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GENERAL NOTICE

NOTICE 654 OF 2008

MINERALS AND ENERGY

The Minister of Minerals and Energy intends to introduce the National Radioactive Waste Management Bill into Parliament during May 2008.

The objects of the said Bill are to provide for the establishment of a National Radioactive Waste Management Agency to manage radioactive waste disposal nationally on behalf of the Minister of Minerals and Energy, for its functions, for the manner in which it is to be managed and for its staff matters; and to provide for matters connected therewith.

Attached hereto find the said Bill for ease reference.

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REPUBLIC OF SOUTH AFRICA

NATIONAL RADIOACTIVE WASTE MANAGEMENT AGENCY BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No._____ of 2008) (The English text is the official text of the Bill)

(Minister of Minerals and Energy)

[B__--2008]

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BILL

To provide for the establishment of a National Radioactive Waste Management Agency to manage radioactive waste disposal on a national basis on behalf of the Minister of Minerals and Energy, for its functions, for the manner in which it is to be managed and for its staff matters; and to provide for matters connected therewith.

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CHAPTER 1

INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise–

(i) "Agency" means the National Radioactive Waste Management Agency established by section 3;
(ii) "Authorised" means permitted in writing under the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999);
(iii) "board' means the Board of Directors as referred to in section 11(1);
(iv) "chief executive officer" means the person appointed as such in terms of section 18(1);
(v) "closed radioactive waste disposal facility" means the completion of all operations after the emplacement of radioactive waste in a disposal facility;
(vi) "Department" means the Department of Minerals and Energy;
(vii) "director" means a member of the Board;
(viii) "Director-General" means the Director-General of the Department of Minerals and Energy;
(ix) "financial year", in relation to the Agency, means the period contemplated in section 9(3);
(x) "Minister" means the Minister of Minerals and Energy;
(xi) "prescribed" means prescribed by regulation;
(xii) "radioactive material" means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial, including, but not limited to, radioactive waste;
(xiii) "radioactive nuclide" means any unstable atomic nucleus which decays spontaneously with the accompanying emission of ionizing radiation;
(xiv) "radioactive waste" means any radioactive material destined to be disposed of as waste material and "nuclear waste" has a similar meaning;
(xv) "radioactive waste disposal certificate" means a certificate contemplated in section 22;
(xvi) "Radioactive Waste Management Fund" means a fund established in terms of an Act of Parliament;
(xvii) "South African Nuclear Energy Corporation" means the Corporation established in terms of the Nuclear Energy Act, 1999 (Act No, 46 of 1999);
(xviii) "specified date" means the date contemplated in section 31;
(xix) "this Act" includes any regulations made in terms of section 25
(xx) "waste disposal facility" means a facility for the disposal of radioactive waste and which may include the acceptance, handling, storage and treatment of such radioactive waste at the disposal facility.

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Application of Act

2. This Act applies to all radioactive wastes in the Republic destined to be disposed off in an authorised waste disposal facility.

CHAPTER 2

NATIONAL RADIOACTIVE WASTE MANAGEMENT AGENCY

Establishment of National Radioactive Waste Management Agency

3. A juristic person to be known as the National Radioactive Waste Management Agency is hereby established.

Certain assets and liabilities of the South African Nuclear Energy Corporation to vest in Agency

4.(1) On the specified date, and despite anything to the contrary in any other law, all assets, rights, liabilities, obligations, licences and authorisations regarding the Vaalputs National Radioactive Waste Disposal Facility operated by the South African Nuclear Energy Corporation will vest in the Agency.

(2) Despite the provisions in subsection (1) all contracts entered into by the South African Nuclear Energy Corporation for the receipt of radioactive waste at the Vaalputs National Radioactive Waste Disposal Facility will become null and void on the specified date where after the acceptance of radioactive waste will be subject to the provisions of sections 22 to 24 of this Act.

State's interest in Agency

5. The Agency is wholly owned by the State.

Judicial management and liquidation

6. (1) Despite the provisions of any other law, the Agency may not be placed under judicial management or in liquidation, except if authorised by an Act of Parliament adopted specially for that purpose.

