

## INTERNATIONAL ENVIRONMENTAL REQUIREMENTS

1. *United Nations Framework Convention on Climate Change 9 May 1992 (New York): FCCC*

The objective of this convention is the "stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." The convention requires, *inter alia*, that developed countries formulate and implement programmes which mitigate the adverse effects of climate change and facilitate adaptation to it. South Africa ratified this convention in August 1997.

2. *Kyoto Protocol to the United Nations Framework Convention on Climate Change Kyoto, 1997*

South Africa ratified the United Nations Framework Convention as a developing country and thus has no requirements at present to reduce green house gas emissions. South Africa has acceded to the Kyoto Protocol and as such is eligible to participate in the Clean Development Mechanism (CDM). South Africa is also particularly vulnerable to the adverse impacts of climate change, both due to impacts on the weather patterns in Southern Africa and impacts on the economy as a result of the response measures taken by developed countries.

3. *The Convention on Biological Diversity*

Opened for signature at Rio de Janeiro on 5 June 1992

South Africa is a party to this convention, whose obligations include the duty to protect biodiversity, and thus indirectly to promote environmentally sound integrated pollution and waste management practices. A Green Paper on the Conservation and Use of South Africa's Biological Diversity (Department of Environmental Affairs and Tourism, October 1996) has been published and a White Paper is anticipated. No specific legislation to give effect to this convention has been passed, but many legislative enactments, for example the Nature Conservation ordinances are indirectly relevant.

4. *The Convention on Wetlands of International importance especially as Waterfowl Habitat (RAMSAR 1971)*
5. *Bonn Convention: Convention on the Conservation of Migratory Species of Wild Animals*
6. *Convention on the preservation of Marine Pollution by dumping of wastes and other matters, 1972. The London Convention, 1972*
7. *The Basel Convention on the control of transboundary movements of hazardous wastes and other disposal. The Basel Convention, 1989*

This convention regulates the transboundary movement of hazardous waste. This convention has been acceded to. No domestic legislation has been passed in this regard.

8. *The Montreal Protocol on substances that deplete the ozone layer Montreal, 1987*

The purpose of this convention and its protocol is to protect human beings and the environment from the harmful effect of activities which modify the ozone layer. It requires the parties to cooperate, according to their means, in research and legislative measures and to formulate agreed standards, procedures and measures in the form of protocols and annexes. The 1987 Montreal Protocol sets out a timetable for the reduction of controlled substances which deplete the ozone layer. It establishes a formula for determining calculated levels of consumption and production of controlled substances, based on the ozone-depleting potential of each substance. Although the convention has been ratified, no specific domestic legislation or regulation has been passed in this regard.

9. *Convention for the protection of the World Cultural and Natural Heritage Paris, 1972*

10. *International convention on civil liability for oil pollution damage, 29 November 1969 (Brussels):*

This convention provides for a compensation fund for clean-up costs and environmental damage, subject to certain conditions and ceilings. It is incorporated into South African law in the Prevention and Combating of Pollution of the Sea by Oil Act (No. 6 of 1981) and General Regulations made under it (GN R1276 of 29 June 1982).

11. *Convention on the establishment of an international fund for compensation for oil pollution damage, 1971:*

The convention supplements the International Convention on Civil Liability for Oil Pollution Damage (1969) in that it is applied when certain limits and financial ceilings exclude the Brussels Convention. South Africa has not become a party to this convention, as it necessitates disclosure of its oil imports.

12. *Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the sea-bed and the ocean floor and in the subsoil thereof, 11 February 1971(London, Moscow, Washington):*

This treaty prohibits environmental pollution from nuclear activities. The relevant legislation is the Nuclear Energy Act (No. 13 of 1994).

13. *Convention on the prevention of marine pollution by dumping wastes and other matter, 29 December 1972(London, Mexico City, Moscow)*

This convention regulates the dumping at sea of matter scheduled. It schedules prohibited substances and substances requiring permits and sets out guidelines in this regard. It is incorporated into South African law by the Dumping at Sea Control Act (No. 73 of 1980).

14. *Convention for the prevention of marine pollution from land-based sources*  
1974

This convention is relevant to the pollution of coastal waters from land-based sources. South Africa has not acceded to it, but is monitoring developments in this regard and may accede to it in due course.

15. *Fourth African, Caribbean and Pacific-European economic community convention*, 15 December 1989(LOME4)

This convention, which South Africa has signed but not ratified, is a cooperative agreement of the European Community and its member states on the one hand, and the African, Caribbean and Pacific states on the other. Its purpose is to provide and expedite the economic, cultural and social development of the African, Caribbean and Pacific states and to consolidate and diversify their relations in a spirit of solidarity and mutual interest. Title I (articles 33 to 39) is dedicated to the environment. Article 39 is dedicated to the control of international movement of hazardous and radioactive waste. The article specifically prohibits all direct and indirect export of such waste by the European Community to the African, Caribbean and Pacific states and provides that the African, Caribbean and Pacific states shall prohibit the import of such waste into their territory. South Africa has not passed domestic legislation or regulations in this regard and will have to do so once it ratifies the convention. South Africa is also considering a bilateral arrangement with the European Community.

