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## **Draft National Climate Change Response Green Paper**

### **Introduction**

The long-awaited draft National Climate Change Response Green Paper finally appeared this week, after its pending arrival and “imminent” publication had been, earlier, heralded by the newly appointed Minister of Water and Environmental Affairs, Edna Molewa. The Minister also indicated that, following a period of consultation, a final climate change policy White Paper is expected to be completed by mid-2011. The draft Green Paper was eventually uploaded to the website of the Department of Environmental Affairs, overnight on 16 November 2010. Climate change policy-watchers have been anticipating the draft Green Paper since prior to the UN Climate Change Conference held in Copenhagen, Denmark, in December 2009. In less than two weeks the next edition of the Conference will open in Cancun, Mexico, with the follow-up to Cancun scheduled for Durban, in late 2012.

### **Background**

As one would expect, the draft Green Paper owes much to South Africa’s prominent role in the international climate change negotiations and to the wide range of research and development work that has been undertaken to inform the formulation of our national climate change policy. Government has promised to prepare a legislative, regulatory and fiscal package ready for implementation by 2012, and the draft Green Paper is the most recent, and important, step in a process which has been underway for some years. Taken in this light, a number of elements of the draft Green Paper are unsurprising and, indeed, have been, either, hinted at or boldly stated by government since, at least, Marthinus van Schalkwyjk’s tenure as the (then) Minister of Environmental Affairs and Tourism. In addition, and considering that the draft Green Paper is still to be subjected to a process of consultation with a view to formulating a final climate change policy which must then be operationalised in the form of the abovementioned legislative, regulatory and fiscal package, the document remains a strong statement of intent rather than an articulation of specific obligations to be imposed on climate change roleplayers. Notwithstanding these considerations, the draft Green Paper is essential reading as a barometer of a policy landscape increasingly influenced by the imperatives of climate change.

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## **General comments**

The draft Green Paper utilises language that will be familiar to those following the international climate change negotiations and recent steps towards policy-formulation in this country. The principle of “peak, plateau and decline” of national greenhouse gas emissions, encapsulated in the Long Term Mitigation Strategy, is clearly evident as is the often reiterated mantra of the achievement of government’s macro-economic policy – job creation and poverty alleviation - as an over-arching objective of climate change policy. The draft Green Paper also references, at least, one of its predecessors, the National Climate Change Response Strategy for South Africa (September, 2004) which tended to be, largely, a wish-list of intentions as opposed to a coherent and operational plan. In defence of the 2004 document it must be acknowledged that some of the “key actions” listed therein have been implemented in the intervening period, including the complete renovation of the air quality legal regime in the country and the establishment of the Designated National Authority for the Clean Development Mechanism. Another important element of the earlier document, i.e., the recognition of the cross-cutting nature of the implications of climate change and the need to take this nature into account when formulating relevant policy, is also retained and developed by the draft Green Paper (see, for example, section 7 dealing with institutional frameworks, from page 31).

## **Structure**

However, similarly to its predecessor, the draft Green Paper will not provide much satisfaction for individuals seeking, at this stage, to determine their future, legal obligations relating to climate change. This is for the reason that the draft Green Paper, while focusing the work of the 2004 Strategy and other contributors to policy formulation, does not specify intended rules but, rather, defines an ultimate policy objective and identifies certain principles and strategies to be utilized to achieve the objective, within a set of key affected sectors. Consequently, while the document is probably accurately described as moving beyond the purely aspirational it also recognizes that there is still much work to be undertaken in order to realize the policy’s ambitions.

By way of illustration - perhaps the closest that the document comes to a statement on the much discussed question of the level and timing of future greenhouse gas emissions reduction obligations is found on the last page, in a section dealing with monitoring, verifying and reporting overall mitigation efforts. In this context, it is noted, South Africa will require “...the mandatory submission of greenhouse gas emission data to the National Atmospheric Emission Inventory by all significant emitters and compilers of greenhouse gas emission related data and / or proxy data by 2013.” There is no indication of what is meant by the term “significant emitters”, although well-educated guesses in this regard are clearly possible.

The draft Green Paper does, however, include some tantalizing references to specifically anticipated legal interventions, including:

- The revision of the Minimum Requirements for Landfill by 2012 (page 29).
- The compilation of a national composting strategy by 2012 aimed at reducing the amount of organic waste to landfill by 50% of the 2000 baseline by 2020 (page 29).

- The use of section 29(1) of the National Environmental Management: Air Quality Act (No. 39 of 2004), which deals with priority air pollutants, to manage greenhouse gas emissions from all significant industrial sources, i.e., sources responsible for > 0.1% of total emissions for a specific industrial sectors, in line with improved mitigation plans prepared by identified industries and / sectors (page 17).