(2) The Agency may only be abolished by an Act of Parliament.

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Functions of Agency

7. The functions of the Agency are–

(a) to meet the institutional obligations of the Minister of Minerals and Energy related to the management of nuclear waste disposal on a national basis as provided for in the Nuclear Energy Act, 1999 (Act No. 46 of 1999);

(b) to design and implement disposal solutions for all categories of radioactive waste;

(c) to develop radioactive waste acceptance and disposal criteria in compliance with any applicable regulatory safety requirements and any other technical and operational requirements;

(d) to assess and inspect the acceptability of radioactive waste for disposal and to issue radioactive waste disposal certificates;

(e) to manage, operate and monitor operational radioactive waste disposal facilities including related predisposal management of radioactive waste on disposal sites;

(f) to manage and monitor closed radioactive waste disposal facilities;

(g) to investigate the need for any new radioactive waste disposal facilities and to site, design and construct new facilities as required;

(h) to define and conduct research and development aimed at finding solutions for long-term radioactive waste management;

(i) to maintain a national radioactive waste database and publish a report on the inventory and location of all radioactive waste in the Republic at a frequency determined by the board;

(j) to manage any ownerless radioactive waste on behalf of the State, including the development of radioactive waste management plans for such waste;

(k) to assist generators of small quantities of radioactive waste in all technical aspects related to the management of such waste;

(l) to implement any assignments or directives from the Minister regarding radioactive waste management;

(m) to provide information on all aspects of radioactive waste management to the public living around radioactive waste disposal facilities and to the public in general;

(n) to co-operate with any person or institution in matters falling within these functions;

(o) any other function necessary to achieve the objects of the Agency and this Act.

Ancillary powers of Agency

8.(1) In connection with its functions, subject to the approval of the board and any applicable provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Agency may–

(a) purchase or otherwise acquire immovable property and encumber or dispose thereof;

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(b) purchase, erect, or cause to be erected, any buildings, installations, works or plants;
(c) establish and manage facilities for collecting and disseminating information regarding activities falling within the scope of the Agency's functions and powers;
(d) utilise buildings, works or plants for the benefit of the Agency;
(e) purchase, hire or otherwise acquire, or hold, movable property, and let, pledge, encumber or dispose of such property of which it is the owner;
(f) hire services or let its own services or make them otherwise available;
(g) sell or in any other manner make available to any person, for use, any patent, licence, concession, or right of manufacture or any other right conferring the power to use any information, expertise, process or technology which has been developed by the Agency and which is the Agency's property;
(h) co-operate with any educational, scientific or other institution or body with a view to such an institution or body providing instruction to, or training of, persons required by the Agency, and if considered necessary by the Agency, provide financial or other assistance to such an institution or body in connection with the instruction or training of those persons;
(i) award a bursary or loan to any suitable person for study in any scientific or technical field relevant to the Agency's activities;
(j) acquire patents, licences, concessions, rights of manufacture or other similar rights conferring the power to use any technology, process, expertise or information and use, exercise, develop or grant licences in respect of such rights, concessions, technology, processes, expertise or information, or otherwise exploit it beneficially;

(2) The Agency may, at the request or with the written permission of the Minister, undertake the development, transfer or exploitation of radioactive waste management technology on behalf of or in collaboration with any person, or institution in, or any government or administration of, any other country or territory.

(3) The Agency may, subject to approval of the board –

(a) build, cause to be built, buy or hire dwelling houses, flats or flat buildings for occupation by the Agency's employees, and may sell or let such houses or flats to its employees or, if no longer reasonably required, otherwise alienate or let, or otherwise deal with, such houses, flats or flat buildings;
(b) establish, erect, operate or carry on sports and recreational facilities, social clubs, social and health services, restaurants, hostels and study bursary schemes for the benefit of the Agency's employees, or any other similar undertakings or schemes.

Financial Management of Agency

9.(1) The Agency will be a Schedule 3 public entity in terms of the Public Finance Management Act. 1999 (Act No. 1 of 1999) and will be subject to the applicable provisions of that Act.

