

THE ENVIRONMENTAL MANAGEMENT ACT, 2000

RULES

MADE BY THE MINISTER UNDER SECTIONS 26 (H) AND 35 OF THE Environmental Management Act, 2000 and after compliance with sections 27 and 28 of the said Act

THE CERTIFICATE OF ENVIRONMENTAL CLEARANCE RULES, 2001

Citation 1. These Rules may be cited as the Certificate of Environmental Clearance Rules, 2001.

Interpretation 2. In these Rules -

Act No. 3 of 2000

“Act” means the Environmental Management Act, 2000;

“applicant” includes an agent and an attorney appointed under a duly registered power of attorney ;

“application” means an application for a Certificate made under section 35(2) of the Act;

“Authority” means the Environmental Management Authority established under section 6(1) of the Act;

“Certificate” means a certificate of environmental clearance issued under section 36(1) of the Act;

“designated activity” means an activity listed in the Schedule to the Certificate of Environmental Clearance (Designated Activities) Order, 2000;

“effects” includes direct and indirect, secondary, cumulative, short, medium and long term, permanent, temporary, positive, negative and synergistic effects;

“EIA” means an environmental impact assessment;

"notice" means a notice in accordance with the form determined by the Authority;

“Order” means the Certificate of Environmental Clearance (Designated Activities) Order, 2000;

“prescribed fee” and “prescribed charge” mean the fee and charge respectively prescribed in the Certificate of Environmental Clearance (Fees and Charges) Regulations, 2000;

“recipient” means the Authority, TCPD and a person mentioned in rule 3(2) (b);

“Register” means the National Register of Certificates of Environmental Clearance established under rule 8;

“Registrar” refers to the Registrar of Companies under the Companies Act, 1995;

“TCPD” means the entity responsible for town and country planning;

“TOR” means terms of reference for an EIA.

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**Application for Certificate
Form A**

3. (1) An application for a Certificate shall be in Form A and shall, subject to subrule(2), be submitted to the Authority together with the prescribed fee.

(2) An application shall be submitted –

(a) to TCPD in respect of a designated activity constituting a development requiring express grant of permission under the Town and Country Planning Act; or

(b) subject to paragraph (a), to a person appointed as recipient of applications by the Authority by notice published in the *Gazette*.

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(3) An application submitted under subrule (2) shall be forwarded by the recipient to the Authority not later than 5 working days after its receipt.

(4)The application shall contain-

- (a) the name, and business address of the applicant;
- (b) an identification of the designated activity as set out in the Schedule to the Order; and
- (c) the location of the proposed activity.

(5)The following information shall be supplied by the applicant in support of his application:

- (a) the purpose and objectives of the activity;
- (b) a description of the site and the areas likely to be affected by the proposed activity;
- (c) the size and scale of the activity including capacity, throughput, land space and covered areas;
- (d) a description of the activity explaining –
 - (i) the types of processes and equipment or machinery to be involved;
 - (ii) the type, quantity and sources of input materials;
 - (iii) the quantity and destination of any by-products, including any waste;
 - (iv) the modes of transportation that will be used to carry out the proposed activity and the potential effects of such transportation;
- (v)the volume of intermediate and final products; and

(vi) the frequency or rate of extraction with respect to use of natural resources;

(e) the expected life of the activity;

(f) the proposed schedule of actions from preparatory work to start-up and operation;

(g) such maps, plans, diagrams, photographs, charts and other illustrative or graphic material as may facilitate understanding of the information presented and the nature of the site.

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(6) Where the applicant is a company, the applicant shall supply the Authority with a Registrar's Certificate furnished by the Registrar of companies under section 486(1)(b) of the Companies Act stating that the name of the company is on the Companies Register.

(7) The applicant may, in the application assert a claim that any of the information to be supplied under subrule (5) is a trade secret or confidential business information, and the applicant may request that such information be omitted from the Register.

(8) The Authority may reject the claim under subrule (7) for the reason -

(a) that the applicant has not disclosed the basis for the claim;

(b) that the basis disclosed is invalid; or

(c) that the public interest in disclosing the information clearly outweighs any prejudice to the applicant.

Processing of application

4. (1) The Authority shall, within 10 working days after receipt of an application under rule 3(1) or 3(3) issue to the applicant a notice acknowledging receipt of the application and it shall -

(a) notify the applicant that the application does not relate to a designated activity and accordingly,

does not require a Certificate;

- (b) request further information of the applicant as prescribed in rule 3 (5);
- (c) notify the applicant that an application requires a CEC but does not require an EIA;
- (d) notify the applicant that an EIA is required in compliance with a TOR;
- (e) notify the applicant that the claim for confidentiality of information is upheld or rejected and the reason therefor.

(2) The rejection of a claim under rule 3(8) is subject to appeal to the Environmental Commission.

Preparation of TOR

5. (1) Where the Authority determines that an EIA is required, the Authority shall within 21 working days after the date of the notification under rule 4(1)(d).

