

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
NATIONAL NUCLEAR
REGULATOR BILL**

[B 11—99]

(As agreed to by the Portfolio Committee on Minerals and Energy (National Assembly))

[B 11A—99]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP DIE
NASIONALE
KERNREGULEERDER**

[W 11—99]

(Soos goedgekeur deur die Portefeuljekomitee oor Minerale en Energie (Nasionale Vergadering))

[W 11A—99]

ISBN 0 621 29106 4

AMENDMENTS AGREED TO

NATIONAL NUCLEAR REGULATOR BILL
[B 11—99]

CLAUSE 1

1. On page 6, before line 1, to insert:

“action” means—

 - (a) the use, possession, production, storage, enrichment, processing, reprocessing, conveying or disposal of, or causing to be conveyed, radioactive material;
 - (b) any action, the performance of which may result in persons accumulating a radiation dose resulting from exposure to ionizing radiation; or
 - (c) any other action involving radioactive material;

2. On page 6, from line 21, to omit the definition of “nuclear accident” and to substitute:

“nuclear accident” means any occurrence or succession of occurrences having the same origin which—

 - (a) results in the release of radioactive material, or a radiation dose, which exceeds the safety standards contemplated in section 36; and
 - (b) is capable of causing nuclear damage;

3. On page 6, from line 30, to omit the definition of “nuclear damage” and to substitute:

“nuclear damage” means—

 - (a) any injury to or the death or any sickness or disease of a person; or
 - (b) other damage, including any damage to or any loss of use of property or damage to the environment, which arises out of, or results from, or is attributable to, the ionizing radiation associated with a nuclear installation, nuclear vessel or action;

4. On page 6, in line 41, to omit “nuclear”.

5. On page 6, from line 45, to omit the definition of “nuclear installation” and to substitute:

“nuclear installation” means—

 - (a) a facility, installation, plant or structure designed or adapted for or which may involve the carrying out of any process, other than the mining and processing of ore, within the nuclear fuel cycle involving radioactive material, including, but not limited to—
 - (i) a uranium or thorium refinement or conversion facility;
 - (ii) a uranium enrichment facility;
 - (iii) a nuclear fuel fabrication facility;
 - (iv) a nuclear reactor, including a nuclear fission reactor or any other facility intended to create nuclear fusion;
 - (v) a spent nuclear fuel reprocessing facility;

- (vi) a spent nuclear fuel storage facility;
 - (vii) an enriched uranium processing and storage facility; and
 - (viii) a facility specifically designed to handle, treat, condition, temporarily store or permanently dispose of any radioactive material which is intended to be disposed of as waste material; or
 - (b) any facility, installation, plant or structure declared to be a nuclear installation in terms of section 2(3);
6. On page 8, in lines 7 and 8, to omit the definition of “nuclear site”.
 7. On page 8, in line 20, to omit “nuclear site” and to substitute “site”.
 8. On page 8, in line 22, to omit “nuclear site” and to substitute “site”.
 9. On page 8, in line 24, to omit “human activity” and to substitute “action”.
 10. On page 8, in line 27, to omit “nuclear site or human activity” and to substitute “site or action”.
 11. On page 8, in line 36, after “artificial” to insert:
 - , including, but not limited to, radioactive waste and spent nuclear fuel
 12. On page 8, after line 41, to insert:
 - (xxx) “site” means a site on which—
 - (a) a nuclear installation is situated or is being constructed; or
 - (b) any action which is capable of causing nuclear damage, is carried out;

CLAUSE 2

1. On page 8, from line 49, to omit paragraph (c) and to substitute:
 - (c) any action which is capable of causing nuclear damage.
2. On page 8, from line 53, to omit subsection (2) and to substitute:
 - (2) This Act does not apply to—
 - (a) exposure to cosmic radiation or to potassium-40 in the body or any other radioactive material or actions not amenable to regulatory control as determined by the Minister, after consultation with the board and by notice in the *Gazette*;
 - (b) subject to section 41(4), any action where the radioactivity concentrations of individual radioactive nuclides, or the total radioactivity content, are below the exclusion levels provided for in the safety standards contemplated in section 36;
 - (c) Group IV hazardous substances as defined in section 1 of the Hazardous Substances Act, 1973 (Act No. 15 of 1973);
 - (d) exposure to ionizing radiation emitted from equipment, declared to be a Group III hazardous substance in terms of section 2(1)(b) of the Hazardous Substances Act, 1973.