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(2) Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999) the Agency may accumulate surplus funds.

(3) The Agency's financial year will be from 1 April in any year to 31 March in the following year, both days included. However, the first financial year will run from the specified date to 31 March in the following year, both days included.

Funds of Agency

10.(1) The funds of the Agency consist of–

(a) money appropriated by Parliament;
(b) money transferred to the Agency from the Radioactive Waste Management Fund;
(c) money received for services rendered or derived from the sale or exploitation of its products, technology or other assets;
(d) income or interest earned on the Agency's cash balances or on money invested;
(e) loans raised by the Agency in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
(f) donations or contributions received by the Agency, with the approval of the Minister, from any source.

(2) The chief executive officer must-

(a) open an account in the name of the Agency with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); and
(b) deposit therein all money received in terms of subsection (1).

(3) The chief executive officer may, on behalf of the Agency, invest any money received in terms of subsection (1) which is not required for immediate use–

(a) with the approval of the Minister, with the Public Investment Commissioners referred to in section 2 of the Public Investment Corporation Act, 2004 (Act 23 of 2004); or
(b) with such other institution as the board and the Minister, determine.

(4) The Agency may not incur any expenditure in excess of approved budgetary provisions.

(5) The Auditor-General must externally audit the Agency.

(6) Expenses for the establishment and initial operation of the Agency must be defrayed from money appropriated by Parliament to the Department until such time as the Radioactive Waste Management Fund has been established by an Act of Parliament.

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Control and management of affairs of Agency

11.(1) The Agency is governed and controlled, in accordance with this Act, by a Board of Directors.

(2) The board–

(a) must ensure that the functions of the Agency referred to in section 7 are carried out; and
(b) exercises general control over the performance of the Agency's functions.

(3) The board represents the Agency and all acts performed by the board or on its authority are the acts of the Agency.

(4) The board consists of–

(a) the following directors appointed by the Minister:
(i) an official from the Department of Minerals and Energy;
(ii) an official from the Department of Environmental Affairs and Tourism;
(iii) an official from the Department of Water Affairs and Forestry;
(iv) an official from the Department of Health;
(v) not more than five other directors;
(b) the chief executive officer; and
(c) the chief financial officer.

(5) The Minister must from among the directors of the board referred to in subsection (4)*(a)*(v) appoint a chairperson and a deputy chairperson.

(6) A person may only be appointed as a director in terms of subsection (4)*(a)* if he or she is suitably qualified.

(7) For the purposes of appointing the directors of the board referred to in subsection (4)*(a)*(v)–

(a) the Minister must through the media and by notice in the Gazette invite nominations of persons as candidates for the relevant positions on the board;
(b) a panel, appointed by the Minister, which may include representatives of the relevant committees of Parliament, must compile a shortlist of not more than 15 candidates from the persons so nominated;
(c) the Minister must, from the shortlist so compiled and from other persons nominated as contemplated in paragraph *(a)*, appoint persons to the relevant positions on the board; and

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(d) the Minister may, for a director appointed in terms of subsection (4)*(a)*(i) to (iv), appoint a suitably qualified alternate director to act in the place of that director during his or her absence.

(8) A person is disqualified from being appointed or remaining a director of the board if he or she–

(a) is not a South African citizen;
(b) is declared insolvent;
(c) is convicted of an offence and sentenced to imprisonment without the option of a fine;
(d) becomes a member of Parliament, a provincial legislature, a Municipal Council, the Cabinet or the Executive Council of a province;
(e) is an employee of, or adviser to, any organisation that possess or produce radioactive waste that may be disposed of by the Agency.

(9) A director of the board may not be present during, or take part in, the discussion of, or the making of a decision on, any matter before the board in which that director or his or her spouse, life partner, child, business partner or associate or employer, other than the State, has a direct or indirect financial interest.

(10) Within 30 days of appointment of a person as a director of the board he or she must submit to the Minister and the board a written statement in which he or she declares whether or not he or she has any interest contemplated in subsection (9).

