



environment & tourism

Department:
Environmental Affairs and Tourism
REPUBLIC OF SOUTH AFRICA

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Reference: DG 22912

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Ms Jaana-Maria Ball
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PER FACSIMILE / MAIL

Dear Ms Ball,

NOTIFICATION OF STATEMENT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM REGARDING THE CONSIDERATION OF MATTERS PERTAINING TO NUCLEAR SAFETY IN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) PROCESSES ON NUCLEAR INSTALLATIONS

The Department and the National Nuclear Regulator (NNR) as an organ of state, has reached consensus on the need for streamlining in terms of radiological issues raised or identified within EIA processes. This effort has been effected to:

- Prevent unnecessary and unavoidable duplication of effort;
- Ensure that the mandates and independence of the respective authorities are not compromised;
- Facilitate the integration of processes; and
- Contribute to effective and efficient decision-making.

In support of all spheres of government and all organs of state co-operating in mutual trust and in good faith, the Director-General has issued the attached statement.

Yours faithfully

Ms Nosipho Ngcaba
DIRECTOR - GENERAL

Department of Environmental Affairs and Tourism

Letter signed by: Ms Lize McCourt

Designation: Chief Director: Environmental Impact Management

DATE: 10/2/2009

Muhasho wa zwa Vhupho na Vhucendelamashango • LITiko le Tesimondzawo netekuVakatsaha • Isebe JemCimbi yokusiNgqongileyo nofkenketho
Ndzawulo ya Tihake & Mbango • Department: Omgewingsake en Toerleme • Lefapha le Tikoloho le Bohantlaidi • Lefapha le Bojanala
Kgoro ya Tikologo le Boeti • UmNyango wezeBhuduluko nokuVakatlha • Umnyango Wezemvelo Nokuvakaha



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STATEMENT BY THE DIRECTOR-GENERAL CONCERNING THE CONSIDERATION OF MATTERS PERTAINING TO NUCLEAR SAFETY IN ENVIRONMENTAL IMPACT ASSESSMENT PROCESSES ON NUCLEAR INSTALLATIONS

The construction of facilities or infrastructure, including associated structures or infrastructure for nuclear reaction including the production, enrichment, processing, reprocessing, storage or disposal of nuclear fuels, radioactive products and waste requires authorization from the competent authority in terms of Government Notice No. R. 385 and R. 387 in Government Gazette No. 28753 of 21 April 2006. In considering applications submitted in this regard, the decision-maker needs to apply his / her mind to *inter alia* the potential substantial detrimental impacts on the environment; the extent to which such impacts can be avoided; and, where impacts cannot be altogether avoided, the extent to which it can be managed to be within acceptable levels. This information needs to be contained in the various documents developed during the EIA process.

Additionally the National Environmental Management Act (NEMA), Act No. 107 of 1998 defines environment as *the surroundings within which humans exist and that are made up of:*

- *the land, water and atmosphere of the earth;*
- *micro-organisms, plant and animal life;*
- *any part or combination of the above two and the interrelationships among and between them; and*
- *the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;*

The broad definition of the environment together with the principles of the same Act, outlined in Chapter 1, and the inclusiveness of the elements (biophysical, cultural and socio-economic) that need to be considered in environmental sustainability result in the need for the DG in applications for Environmental Authorisations for nuclear installations to consider issues of nuclear safety, radiation and radiology.

Similarly in terms of Section 20 (1) of the National Nuclear Regulator Act, Act No. 47 of 1999 (NNRA), no person may site, construct, operate, decontaminate or decommission a nuclear installation without a nuclear installation licence. In addition in terms of Section 7 (1) (a) of the NNRA consideration of applications in this regard is administered by the National Nuclear Regulator (NNR). In this context the NNR process applies specifically to issues of nuclear and radiation safety related to siting, design, construction, operation and decommissioning of nuclear installations. According to the NNRA consideration of detailed technical safety cases submitted for all these phases of construction of nuclear facilities should be conducted by NNR which is identified as the competent authority.

The Principle Safety Criteria that must be met to ensure the safety for any nuclear installation are presented in the Regulations on Safety Standards and Regulatory Practices published as Regulation No. R388 dated 28 April 2006. These Safety Standards are further elaborated in NNR Regulatory Documents and Guidelines. According to the guidelines published by the NNR on Safety Assessments of Nuclear Power Reactor Sites (LG-1041 rev 0) issued 23 August 2002 consideration of detailed technical safety cases are required to support the license application and demonstrate compliance with the NNR safety standards for all licensing stages associated with the licensing of complex nuclear installations. The safety case review would be subject to assessment by NNR experts

Furthermore one of the most significant changes made to the South African legislation by the NNRA was the introduction of the provision of public representation and public hearings in the licensing process for nuclear installations. In terms of Section 21 (4) and (5) quoted below, the NNR licensing process is open to public participation and this is considered administratively just.