3. On page 10, in line 14, after “may,” to insert:
after consultation with the board and
4. On page 10, in line 15, after “structure” to insert:
including a mine or ore-processing facility

CLAUSE 5

1. On page 10, in lines 41 and 42, to omit “human activities involving radioactive material or exposure to ionizing radiation” and to substitute “actions”.

NEW CLAUSE

1. That the following be a new Clause:

Co-operative governance

6. (1) To give effect to the principles of co-operative government and intergovernmental relations contemplated in Chapter 3 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), all organs of state, as defined in section 239 of the Constitution, on which functions in respect of the monitoring and control of radioactive material or exposure to ionising radiation are conferred by this Act or other legislation, must co-operate with one another in order to—

- (a) ensure the effective monitoring and control of the nuclear hazard;
- (b) co-ordinate the exercise of such functions;
- (c) minimise the duplication of such functions and procedures regarding the exercise of such functions; and
- (d) promote consistency in the exercise of such functions.

(2) The Regulator must conclude a co-operative agreement with every relevant organ of state to give effect to the co-operation contemplated in subsection (1).

(3) The Minister must, after consultation with the board and in consultation with the Ministers responsible for the relevant organs of state, make regulations regarding—

- (a) time periods and procedures, including procedures for public participation and mechanisms for dispute resolution, in respect of the conclusion of co-operative agreements referred to in subsection (2);
- (b) matters that must be provided for in co-operative agreements, including, but not limited to, provision for—
 - (i) time periods for the implementation of co-operative agreements;
 - (ii) the co-ordination of the functions referred to in subsection (1) in a manner that avoids unnecessary duplication and omissions regarding safety requirements and the issuing of conflicting instructions;

- (iii) measures to be taken in the event of non-compliance with a co-operative agreement;
 - (iv) dispute resolution in respect of the interpretation or application of co-operative agreements referred to in subsection (2).
- (4) The Minister must publish by notice in the *Gazette* every co-operative agreement concluded in terms of subsection (2).

CLAUSE 6

1. On page 12, in line 1, to omit “, renew”.
2. On page 12, in line 2, after “acquire” to insert “any”.
3. On page 12, in line 2, after “property” to insert “and proprietary right”.
4. On page 12, in line 19, to omit “human activity” and to substitute “action”.
5. On page 12, in line 24, before “act” to insert “for purposes of this Act”.
6. On page 12, in line 24, to omit “for any purpose”.
7. On page 12, in line 34, to omit “nuclear sites;” and to substitute:
sites including, but not limited to, the prescribed contents.
8. On page 12, after line 34, to insert:

(2) The Minister must table in Parliament the annual public report submitted to him or her in terms of subsection (1)(j) within 14 days after it is so submitted if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

CLAUSE 7

1. On page 12, from line 46, to omit subsections (4) and (5) and to substitute:

(4) The board consists of—
 - (a) the following directors appointed by the Minister:
 - (i) One representative of organised labour;
 - (ii) one representative of organised business;
 - (iii) one person representing communities, which may be affected by nuclear activities;
 - (iv) an official from the Department of Minerals and Energy;
 - (v) an official from the Department of Environmental Affairs and Tourism; and
 - (vi) not more than seven other directors; and
 - (b) the chief executive officer.
- (5) The Minister must from among the directors of the board referred to in subsection (4)(a)(vi) 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)(i), (ii), (iii) and (vi)—

- (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 20 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
- (d) the Minister may, for a director appointed in terms of subsection (4)(a)(i) to (v), 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 a holder of a nuclear authorisation or an employee of such holder.

(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) Upon 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.

- 2. On page 14, in line 8, to omit “(4)(b)” and to substitute “(4)(a)”.
- 3. On page 14, from line 11, to omit subsections (7) and (8).
- 4. On page 14, in line 16, to omit “(5)” and to substitute “(9)”.

CLAUSE 8

- 1. On page 14, in line 30, to omit “member” and to substitute “director”.
- 2. On page 14, in line 31, to omit “member” and to substitute “director”.