(11) If any director acquires or contemplates acquiring an interest, which could possibly be an interest contemplated in subsection (9), he or she must immediately in writing declare that fact to the Minister and the board.

(12) The chairperson of the board holds office for a period specified in the letter of appointment but not exceeding three years and may be reappointed upon expiry of that term of office.

(13) A director referred to in subsection (4)*(a)* holds office for a period specified in the letter of appointment but not exceeding three years and may be reappointed upon expiry of that term of office.

(14) If a director dies or vacates office, the Minister may, subject to subsection (8), appoint another person as a director which serves for the unexpired portion of the predecessor's term of office.

Vacation of office of board members

12.(1) The Minister may at any time discharge a director of the board from office–

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(a) if the director has repeatedly failed to perform his or her functions efficiently;
(b) if, because of any physical or mental illness or disability, the director has become incapable of performing his or her functions or performing them efficiently; or
(c) for misconduct.

(2) A director vacates office when–

(a) the director is disqualified in terms of section 11(8);
(b) the director is discharged in terms of subsection (1);
(c) the director is absent from three consecutive meetings of the board without the chairperson's permission; or
(d) the person's resignation as director takes effect.

Meetings of board

13.(1) The first meeting of the board is held at the time and place determined by the Minister, and thereafter meetings are held at such times and places as the board determines.

(2) The chairperson or, in his or her absence, the deputy chairperson, may at any time call a special meeting of the board to be held at the time and place determined by the chairperson or deputy chairperson.

(3) All directors must be notified in writing of every meeting of the board.

(4) A majority of the directors forms a quorum at any meeting of the board.

(5) Subject to subsection (4), a decision of the majority of the directors present at a meeting of the board constitutes a decision of the board and, in the event of an equality of votes on any matter; the person chairing the relevant meeting has a casting vote in addition to a deliberative vote.

(6) No decision taken by the board or an act performed under its authority, is invalid merely by reason of–

(a) a vacancy on the board; or
(b) the fact that any person not entitled to do so, sat as a director at the time that decision was taken, if that decision was taken or that act was authorised by the required majority of directors present at the meeting who were entitled to sit as directors.

(7) If the chairperson is for any reason unable to act, or the office of chairperson is vacant, the deputy chairperson must act as chairperson.

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(8) If both the chairperson and deputy chairperson are for any reason unable to act, or both the offices of chairperson and deputy chairperson are vacant, the board must designate any other director to act as chairperson.

Minutes of board meetings

14.(1) The board must cause minutes of its meetings to be kept and copies of the minutes to be circulated to its members.

(2) Such minutes, when signed at a next meeting by the person who chairs that meeting, are, in the absence of proof of error therein, regarded as a true and correct record of the proceedings and are prima facie evidence of those proceedings before a court of law, any tribunal or a commission of inquiry.

Committees of board

15. The board may–

(a) establish such committees as it considers necessary to assist it in the performance of its functions; and
(b) appoint as members of any such committee such persons, including directors of the board, staff of the Agency, as the board considers appropriate.

Remuneration of directors and committee members

16. A director, or member of a committee, of the board, other than the chief executive officer or a person who is in the full-time employment of the Agency or other organ of state, is appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister determines with the agreement of the Minister of Finance.

Delegation and assignment by board

17.(1) Subject to subsections (2), (3), (4) and (5), the board may, by resolution, delegate any power, and assign any duty, conferred or imposed on it by the operation of section 8(1) or (2) or conferred or imposed on it elsewhere by this Act, to its chairperson or a committee of the board.

(2) The board is not divested of any power or relieved of any function it so delegated or assigned.

(3) Such delegation or assignment–

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(a) may be made subject to conditions determined by the board;
(b) may, subject to subsection (5), be given together with the power to sub-delegate or further assign, subject to conditions determined by the board;
(c) must be communicated to the delegatee or assignee in writing.

