

(22 July 2005 - to date)

## NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

*(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999 [Proc. No. 8, Gazette No.19703])*

### REGULATIONS FOR THE ESTABLISHMENT OF A DESIGNATED NATIONAL AUTHORITY FOR THE CLEAN DEVELOPMENT MECHANISM

*Published under Government Notice R721 in Government Gazette 27788, dated 22 July 2005.  
Commencement date: 22 July 2005.*

#### SCHEDULE

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.

1. Definitions
2. Designation of the DNA
3. Duties of the DNA
4. Establishment of a Steering Committee for DNA
5. Duties of the Steering Committee for the DNA
6. Evaluation and approval procedure
7. Letter of Approval
8. Appeals
9. Financing of the DNA

#### 1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned shall have the meaning, so assigned and, unless the context otherwise indicates -

“**CDM**” means the “**Clean Development Mechanism**” contemplated in Article 12 of the Kyoto Protocol;

“**CDM Project**” means a “**Clean Development Mechanism Project**” activity proposed or established under the rules adopted under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol for the CDM, which has to be approved by the DNA;

“**DNA**” means the “**Designated National Authority**” designated in regulation 2, who is responsible for the approval of Clean Development Mechanism projects for the purposes of the Kyoto Protocol;

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“**Executive Board of the Clean Development Mechanism**” means the Executive Board for the Clean Development Mechanism contemplated in 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 11 December, 1997;

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

“**Steering Committee**” means the Steering Committee established by regulation 4;

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

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

## **2. Designation of the DNA**

- (1) The Director-General of the Department of Minerals and Energy is hereby designated as the DNA in the Republic.
- (2) The Director-General contemplated in subregulation (1) shall perform all the powers and duties of the DNA as set out in regulation 3.
- (3) The DNA may delegate any power conferred on that Authority by these regulations to one or more officers in the Department of Minerals and Energy.

## **3. Duties of the DNA**

- (1) The DNA must in consultation with the Steering Committee-
  - (a) establish and apply an approval procedure in terms of regulation 6;
  - (b) consider applications by project proponents for endorsement that the project complies with the international and national criteria for CDM projects and where appropriate comment on Project Design Documents;
  - (c) issue letters of, approval to project proponents in respect of CDM projects that meet the international and national 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 CDM;
  - (e) promote the establishment of CDM projects in the Republic in cooperation with other government agencies with the same or similar responsibilities;
  - (f) monitor and report to the Minister of Minerals and Energy from time to time on CDM projects and activities in the Republic;
  - (g) declare all donations received in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) The DNA may make recommendations to the Minister of Environmental Affairs and Tourism on amendments to these Regulations.

#### **4. Establishment of a Steering Committee for DNA**

- (1) A Steering Committee for the DNA is hereby established.
- (2) The Steering Committee consists of ten 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;
  - (h) National Treasury;
  - (i) Science and Technology; and
  - (j) Health.

- (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 Steering Committee serves until the member's successor has been appointed or until his or her termination of employment by the Department concerned, whichever is the sooner.
- (5) The chairperson of the Steering Committee is the representative of the Department of Minerals and Energy.
- (6) The Steering Committee must establish terms of reference for its operations which will address the following matters:
  - (a) Meetings of the Steering Committee;
  - (b) Decisions of the Steering Committee;
  - (c) Establishment of subcommittees, and an Expert Advisory Committee, and
  - (d) Powers and duties of Sub-committees and the Expert Advisory Committee.

## **5. Duties of the Steering Committee for the DNA**

- (1) The Steering Committee must-
  - (a) provide supervision and advice with regard to the operations of the DNA;
  - (b) consider and make recommendations to the DNA in respect of CDM projects submitted to it;
  - (c) approve the CDM project evaluation and approval procedure;
  - (d) facilitate the development of administrative guidelines and arrangements required for the effective functioning of the DNA;
  - (e) facilitate cooperative governance and coordination over issues related to the CDM between National Departments and government agencies;
  - (f) review and approve the DNA's annual business plan and work programmes;
  - (g) address issues arising from CDM projects and activities submitted to it;

- (h) monitor and 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 summarising the performance evaluation of the DNA;
- (i) establish a sub-committee on the promotion of CDM Projects to review and coordinate the implementation and promotion of the CDM in the Republic through different national departments and agencies;
- (j) advise and make recommendations for the implementation of the CDM in the Republic to the Department of Minerals and Energy and Cabinet as appropriate;
- (k) perform any other responsibility that may be allocated to it by Ministers via the Minister of Minerals and Energy.

## **6. Evaluation and approval procedure**

- (1) The evaluation and approval procedure for CDM projects must include-
  - (a) a process for the submission of projects for approval to the DNA;
  - (b) the sustainable development criteria approved by the Minister of Minerals and Energy from time to time; and
  - (c) any other document, form, template and or other guidance material that is deemed necessary by the DNA.
- (2) The DNA must make the evaluation and approval procedure contemplated in subregulation (1) available to the public.
- (3) When the evaluation and approval procedure contemplated in subsection (1) is amended, any project already submitted for evaluation and approval to the DNA will be subject to the evaluation and approval procedure applicable at the time of submission.

## **7. Letter of Approval**

- (1) The DNA must in consultation with the Steering Committee consider all the applications submitted to it for evaluation and approval within ten days of receipt.
- (2) The Steering Committee must make recommendations to the DNA on whether to issue or not to issue a letter of approval within ten days of receipt of a project submission.

- (3) If the DNA accepts a recommendation to issue a letter of approval, it shall within five days of the receipt of the recommendations from the Steering Committee issue a letter of approval to the project proponent.
- (4) If the DNA does not accept a recommendation of approval by the Steering Committee, it shall issue a letter of no approval and reasons for non approval thereof in writing within five days of receipt of the recommendations from the Steering Committee.
- (5) A letter of approval must contain-
  - (a) a statement that the Republic is a signatory to the Kyoto Protocol;
  - (b) a statement that the DNA is the authorised body in the country to issue CDM 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 the Republic;
  - (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; and
  - (l) the signature of the Director-General of Minerals and Energy and the date thereof.

## **8. Appeals**

- (1) An applicant or an interested and affected party who is not satisfied with the recommendation of the Steering Committee must be afforded an opportunity to make presentation to the Director General, before he or she takes the decision.

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- (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 Regulation must be made in writing within 30 days of the date on which the decision was made known.
- (4) An appeal made in terms of this Regulation must-
  - (a) be in writing;
  - (b) state the grounds for the appeal;
  - (c) be accompanied by all relevant original documents or copies thereof that has *[sic]* been certified as being true copies by any competent person.

## **9. Financing of the DNA**

- (1) The funds of the DNA 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 DNA from any source.
- (2) The DNA must utilise the funds at its disposal to defray expenses in connection with the performance of its functions.