NEW CLAUSES

1. That the following be new Clauses:

Committees of board

- 12.** 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 Regulator, the holders of nuclear authorisations and employees of such holders, as the board considers appropriate.

Remuneration of directors and committee members

13. 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 Regulator 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.

CLAUSE 12

1. On page 16, in line 46, after “must” to insert:

, after consultation with the board,
2. On page 18, in line 22, to omit “consulting” and to substitute “consultation with”.

CLAUSE 13

1. On page 20, in lines 18 and 19, to omit “, provident or medical aid scheme or fund for the benefit for its” and to substitute:

or provident fund or medical scheme for the benefit of the staff of the Regulator
2. On page 20, after line 20, to insert:

(6) Any pension or provident fund established by the Council for Nuclear Safety in terms of section 13(4)(b) of the previous Act is deemed to be a fund established in terms of subsection (5).

CLAUSE 14

1. On page 20, after line 23, to insert:

(b) fees paid to the Regulator in terms of section 25; and

CLAUSE 17

1. On page 22, in line 7, to omit “activities” and substitute “actions”.
2. On page 22, from line 10, to omit subsection (2) and to substitute:
 - (2) No vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage may—
 - (a) anchor or sojourn in the territorial waters of the Republic; or
 - (b) enter any port of the Republic,
 except under the authority of a nuclear vessel licence.
3. On page 22, in line 14, to omit “human activity” and to substitute “action”.
4. On page 22, in line 14, after “2(1)(c)” to insert:

other than any action contemplated in subsection (1) or (2)

CLAUSE 18

1. On page 22, in line 18, after “apply” to insert “in the prescribed format”.
2. On page 22, in line 19, to omit “Regulator” and to substitute “board”.
3. On page 22, from line 20, to omit subsection (2) and to substitute:
 - (2) Any person wishing to—
 - (a) anchor or sojourn in the territorial waters of the Republic; or
 - (b) enter any port in the Republic,
 with a vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage, may apply to the chief executive officer for a nuclear vessel licence and must furnish such information as the board requires.
4. On page 22, from line 26, to omit paragraphs (a) and (b) and to substitute:
 - (a) serve a copy of the application upon—
 - (i) every municipality affected by the application; and
 - (ii) such other body or person as the chief executive officer determines; and
 - (b) publish a copy of the application in the *Gazette* and two newspapers circulating in the area of every such municipality.
5. On page 22, in line 31, to omit “on” and to substitute “pursuant to”.
6. On page 22, in line 32, to omit “Regulator” and to substitute “board”.
7. On page 22, in line 35, to omit “Regulator” and to substitute “board”.

CLAUSE 19

1. On page 22, in lines 42 and 43, to omit “human activities involving radioactive material” and to substitute “actions”.

2. On page 22, in line 44, to omit “human activity” and to substitute “action”.
3. On page 22, in line 45, after “apply” to insert “in the prescribed format”.
4. On page 22, in line 46, to omit “Regulator” and to substitute “board”.
5. On page 22, after line 46, to insert:
 - (2) The chief executive officer may direct that the applicant for a certificate of registration—
 - (a) serve a copy of the application upon—
 - (i) every municipality affected by the application; and
 - (ii) such other body or person as the chief executive officer determines; and
 - (b) publish a copy of the application in the *Gazette* and two newspapers circulating in the area of every such municipality.
6. On page 24, in line 1, to omit “human activity” and to substitute “action”.
7. On page 24, in line 3, to omit “, established in terms of this Act, as the case may be” and to substitute “contemplated in section 32”.

CLAUSE 20

1. On page 24, in line 8, after “may” to insert:

, subject to subsection (3),
2. On page 24, in lines 12 and 13, to omit paragraph (b) and to substitute:

(b) provides for the rehabilitation of the site.

CLAUSE 23

1. On page 24, in line 53, after “officer” to insert:

to ensure public access to the conditions specified in the authorisation
2. On page 26, after line 4, to insert:

(4) The holder of a nuclear installation licence must establish a public safety information forum as prescribed in order to inform the persons living in the municipal area in respect of which an emergency plan has been established in terms of section 34(1) on nuclear safety and radiation safety matters.