(4) The written communication in terms of subsection (3)*(c)*–

(a) must contain full particulars of the matters being delegated or assigned and of the conditions determined in terms of subsection (3)*(a)*; and
(b) if the power of sub-delegation or further assignment is conferred, must state that fact and any conditions determined in terms of subsection (3)*(b)*.

(5) The board may, by resolution–

(a) amend or revoke a delegation or assignment made in terms of subsection (1);
(b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter itself.

(6) The Minister may, by notice in the Gazette–

(a) prohibit the delegation by the board of any particular power or its assignment of any particular duty, whether generally or in the circumstances specified in the notice;
(b) limit the circumstances in which any particular power or duty of the board may be delegated, sub-delegated, assigned or further assigned;
(c) prescribe conditions for the delegation of any particular power or assignment of any particular duty.

Chief Executive Officer of Agency

18.(1) The Minister must, after consultation with the board, appoint a person with suitable qualifications as chief executive officer of the Agency.

(2) A person is disqualified from being appointed or remaining a chief executive officer if subject to any of the disqualifications mentioned in section 11(8).

(3) A chief executive officer holds office for a period not exceeding three years as specified in the letter of appointment and may be reappointed upon expiry of that term of office.

(4) The Minister may at any time discharge the chief executive officer from office–

(a) if the chief executive officer has repeatedly failed to perform the duties of office efficiently;

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(b) if, because of any physical or mental illness or disability, the chief executive officer has become incapable of performing the functions of that office or performing them efficiently; or
(c) for misconduct.

General management of Agency

19.(1) The Agency's day to day business and operations will be under the general management of the chief executive officer, subject to the general or specific directions and instructions, if any, that the Board may issue from time to time.

(2) The chief executive officer must–

(a) ensure that the functions of the Agency in terms of this Act are performed;
(b) report to the Board on the proper performance and functioning of the Agency; and
(c) compile a report on the activities of the Agency for each financial year in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and submit the report to the board for approval.

(3) The board must forward the report mentioned in subsection (6)*(d)*, as approved by it, to the Minister within three months of the end of the financial year concerned.

(4) The chief executive officer is the accounting officer of the Board charged with the responsibility of accounting for all money received, payments made and assets of the Agency.

(5) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by–

(a) this Act, the Reporting by Public Entities Act, 1992 (Act 93 of 1992), or any other law;
(b) the Board.

(6) *(a)* Whenever, due to absence or for any other reason, the chief executive officer is temporarily unable to perform the functions of that office, or when that office is vacant, the Board may designate an employee of the Agency to act as chief executive officer until the incumbent of that office resumes the functions of chief executive officer, or, as the case may be, the vacancy is filled by the Minister through the appointment of another person as chief executive officer under section 18(1).

(b) While so acting, the designated employee will be competent to exercise and perform all the powers, functions and duties of the chief executive officer in terms of this Act.

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Delegations and assignments by Chief Executive Officer

20.(1) The chief executive officer may delegate any of the powers, and assign any of the functions or duties attached to that office, to any employee of the Agency.

(2) Section 17(1)*(b)*, (2)*(a)* and *(c)*, (3) and (4) will apply, reading in the changes necessary in the context, to any delegation or assignment in terms of this section.

Organisational structure and staff of Agency

21.(1) The board must determine the organisational structure for the Agency and may revise the structure as may be necessary from time to time.

(2) Subject to the directions of the board, if any, the chief executive officer may appoint the staff for the Agency that may be necessary to perform the work arising from or connected with the Agency's functions, business and operations in terms of this Act.

(3)*(a)* The terms and conditions of service of the Agency's staff, and their remuneration, allowances, subsidies and other service benefits will be as determined by the Board.

(b) That remuneration and those allowances, subsidies and other benefits must be determined in accordance with a system approved by the Minister.

(4)*(a)* The persons who, immediately before the specified date, were employees of the South African Nuclear Energy Corporation, at the Vaalputs National Radioactive Waste Disposal Facility, appointed in terms of section 25 of the Nuclear Energy Act will from the specified date be deemed to be staff members of the Agency who have been appointed in terms of subsection (2) of this section.

