM, which seeks approval from the DNA;

“**Designated National Authority**” or DNA means the national authority responsible for the approval of Clean Development Mechanism projects for the purposes of the Kyoto Protocol established in terms of regulation 2.

“**Director General**” means the Director General of the Department of Minerals and Energy.

“**Executive Board of the Clean Development Mechanism**” means the Executive Board for the Clean Development Mechanism established under Article 12 of the Kyoto Protocol;

“**Kyoto Protocol**” means the Protocol to the United Nations Framework Convention on Climate Change adopted at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, Japan on December 11, 1997;

“**Letter of Approval**” means the [Permit/Authorization/Decision -> refer to the adequate instrument under SA administrative law] that the CDM Project contributes to the sustainable development of the Republic of South Africa for the purposes of the UNFCCC and the Kyoto Protocol;

“**Project proponent**” means the person submitting a CDM project for approval;

“**Steering Committee**” means the Steering Committee established in terms of regulation 5.

“**United Nations Framework Convention on Climate Change**” or “UNFCCC” means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992;

#### **Establishment of the Designated National Authority**

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- (1) Designated National Authority for the Republic of South Africa is hereby established;
  - (2) The responsibilities of the Designated National Authority are hereby allocated to the Office of the Director-General, who must perform all such powers, duties and functions of the Designated National Authority.
  - (3) The Director General may delegate any power of the Designated National Authority conferred on it by these regulations to one or more officers in the Department of Minerals and Energy;

#### **Duties of the Designated National Authority**

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- (1) The Designated National Authority must-
    - (a) In concurrence with the Steering Committee for the Designated National Authority establish and apply an approval procedure in terms of regulation 7.
    - (b) Consider applications by project proponents for comments on Project Design Documents and where appropriate comment on Project Design Documents;
    - (c) Issue Letters of Approval to project proponents in respect of Clean Development Mechanism Projects that meet the sustainable development criteria approved by the Minister of Minerals and Energy from time to time;
    - (d) Facilitate the effective and beneficial participation of South Africa and South African public and private sector entities in the activities of the Clean Development Mechanism;

- (e) Promote the establishment of Clean Development Mechanism Projects in South Africa in cooperation with other government agencies with the same or similar responsibilities;
  - (9) Monitor and report to the Minister of Minerals and Energy from time to time on Clean Development Mechanism Projects and activities in South Africa;
  - (g) Declare all donations received in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
- (2) The Designated National Authority may make recommendations to the Minister of Environmental Affairs and Tourism on amendments to Regulations issued in terms of Section 25(3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

#### **Establishment of a Steering Committee for the Designated National Authority**

4. (1) A Steering Committee of the Designated National Authority is hereby established.
- (2) The Steering Committee shall be comprised of eight members representing the following National Departments-
- (a) Minerals and Energy;
  - (b) Environmental Affairs and Tourism,
  - (c) Water Affairs and Forestry;
  - (d) Foreign Affairs;
  - (e) Trade and Industry;
  - (f) Agriculture and Land Affairs,
  - (g) Transport; and
  - (h) The National Treasury.
- (3) The Directors' General of each of the Departments represented in the Steering Committee must appoint one member of the Committee and an alternate to that member from among the officials in their departments.
- (4) Each member of the Committee shall serve until the member's successor shall have been appointed or until their employment by the department concerns ends, whichever is the sooner.
- (5) The chairperson of the Committee shall be the representative of the Department of Minerals and Energy.
- (6) The Steering Committee must establish a terms of reference for its operations which must address the following matters of procedure:
- (a) Meetings of the Steering Committee;
  - (b) Decisions of the Steering Committee;
  - (c) Powers and Duties of the Steering Committee;
  - (d) Establishment of sub-committees.