CLAUSE 24

1. On page 26, in line 14, to omit “nuclear”.
2. On page 26, in line 24, to omit “nuclear site” and to substitute “site”.

CLAUSE 25

1. On page 26, in line 26, to omit “after consultation with the Regulator” and to substitute:

on the recommendation of the board and in consultation with the Minister of Finance
2. On page 26, in line 27, after “payable” to insert “to the Regulator”.
3. On page 26, in lines 30 and 31, to omit paragraphs (c) and (d).
4. On page 26, in lines 32 and 33, to omit subsection (2).

CHAPTER 4

Chapter rejected.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 4**FINANCIAL SECURITY AND LIABILITY****Financial security by holder of nuclear installation licence**

29. (1) The Minister must, on the recommendation of the board and by notice in the *Gazette*, categorise the various nuclear installations in the Republic, based on the potential consequences of a nuclear accident.

(2) The Minister must, on the recommendation of the board and in consultation with the Minister of Finance and by notice in the *Gazette*, determine—

- (a) the level of financial security to be provided by holders of nuclear installation licences in respect of each of those categories; and
- (b) the manner in which that financial security is to be provided, in order for the holder of a nuclear installation licence to fulfil any liability which may be incurred in terms of section 30.

(3) Despite subsection (2), the Minister may, after consultation with the board, for so long as the holder of a nuclear installation licence may be liable for nuclear damage—

- (a) increase or decrease the level of financial security to be provided by that holder as determined in terms of subsection (2);
- (b) if financial security has not been required in terms of subsection (2) require that holder to provide financial security;
- (c) discharge that holder from the requirement to provide financial security;
- (d) amend the manner in which that holder must provide financial security.

(4) If—

- (a) nuclear damage occurs and compensation is claimed as a result thereof; or

(b) the Minister is satisfied that such compensation is likely to be so claimed,

the Minister may require the holder of the nuclear installation licence in question to give additional financial security in respect of those claims or possible claims, to an amount which the Minister, after consultation with the board, determines.

(5) The holder of a nuclear installation licence must annually provide proof to the Regulator that any claim for compensation to an amount contemplated in section 30(2), can be met.

Strict liability of holder of nuclear installation licence for nuclear damage

30. (1) Subject to subsections (2), (3), (5) and (6), only a holder of a nuclear installation licence is, whether or not there is intent or negligence on the part of the holder, liable for all nuclear damage caused by or resulting from the relevant nuclear installation during the holder's period of responsibility—

- (a) by anything being present or which is done at or in the nuclear installation or by any radioactive material or material contaminated with radioactivity which has been discharged or released, in any form, from the nuclear installation; or
- (b) by any radioactive material or material contaminated with radioactivity which is subject to the nuclear installation licence, while in the possession or under the control of the holder of that licence during the conveyance thereof from the nuclear installation, to any other place in the Republic or in the territorial waters of the Republic from or to any place in or outside the Republic.

(2) The liability for nuclear damage by any holder of a nuclear installation licence is limited, for each nuclear accident, to the amounts determined in terms of section 29(2).

(3) The liability contemplated in subsection (1)(b) ends upon the relevant material coming—

- (a) onto another site in respect of which a nuclear installation licence has been granted; or
- (b) onto a site or into the possession or the control of any person authorised in terms of section 3A of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), where such material is a Group IV hazardous substance as defined in section 1 of that Act.

(4) For the purposes of subsection (1) radioactive material or material contaminated with radioactivity which is being conveyed on behalf of the holder of a nuclear installation licence is regarded to be in the possession or under the control of the holder of that licence.

(5) Nothing in this section precludes a person from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), but such person may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993.

(6) The holder of a nuclear installation licence is not liable to any person for any nuclear damage—

- (a) to the extent to which such nuclear damage is attributable to the presence of that person or any property of that person at or in the nuclear installation or on the site in respect of which the nuclear installation licence has been granted, without the permission of the holder of that licence or of a person acting on behalf of that holder; or

(b) if that person intentionally caused, or intentionally contributed to, such damage.

(7) The holder of a nuclear installation licence retains any contractual right of recourse or contribution which the holder has against any person in respect of any nuclear damage for which that holder is liable in terms of subsection (1).