- S21(4)(a) "Any person who may be directly affected by the granting of a nuclear installation to an application in terms of subsection 20 (1) of NNRA may make representations to the board, relating to health, safety and environmental issues connected with the application, within 30 days of the date of publication in the Gazette contemplated in subsection (3)(b) of NNRA
- (b) If the board is of the opinion that further public debate is necessary, it may arrange for such hearings on health, safety and environmental issues as it determines.
- S21(5) Subject to the board's approval, the chief executive officer may
 - (a) refuse an application for a nuclear installation or vessel licence and must provide the applicant in writing with the reasons for the refusal; or
 - (b) grant an application for a nuclear installation license subject to such conditions as may be determined in terms of section 23 of the NNRA.

Furthermore Section 44 (1) of the NNRA makes provision for appeals to the board should any person feel aggrieved or adversely affected by a decision of the Chief Executive Officer.

- Any person who may be directly affected by the granting of a nuclear installation to an application in terms of subsection 20 (1) of NNRA may make representations to the board, relating to health, safety and environmental issues connected with the application, within 30 days of the date of publication in the Gazette contemplated in subsection (3)(b) of NNRA
- If the board is of the opinion that further public debate is necessary, it may arrange for such hearings on health, safety and environmental issues as it determines.
- Subject to the board's approval, the chief executive officer may
 - refuse an application for a nuclear installation or vessel licence and must provide the applicant in writing with the reasons for the refusal; or
 - grant an application for a nuclear installation license subject to such conditions as may be determined in terms of section 23 of the NNRA.

The NNR Act Section 45 and Section 46 make furthermore provision for appeals to the Minister (Department of Minerals and Energy) and the High Court respectively.

Section 41 of the Constitution stipulates that all spheres of government and all organs of state within each sphere must

- Provide effective, transparent, accountable and coherent government for the Republic as a whole
- Respect constitutional status, institutions, powers and functions of government in the other spheres
- Exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere
- Cooperate with one another in mutual trust and in good faith by
 - Assisting and supporting one another
 - Informing one another of and consulting one another on matters of common interest
 - Coordinating their actions and legislation with one another

Furthermore the general legal principles applied in South Africa stipulate that legislation related to a specific matter (for example, nuclear installations) take precedence over legislation of a general nature (for example, environmental management).

With the above in mind and the fact that NNR as an organ of state and an institution that exercises powers and functions that might affect the environment, is compelled to consider the principles of NEMA as stipulated in Chapter 1, the Department of Environmental Affairs and Tourism (DEAT) and NNR came to a conclusion that there needs to be streamlining in terms of radiological issues raised or identified in an EIA process where such approach:

- Prevents unnecessary and avoidable duplication of effort;
- Does not compromise the mandates and independence of the respective authorities;
- Facilitate integration of processes; and
- Is conducive to effective and efficient decision-making.

With the above in mind, I, Nosipho Ngcaba the Director General of DEAT as the delegated competent authority for the consideration of environmental authorisation applications both in terms

of Section 33 (1) of the Environment Conservation Act No. 73 of 1989 and Sections 42 (1) a of National Environmental Management Act No. 107 of 1998, in furtherance of administrative justice whilst not compromising the protection of the rights enshrined in section 24 of the Constitution:

- (1) Acknowledges that nuclear safety, radiation and radiology are matters of concern in an environmental impact assessment process;
- (2) Acknowledges the mandate and role of the NNR in the consideration and regulation of nuclear safety, radiation and radiology;
- (3) Acknowledges that consideration of these issues in an EIA process would result in unnecessary and avoidable duplication in regulatory requirement

I have considered the provisions of the NNRA (attached as Annexure A) and the NEMA EIA Regulations thereto (Attached as Annexure B) and am satisfied that the NNRA and Regulations thereto are administered by experts in the field of nuclear safety, radiation and radiology through and administratively just process. I am further of the view that these issues are better placed within the regulatory process of the NNRA and that consideration of the same issues in an EIA process will result in unnecessary and avoidable duplication. I therefore have decided that, as detailed in the agreement between DEAT and the NNR of 15th June 2006 (Attached as Annexure C), these issues would fall outside the ambit of the EIA process and that the Department would not make a pronouncement on the acceptability of these impacts. Any authorisation granted for Nuclear installations would accordingly be conditional on the necessary nuclear licence being in place.



Ms Nosipho Ngcaba
DIRECTOR-GENERAL

DATE: 30/1/2009