### Duties of the Steering Committee for the Designated National Authority

5. (1) The Steering Committee must-
- (a) provide oversight and advice to the operations of the DNA;
  - (b) in concurrence with the Designated National Authority adopt and make publicly available a Clean Development Mechanism project approval procedure;
  - (c) facilitate coordination over issues related to the Clean Development Mechanism between National Departments and government agencies;
  - (d) support the CDM in South Africa;
  - (e) monitor the CDM in South Africa;
  - (f) provide general advice to the Designated National Authority;
  - (g) consider and make recommendations to the Designated National Authority in respect of CDM Projects submitted to it;
  - (h) approve an annual business plan and workplans for the Designated National Authority;
  - (i) address issues arising from CDM projects and activities submitted to;
  - (j) review the performance of the DNA every three years and submit a report on the performance of the DNA to the Minister of Minerals and Energy summarizing the performance evaluation of the DNA;
  - (k) establish a sub-committee on the promotion of Clean Development Mechanism Projects to review and coordinate the implementation and promotion of the Clean Development Mechanism in South Africa through different Government departments and agencies.

### Approval Procedure

6. (1) The approval procedure for Clean Development Mechanism projects must include-
- (a) a process for the submission of projects for approval to the Designated National Authority;
  - (b) the sustainable development criteria approved by the Minister of Minerals and Energy from time to time;
  - (c) such other documents, forms, templates or other guidance material as is deemed necessary;
- (2) The Designated National Authority shall make the approval procedure available to the public;
- (3) The approval procedure may be amended from time to time.
- (4) Any project already submitted for approval to the Designated National Authority will be subject to the approval procedure applicable at the time of submission.

### Letter of Approval

7. (1) The Director General must consider recommendations by the Designated National Authority to issue letters of approval, within **10** days of receipt thereof.
- (2) If the Director General accepts the recommendation **he/she** must issue a letter of approval to the project proponent;
- (3) If the Director General does not accept the recommendation he or she must give reasons therefore in writing within **10** days of receipt thereof;
- (4) A letter of approval **will** contain-
- (a) a statement that South Africa is a signatory to the Kyoto Protocol;
  - (b) a statement that the Designated National Authority is the authorised body in the country to issue Clean Development Mechanism project letters of approval;
  - (c) a statement that the participation in the project is voluntary;
  - (d) confirmation that the project **activity** assists in supporting sustainable development in South Africa;
  - (e) authorisation for the Project Proponent to participate in the **CDM** Project;
  - (f) authorisation for the Project Proponent to sell the title and all rights to the greenhouse gas emission reductions generated by the CDM Project;
  - (g) the name, address and telephone number and other **contact** details of the project, proponent;
  - (h) the geographic location of the project;
  - (i) a description of the boundaries of the area occupied by the project;
  - (j) the conditions, if any, included in the letter of approval;
  - (k) the date **of** expiry or the duration **of** the letter **of** approval;
  - (l) the signature of the Director-General and the date thereof.

### 8. Appeals

- (1) An applicant or an interested and affected party **may** appeal against a recommendation of the Designated National Authority or **of** the Steering Committee to the Director General;
- (2) An applicant or an interested and affected **party** may appeal against a decision of the Director General to the Minister of Minerals and Energy.
- (3) Any appeal contemplated in this section must **be** made in writing within **30** days of the date on which the recommendation or decision was made known;
- (4) **An** appeal made in terms of this section must-
- (a) Be in writing;
  - (b) State the grounds for the appeal;
  - (c) Be accompanied **by** all relevant original documents or copies thereof which a commissioner of oaths has certified as being true copies.

**9. Financing of the Designated National Authority**

- (1) The funds of the Designated National Authority consist of—
- (a) Monies provided for in the budget of the Department of Minerals and Energy;
  - (b) Donations received by the Department of Minerals and Energy on behalf of the Designated National Authority from any source;
  - (c) User charges, for the evaluation of Project Proposals.
- (2) The Designated National Authority must utilize the funds at its disposal to defray expenses in connection with the performance of its functions.