(8) Any person who, without a nuclear installation licence, carries out an action for which such a licence is required, is, whether or not there is intent or negligence on the part of that person, liable for all nuclear damage.

(9) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person may be entitled in terms of this section.

Special provisions for liability for nuclear damage caused by vessels

31. If the chief executive officer has not determined any conditions for liability for nuclear damage as contemplated in section 24(1)(a)(i) for a holder of a nuclear vessel licence granted in respect of a vessel, the provisions of section 30 apply with the changes required by the context.

Liability of holder of certificate of registration for nuclear damage

32. (1) The liability of a holder of a certificate of registration, for any nuclear damage caused by or resulting from any action carried out by virtue of that certificate during his or her period of responsibility, must be determined in accordance with—

- (a) the common law; or
 - (b) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993),
- as the case may be.

Claims for compensation in excess of maximum liability

33. (1) If—

- (a) the total amount of claims for compensation against a holder of a nuclear installation licence; or
- (b) the total amount of claims for compensation against such holder plus the estimated amount of claims for compensation likely to be required to be paid,

exceeds, or is likely to exceed, the amount for which that holder has given security in terms of section 29, the holder must immediately notify the board and the Minister thereof in writing.

(2) Such notice must include—

- (a) particulars of the total number and amount of all such claims received; and
- (b) an estimate of the number and amount of any other claims which may have to be satisfied.

(3) If on receipt of that notice, the Minister is satisfied that the total amount of claims for compensation against a holder of a nuclear installation licence that is unpaid, and of such claims as are likely to be made thereafter, will exceed the amount of security given by that

holder in terms of section 29 in respect of such claims, the Minister must—

- (a) table in Parliament a report on the nuclear damage in question, which recommends that Parliament appropriate funds for rendering financial assistance to the holder to the amount by which the claims exceed or are likely to exceed the security which is available; and
- (b) by notice in the *Gazette* suspend the obligation to pay the claims in respect of that nuclear damage until Parliament has decided about the recommendation.

(4) The liability of a person who has provided or must provide financial security as contemplated in section 29, is not affected by any appropriation in terms of subsection (3)(b).

(5) If Parliament has by resolution decided that funds to an amount specified in the report by the Minister be appropriated, no payment of any such claim for compensation arising out of the nuclear damage concerned may be made after the passing of such resolution without the approval of the Minister or an order of court.

(6) The giving of additional security by a holder of a nuclear installation licence in terms of section 29(4) does not affect the application of this section.

Prescription of actions

34. (1) Despite anything to the contrary in any other law, an action for compensation in terms of section 30, 31 or 32 may, subject to subsection (2), not be instituted after the expiration of a period of 30 years from—

- (a) the date of the occurrence which gave rise to the right to claim that compensation; or
- (b) the date of the last event in the course of that occurrence or succession of occurrences, if a continuing occurrence or a succession of occurrences, all attributable to a particular event or the carrying out of a particular operation, gave rise to that right.

(2) If the claimant concerned became aware, or by exercising reasonable care could have become aware, of—

- (a) the identity of the holder of the nuclear authorisation concerned; and
 - (b) the facts from which the right to claim compensation arose,
- during the period of 30 years contemplated in subsection (1), an action for compensation in terms of section 30, 31 or 32 may not be instituted after the expiration of a period of two years from the date on which he or she so became aware or could have become aware.

(3) The running of the period of two years referred to in subsection (2) is suspended from the date negotiations regarding a settlement by or on behalf of the claimant and the relevant holder of the nuclear authorisation are commenced in writing until the date any party notifies the other party that the negotiations are terminated.

Compensation for injuries of Regulator's employees

35. (1) If a person who is employed in any capacity by or on behalf of the Regulator, while so performing services, suffers a personal injury or contracts a disease attributable to ionizing radiation from any radioactive material, or to the flammable, explosive, poisonous

or special properties of radioactive material, or to the ionizing radiation produced by any apparatus, and in respect of which no liability can be established in terms of section 30, 31 or 32, the Regulator must, subject to subsection (2)—

- (a) defray all reasonable expenses incurred by or on behalf of such person in respect of any medical treatment, including, but not limited to, the supply and maintenance of any artificial part of the body or other device, necessitated by such injury or disease; and
- (b) pay compensation in respect of disablement or death caused by such injury or disease.