(b) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits that were applicable to those employees immediately before the specified date, will, with effect from the specified date, continue to apply until re-determined by the Board under subsection (3).

(c) The terms and conditions of service, salary or pay, allowances, subsidies and service benefits so re-determined, may not be less than those applicable before the re-determination.

(d) Those employees' respective periods of pensionable service with the South African Nuclear Energy Corporation and (where applicable) with its predecessor in terms of any law will be regarded and treated as pensionable service for the purposes of membership of any pension fund or scheme of which they are or may become members after the specified date.

(e) The leave which has been accumulated by each of those employees while in the service of the South African Nuclear Energy Corporation will be regarded and treated as if it were leave accumulated by such an employee in the service of the Agency.

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(4) Subject to subsection (5), the Agency is deemed to be an associated institution for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963).

(5) The Agency, with the approval of the Minister granted with the agreement of the Minister of Finance, may establish, manage and administer, any pension or provident fund or medical scheme for the benefit of its employees or have such a scheme or fund managed and administered by any other body or person.

CHAPTER 3

DISPOSAL APPLICATION

Application for radioactive waste disposal certificate

22.(1) Any person wishing to dispose of radioactive waste may apply to the chief executive officer for a radioactive waste disposal certificate in the prescribed format and must furnish such information as the board requires.

(2) The chief executive officer must assess the information for compliance with the radioactive waste acceptance and disposal criteria contemplated in section 7*(c)* and subject to the board's approval, may–

(a) refuse an application for a radioactive waste disposal certificate and must provide the applicant in writing with the reasons for the refusal; or
(b) grant an application for a radioactive waste disposal certificate subject to such conditions as may be determined in terms of section 23.

Conditions relating to radioactive waste disposal certificate

23.(1) The chief executive officer may, subject to subsection (2), impose any condition in a radioactive waste disposal certificate which is necessary to ensure compliance with the radioactive waste acceptance and disposal criteria as contemplated in section 7*(c)*.

(2) The chief executive officer–

(a) may, subject to paragraph *(c)*, amend any condition in a radioactive waste disposal certificate;
(b) must notify the person in writing to whom the radioactive waste disposal certificate was issued of such amendment and the reasons therefor; and
(c) must submit to the board any amendments made to a radioactive waste disposal certificate as contemplated in paragraph *(a)* for ratification at the first meeting of the board following the amendments.

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Responsibilities of generators of radioactive waste

24.(1) The generators of radioactive waste are responsible for technical, financial and administrative management of such wastes within the national regulatory framework at their premises and when such wastes are transported to an authorised disposal facility.

(2) The generators of radioactive waste must–

(a) develop and implement site specific waste management plans based on national policy;
(b) provide all relevant information on radioactive waste destined for disposal as required by the chief executive officer;
(c) demonstrate compliance with any conditions of a radioactive waste management certificate;
(d) provide site access to agency staff for inspection against any conditions of the radioactive waste disposal certificate.

(3) The generators of radioactive waste shall remain responsible for all liabilities in connection with such radioactive waste under their control until such time as the radioactive waste has been received and accepted in writing by the Agency, following an inspection, at which time liability shall pass to the Agency.

CHAPTER 4

GENERAL

Regulations

25.(1) The Minister may make regulations with regard to anything which in terms of this Act, may or must be prescribed or provided for or governed or necessary for the effective administration of this Act.

(2) Before any regulations are made in terms of subsection (1), the Minister must–

(a) by notice in the Gazette, invite the public to comment on the proposed regulations; and
(b) consider that comment.

Delegations and assignments by Minister

26.(1) The Minister may delegate any power and assign any function conferred or imposed upon the Minister in terms of this Act, except the power to make regulations, to the Director-General of the Department of Minerals and Energy, who may sub-delegate

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or reassign any delegated power or assigned function in the circumstances and manner as prescribed.

(2) A delegation or assignment under subsection (1) must be in writing and may be subject to any conditions or limitations determined by the Minister.

(3) The Minister will not be divested of any power nor be relieved of any function or duty that the Minister may have delegated or assigned.