16. *Convention on the ban of import into Africa and the control of transboundary movement and management of hazardous waste within Africa*, 29 January 1991(Bamako)

During the negotiation of the Basel Convention, the African states represented by the Organisation for African Unity adopted the Bamako Convention, as they were of the view that Basel was not strict enough. The Bamako Convention totally prohibits the importation of hazardous waste into Africa. South Africa has neither signed, nor acceded to this convention. No domestic legislation is necessary.

17. *Convention on nuclear safety, 17 June 1994*

The objective of this convention is to achieve and maintain a high level of nuclear safety worldwide through the enhancement of national measures and international cooperation, including safety-related technical cooperation, where appropriate. South Africa ratified this convention in December 1996 and the Council for Nuclear Safety has initiated a process to develop a national policy and domestic legislation in this regard.

18. *National Nuclear Non-Proliferation Treaty*

The Nuclear Energy Act implements South Africa's commitments with respect to the Non-Proliferation Treaty and the Safeguards Agreement that has been entered into between South Africa and the IAEA. The Minister is accountable and responsible, but may delegate all or part of this function. Partial delegation, to NECSA, has been done.

The implementation of the Safeguards Agreement requires that Subsidiary Agreements be established for the various nuclear facilities that are under safeguards. For example, a Subsidiary Agreement exists (and has always existed) for Koeberg Units 1 and 2. A Subsidiary Agreement existed for the previous BEVA plant.

19. Equator Principles (linked to requirements by banks in terms of financing projects)

The Equator Principles serve to establish minimum requirements for social and environmental impact assessment (SEIA) and are subscribed to by the world's major international financial organisations (in the region of 90%). The Equator Principles have been developed in order to incorporate best practice in the field of environmental, health and safety (EHS), and social responsibility management in the implementation of financed projects. The underlying principle is to identify and then prevent or minimize potentially adverse social and environmental

impacts associated with the Project being financed. The Equator Principles apply to all new projects with total project capital costs of 10 million US dollars or more, and to the associated activities that can potentially result in significant environmental and/or social impacts.

The Equator Principles are adopted by financial institutions in order to ensure that social and environmental risks are adequately assessed and managed in project financing. The principles are as follows:

- i) Review and Categorisation of project risk
- ii) Social and Environmental Assessments to be conducted
- iii) Compliance with Applicable Social and Environmental Standards the International Finance Corporation (IFC) Performance Standards and Industry Specific Environmental, Health and Safety (EHS) Guidelines
- iv) Compilation of an Action Plan and Management System
- v) Consultation with and Disclosure to affected communities
- vi) Establishment of a Grievance Mechanism
- vii) Independent Review of assessment, action plan and consultation process
- viii) Covenants to comply with host country legislation and action plan, to provide reports, and to decommission according to a plan
- ix) Independent Monitoring and Reporting
- x) Equator Principles Financial Institutions (EPFI) Reporting

Projects are categorised under the Equator Principles according to their environmental and social risk:

Category A Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented;

Category B Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

Category C Projects with minimal or no social or environmental impacts.

Equator Principle (iii) requires compliance with applicable Social and Environmental Standards the International Finance Corporation (IFC) Performance Standards and Industry Specific Environmental, Health and Safety (EHS) Guidelines.

International Finance Corporations (IFCs) Performance Standards on Social & Environmental Sustainability

The EHS Guidelines contain the performance levels and measures that are normally acceptable to IFC and are generally considered to be achievable in new facilities at reasonable costs by existing technology. For IFC-financed projects, application of the EHS Guidelines to existing facilities may involve the establishment of site-specific targets with an appropriate timetable for achieving them. The environmental assessment process may recommend alternative (higher or lower) levels or measures, which, if acceptable to IFC, become project- or site-specific requirements.

When host country regulations differ from the levels and measures presented in the EHS Guidelines, projects are expected to achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, a full and detailed justification for any proposed alternatives is needed as part of the site-specific environmental assessment. This justification should demonstrate that the choice for any alternate performance levels is protective of human health and the environment.

## General EHS Guidelines

The General EHS Guidelines contain information on cross-cutting environmental, health, and safety issues potentially applicable to all industry sectors. It is designed and should be used together with the relevant industry sector guideline(s). For electricity utilities there is thermal power plant, wind energy and electric power transmission and distribution industry sector guidelines that are applicable.

The following IFC Performance Standards are applicable:

Performance Standard 1: Social and Environmental Assessment and Management System

Performance Standard 2: Labour and Working Conditions

Performance Standard 3: Pollution Prevention and Abatement

Performance Standard 4: Community Health, Safety and Security

Performance Standard 5: Land Acquisition and Involuntary Resettlement

Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management

Performance Standard 7: Indigenous Peoples

Performance Standard 8: Cultural Heritage

In general the environmental impact assessment (EIA) process undertaken in terms of South African legislation is in alignment with these standards.

The general principle is that the Standards must be adhered to. These Standards are more philosophical requirements and thus should be attainable. The Environmental, Health, and Safety General Guidelines as well as industry sector EHS guidelines (thermal power plants, power lines, wind facilities) are designed to be just those guidelines.