(2) Nothing in this section precludes an employee of the Regulator from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), but such employee may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993.

(3) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person may be entitled in terms of this section.

CLAUSE 32

1. On page 32, from line 46, to omit subsection (1) and to substitute:

(1) The Minister must, on the recommendation of the board, make regulations regarding safety standards and regulatory practices.

2. On page 34, in line 4, to omit subsection (2) and to substitute:

(2) Before any regulations are made in terms of subsection (1), the Minister must, by notice in the *Gazette*, invite the public to comment on the proposed regulations and consider that comment.

3. On page 34, from line 6, to omit subsection (3).

CLAUSE 33

1. On page 34, in line 14, to omit “activities involving radioactive material” and to substitute “actions”.
2. On page 34, in line 45, to omit “nuclear site” and to substitute “site”.

CLAUSE 34

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Emergency planning

38. (1) Where the possibility exists that a nuclear accident affecting the public may occur, the Regulator must direct the relevant holder of a nuclear authorisation, other than a holder of a certificate of exemption, to—

- (a) enter into an agreement with the relevant municipalities and provincial authorities to establish an emergency plan within a period determined by the Regulator;
- (b) cover the costs for the establishment, implementation and management of such emergency plan insofar as it relates to the relevant nuclear installation or any action contemplated in section 2(1)(c); and
- (c) submit such emergency plan for its approval.

(2) The Regulator must ensure that such emergency plan is effective for the protection of persons should a nuclear accident occur.

(3) When a nuclear accident occurs, the holder of a nuclear authorisation, other than a holder of a certificate of exemption, in question must implement the emergency plan as approved by the Regulator.

(4) The Minister may, on recommendation of the board and in consultation with the relevant municipalities, make regulations on the development surrounding any nuclear installation to ensure the effective implementation of any applicable emergency plan.

CLAUSE 36

1. On page 36, from line 26, to omit paragraphs (a) and (b) and to substitute:
 - (a) keep and maintain a record of the details of every nuclear accident and nuclear incident;
 - (b) store that record safely;
 - (c) retain that record for 40 years from the date of the nuclear accident or nuclear incident; and
 - (d) on the request of any person, make that record available to that person.

CLAUSE 37

1. On page 36, in line 31, after “must,” to insert:

with the approval of the board and
2. On page 36, in line 36, to omit “nuclear activities” and to substitute “actions”.
3. On page 36, in line 46, to omit “Regulator” and to substitute “inspector”.
4. On page 36, in line 53, to omit “Regulator” and to substitute “inspector”.

5. On page 36, in lines 54 and 55, to omit “human activity” and to substitute “action”.
6. On page 38, from line 16, to omit paragraphs *(e)* and *(f)* and to substitute:
 - (e)* if any action contemplated in section 20, or any condition associated with such action, does not comply with the requirements laid down in the nuclear authorisation, or with the safety standards contemplated in section 36, direct any person in control of the action—
 - (i) to discontinue such action or immediately rectify such condition; or
 - (ii) to rehabilitate the relevant site or other place to a condition that complies with the requirements laid down in the nuclear authorisation or with the safety standards contemplated in section 36;
 - (f)* if any action contemplated in section 2(2)(b), or any condition associated with such action, does not comply with the exemption criteria specified in the safety standards contemplated in section 36, direct the person in control of the action—
 - (i) to discontinue such action or immediately rectify such condition;
 - (ii) to rehabilitate the site or other place to a condition that complies with the exemption criteria provided for in the safety standards contemplated in section 36; or
 - (iii) to apply for a certificate of registration;
 - (g)* require any person who causes any site or other place to be contaminated with radioactive material to rehabilitate the site or place to a condition that complies with the safety standards contemplated in section 36;
 - (h)* be accompanied by such persons as the inspector considers necessary—
 - (i) to assist the inspector in the exercise of his or her powers in terms of this subsection;
 - (ii) to exercise such powers, and perform such duties, of the inspector as he or she determines;

CLAUSE 38

1. On page 38, from line 45, to omit subsection (3).

CLAUSE 41

1. On page 40, in line 28, before “within” to insert “be lodged”.

NEW CLAUSE

1. That the following be a new Clause:

Appeal to High Court against Minister's decision

46. (1) Any person adversely affected by a decision of the Minister, either in terms of section 45(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the High Court.