(4) The Minister may at any time–

(a) amend or revoke a delegation or assignment made under subsection (1);
(b) withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter himself or herself.

(5) despite paragraph (b) a decision made by a delegatee or assignee may not be withdrawn where it confers a right or entitlement on any third party.

Provisions with regard to security of Agency's installations, sites, premises and land

27.(1) The installations, sites, premises and land belonging to or under the control of the Agency, on which any of its business, operations and activities in terms of this Act are conducted or performed or any records in connection therewith are kept, stored or to be found, are restricted areas.

(2) In view thereof, the Agency, subject to subsection (3), may make any arrangements it considers reasonably necessary for the proper protection of–

(a) those installations, sites, premises and land (hereinafter called high security areas);
(b) the persons employed or present at or in the high security areas;
(c) all property of the Agency, whether of a physical or intellectual nature, at or in the high security areas; and
(d) the records and information of the Agency, or in the Agency's possession, that are kept, stored or to be found thereat or therein, irrespective of the manner in which or the medium on or by means of which the records and information are kept, stored or recorded.

(3) No person will be allowed to enter or be present in a high security area unless the person has consented to any search that may be conducted in terms of subsection (4)*(a)*.

(4) Any person authorised thereto in writing by the chief executive officer, may–

(a) search any person or vehicle about to enter or leave any high security area, and may open and inspect any container or parcel and inspect any object, device,

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article, item or thing (including any material or substance) which is in the possession of such a person or is on or in that vehicle;

(b) search any person present or any vehicle found in the high security area if there are reasonable grounds to suspect that any person or anything in the person's possession or in or on the vehicle, constitutes a threat to or endangers the lives or physical integrity of persons or the physical safety of property;

(c) seize or attach any object, device, article, item or thing (including any material or substance) in the possession of a person mentioned in paragraph *(a)* or *(b)* or found on or in such a vehicle–

(i) if such an object, device, article, item or thing belongs to the Agency or is subject to its control and is not in the lawful possession of the person or lawfully being conveyed in or on the vehicle for the purpose of performing any function or work of the Agency; or

(ii) if, in the opinion of the authorised person, it constitutes a threat or danger of the nature contemplated in paragraph *(b)*, or may be used by the person from whom it was taken or any other person for the purposes of a threat or danger of that nature;

(d) arrest any person found in unlawful possession of anything contemplated in paragraph *(c)* (i), or any person mentioned in paragraph *(b)*.

Minister may authorise performance of Agency's functions by other person or body in certain circumstances

28.(1) If, in any particular case, the Agency should fail, in relation to any matter or matters, to perform any function imposed on the Agency in terms of this Act in circumstances where, in law, it is under a duty to perform that function, the Minister, by notice in writing to the Board, may order the Agency to perform the function concerned, which must be specified in the notice.

(2) The Board and the chief executive officer must ensure that any lawful order issued under subsection (1) is complied with.

(3) If the Agency should fail to comply with such an order, the Minister, in writing, may authorise any person or other body that is competent and has the necessary capacity for that purpose, to perform that function in relation to the particular matter or matters (as the case may be).

(4) The Minister may recover from the Agency the costs of having such a function performed by a person or body so authorised.

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Reproduction of documents by Agency

29.(1) The Agency may–

(a) reproduce or cause to be reproduced documents in its possession or under its control by–
  (i) microfilming;
  (ii) electronic means; or
  (iii) any other process which in its opinion reproduces such a document in a durable and accurate manner; and
(b) keep or cause to be kept the reproduction instead of the original document in question.

(2) For the purposes of this Act–

(a) any reproduction referred to in subsection (1) is regarded to be the relevant original document; and
(b) a copy obtained by means of that reproduction and certified by the chief executive officer or an officer authorised by the chief executive officer as a true copy, is prima facie evidence of the contents of the original document in any court of law, any tribunal or a commission of inquiry.

Short title and commencement

30. This Act is called the National Radioactive Waste Management Agency Act, 2008 and comes into operation on a date specified by the President by proclamation in the *Gazette*.

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