The draft Green Paper's **objective** references the overarching environmental objective of the Framework Convention on Climate Change, the Convention's principle of common but differentiated responsibility for dealing with the consequences of climate change, and the environmental right in South Africa's constitution, as follows:

- South Africa, taking into account equity and the common but differentiated responsibilities and respective capabilities of all nations, as well as the inter-generational commitment of the Environmental Right contained in Section 24 the country's Constitution, has the climate change response objective of –
  - making a fair contribution to the global effort to achieve the stabilisation of greenhouse gas concentrations in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system; and,
  - effectively adapting to and managing unavoidable and potential damaging climate change impacts through interventions that build and sustain South Africa's social, economic and environmental resilience and emergency response capacity.

The following **principles** will guide the achievement of the objective:

- The principle of Common but Differentiated Responsibility and Respective Capabilities.
- The Precautionary Principle.
- The Polluter Pays Principle.
- A people-centred approach.
- Informed participation.
- Inter-generational rights.

Among the **strategies** to be implemented are the following:

- Taking a balanced approach to both climate change mitigation and adaptation responses.
- Prioritising the development and maintenance of the science-policy interface and knowledge management and dissemination systems.
- The short-term prioritisation of adaptation interventions
- The prioritisation of mitigation interventions that:
  - significantly contribute to a peak, plateau and decline emission trajectory where greenhouse gas emissions peak in 2020 to 2025 at 34% and 42% respectively below a business as usual baseline, plateau to 2035 and begin declining in absolute terms from 2036 onwards, in particular, interventions within the energy, transport and industrial sectors; and,
  - have potential positive job creation, poverty alleviation and/or general economic impacts.
- Prioritising the development of knowledge generation and information management systems that increase our ability to measure and predict climate change and, especially extreme

weather events, floods, droughts and forest and veld fires, and their impacts on people and the environment.

- The mainstreaming of climate change response into all national, provincial and local planning regimes.
- The use of incentives and disincentives, including through regulation and the use of economic and fiscal measures to promote behaviour change that would support the transition to a low carbon society and economy.
- Recognise that measures taken by developed countries in their efforts to respond to climate change, including trade measures such as border tax adjustments, may have detrimental effects on high carbon and energy intensive economies such as South Africa.
- Recognise that South Africa's response to climate change will have major implications for, both, the Southern African region and for Africa as a whole and ensure that national responses are aligned to, support and operate as part of a broader regional response.

The location for the implementation of the abovementioned strategies will be the following primary, secondary and other key sectors:

- Primary:
  - Water – considered to be the medium through which climate change impacts will be felt by most people, ecosystems and economies.
  - Agriculture
  - Human Health
- Secondary:
  - Energy.
  - Industry.
  - Transport.
- Other:
  - Disaster Risk Management.
  - Natural resources sectors.
  - Human society, livelihoods and services

## **Conclusion**

Sensibly, the draft Green Paper contains a detailed description of a necessary evolution of institutional frameworks to implement the final climate change policy, while remaining within the existing constitutional paradigm of separate national, provincial and municipal competencies. The section dealing with financing contains intriguing mention of future carbon trading schemes and a potentially concerning indication, from the perspective of the confidential interests of private business, that flows of private climate change finance will, along with public finance, be subject to a Climate Finance Tracking Facility. Watchers of the carbon market will be encouraged to note that in contributing towards the target of 10 000 Gwh of renewable energy contribution to the final energy mix; and, socio-economic and environmentally sustainable growth, and to kick-start and stimulate the renewable energy industry in South Africa, there is recognition of the need for the rapid implementation of the renewable energy support mechanisms including the Renewable Energy Feed-in Tariff, Clean Development Mechanism projects, Renewable Energy Certificates, Solar Water Heating subsidies and other financial support mechanisms.

Written comments on the draft National Climate Change Response Green Paper should be submitted by 16h00 on 11 February 2011 as follows:

1. Hand delivered to the Department of Environmental Affairs.
2. Posted to: The Director-General: Department of Environmental Affairs.  
Attention: Ms. Joanne Yawitch  
Deputy Director-General: Climate Change  
Private Bag X447  
Pretoria, 0001
3. Faxed to: (012) 322 2602; and
4. E-mailed to [jyawitch@environment.gov.za](mailto:jyawitch@environment.gov.za) or [dngobeni@environment.gov.za](mailto:dngobeni@environment.gov.za)

Any telephonic enquiries in connection with the Second National Communication can be directed to Ms. Joanne Yawitch at (012) 310-3666 or Mr. Peter Lukey at (012) 310 3710.

***This document should not be regarded a comprehensive discussion of the topics addressed and, in particular, should not be taken as legal advice or relied upon. For further information please contact: [lulu@warburtons.co.za](mailto:lulu@warburtons.co.za)***