(2) Such appeal must—

- (a) be lodged within 60 days from the date on which the decision was made known by the Minister or such later date as the High Court permits; and
- (b) set out the grounds for the appeal.

(3) The appeal must be proceeded with as if it were an appeal from a Magistrate's Court to a High Court.

CLAUSE 42

1. On page 40, in line 38, after “may,” to insert:

after consultation with the board and

2. On page 40, after line 45, to insert:

(3) Before any regulations are made in terms of subsection (1), the Minister must, by notice in the *Gazette*, invite comment on the proposed regulations and consider that comment.

CLAUSE 43

1. On page 42, from line 2, to omit subsection (1) and to substitute:

(1) Subject to subsection (2), the Minister may delegate any power and assign any duty conferred or imposed upon the Minister in terms of this Act to the Director-General: Minerals and Energy.

(2) Any power or duty conferred or imposed upon the Minister in terms of section 2, Chapter 2 and sections 28, 29, 33, 36, 38(4) 45 and 47 may not be delegated or assigned in terms of subsection (1).

2. On page 42, in line 17, to omit “4(b)” and to substitute “(5)(b)”.

CLAUSE 44

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Disagreement between Minister and board

49. (1) If the Minister rejects a recommendation of the board contemplated in section 28(1), 29(1) or (2), 36(1) or 38(4), the Minister and the board must endeavour to resolve their disagreement.

(2) If the Minister and the board fail to resolve their disagreement, the Minister makes the final decision, in consultation with the relevant Minister.

CLAUSE 46

1. On page 42, from line 30, to omit subsection (2) and to substitute:

(2) Subject to subsection (4) and any national legislation contemplated in section 32(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)—

- (a) no person may disclose to any other person or publish any information which relates to any nuclear installation or site or vessel or action described in section 2(1)(c) in respect of which a nuclear authorisation has been issued or is to be issued and not yet public knowledge if the disclosure of that information is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic;
- (b) no person may be in possession of any documents if not authorised and such possession is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic;
- (c) no person may receive any information knowing or having reasonable grounds to believe that it has been disclosed to him or her in contravention of the provisions of paragraph (a) or (b);
- (d) a person must take reasonable steps to safeguard information which he or she has in his or her possession or under his or her control and which he or she is in terms of paragraph (a) or (b) prohibited from disclosing to any person, or publishing, or so conduct himself or herself as not to endanger the secrecy thereof.

(3) No member of the board or a committee of the board or an employee of the Regulator may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act except—

- (a) to the extent to which it may be necessary for the proper administration of this Act;
- (b) for the purposes of the administration of justice; or
- (c) at the request of any person entitled thereto.

(4) Despite the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information if—

- (a) the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of a health or safety risk or a failure to comply with a duty imposed by this Act; and

- (b) the disclosure was made in accordance with subsection (5).
 (5) Subsection (4) applies only if the person concerned—
- (a) disclosed the information concerned to—
- (i) a committee of Parliament or a provincial legislature;
 - (ii) the Public Protector;
 - (iii) the Human Rights Commission;
 - (iv) the Auditor-General;
 - (v) the National Director of or a Director of Public Prosecutions;
 - (vi) the Minister;
 - (vii) the Regulator; or
 - (viii) more than one of the bodies or persons referred to in subparagraphs (i) to (vii); or
- (b) disclosed the information concerned to one or more news medium and on clear and convincing grounds (of which he or she bears the burden of proof) believed at the time of the disclosure—
- (i) that disclosure was necessary to avert an imminent and serious threat to the health or safety of an individual or the public, to ensure that the health or safety risk or the failure to comply with a duty imposed by the Act was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
 - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or
- (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure (other than the procedures contemplated in paragraph (a) or (b)); or
- (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

CLAUSE 47

1. On page 44, in line 19, to omit “three” and to substitute “10”.
2. On page 44, in line 21, to omit “two” and to substitute “five”.
3. On page 44, in line 23, to omit “one year” and to substitute “three years”.

SCHEDULE

Schedule rejected.