- (a) consult with the applicant on the preparation of the proposed TOR;
- (b) prepare the draft TOR; and
- (c) notify the applicant in writing that the draft TOR is ready for collection at the Authority's offices upon payment by the applicant of the prescribed charge.

(2) The applicant shall, where appropriate, conduct consultations with relevant agencies, non-governmental organisations and other members of the public on the draft TOR and may, within 28 days after notification under subrule(1)(c), submit written representations to the Authority requesting that the draft TOR be modified and setting out –

- (a) the manner in which he proposes that the TOR should be modified;
- (b) a reasoned justification for the proposed modifications; and
- (c) a report of the consultations with relevant agencies, non-governmental organisations and other members of the

public on the draft TOR.

(3) The Authority shall consider any written representations and the prescribed information submitted by the applicant pursuant to subrule (2) and shall finalise the TOR as it sees fit, and issue the final TOR to the applicant within 10 working days after the expiry of the period specified for the submission of written representations in subrule (2).

Determination of Application

6. (1) Subject to subrule (2) the Authority shall notify the applicant in writing of its determination with respect to a Certificate which-

- (a) does not require an EIA, within 30 working days after the date of acknowledgement of the receipt of the application under rule 3(1) or rule 3(3), or within 30 working days after the receipt of further information requested under rule 4; and
- (b) requires an EIA, within 80 working days after the submission of the EIA Report.

(2) Where the Authority considers that it will be unable to make a determination within a period specified in subrule (1) it shall, before the expiry thereof, notify the applicant in writing of an extended date by which the determination will be made and the reasons therefor.

Issue and refusal of Certificate

7. (1) A determination with respect to a Certificate includes –

- (a) the issue of a Certificate in accordance with the form as determined by the Authority which shall include –
 - (i) an identifying number;
 - (ii) the date from which the Certificate is effective;
 - (iii) the information in the application mentioned in rule 3(4);
 - (iv) the mitigation measures that

the applicant is required to undertake;

(v) a condition that if the activity for which the Certificate is granted has not commenced within three years after the effective date, the Certificate shall cease to have any validity, force or effect;

(vi) other terms and conditions as the Authority sees fit; and

(vii) a reminder to the applicant of his right of appeal to the Environmental Commission against a decision to grant a Certificate with conditions; or

(b) the issue of a notice of refusal to issue a Certificate which shall set out the reasons for refusal and a reminder to the applicant of his right of appeal to the Environmental Commission against a decision to refuse to issue a Certificate.

(2) The applicant shall cause the Certificate to be displayed in public view at the place from which the applicant carries on the designated activity for which the Certificate was issued.

National Register

8. (1) The Authority shall establish a National Register of Certificates of Environmental Clearance.

(2) Subject to subrule (3), the Authority shall enter in the Register the details and status of every-

(a) application, including the information supplied under rule 3(5);

(b) application for a transfer under rule 11;

(c) Certificate, including the appropriate mitigation measures, other terms and conditions subject to which it is issued and transfers approved by the Authority under rule 11;

(d) refusal to issue a Certificate and the reasons for refusal ; and

(e) refusal to grant a transfer of a

Certificate.

- (3) The Authority shall omit from the Register any information which the applicant claims under rule 3(7) should be treated as a trade secret or confidential business information where -
 - (a) the Authority does not contest the claim, or
 - (b) the Authority rejects the claim but the claim is upheld on appeal pursuant to rule 4 (2).

Public access to Certificate information

9. (1) The Register shall be open to examination by members of the public at such place or places and during such times as the Authority may notify from time to time in the *Gazette* and in one or more daily newspaper of general circulation.

(2) An extract from the Register shall be supplied at the request of any person on payment of the prescribed fee.

Standards for preparation of EIA

10. An EIA required by the Authority under section 35(4) of the Act shall be carried out by persons with expertise and experience in the specific areas for which information is required and may, where appropriate include the following information:

- (a) a non-technical summary of the findings of the assessment comprising the key issues, a brief evaluation of the potential effects and hazards of the proposed activity and the measures and recommendations proposed for addressing the findings of the evaluation;
- (b) a description of the existing ecological and other characteristics and conditions of the site and areas likely to be affected by the proposed activity, with relevant information about the land use requirements during the various phases of the activity;
- (c) illustrative materials where appropriate, including maps and photographs;
- (d) a description of the activity giving adequate and concise information on-

- (i) the characteristics of the processes and methods proposed;
 - (ii) the design, size, scale and capacity;
 - (iii) equipment and machinery to be involved;
 - (iv) source, nature and quantity of materials to be used;
 - (v) rates of extraction; and
 - (vi) the estimated type and quantities of expected emissions, residues, wastes, noise, light, vibrations, heat, and radiation to air, water and soil during the various phases of the activity;
- (e) an identification and assessment of the main effects that the activity is likely to have on the components of the environment, including:
- (i) human beings;
 - (ii) fauna;
 - (iii) flora;
 - (iv) soil;
 - (v) water - surface and ground
 - (vi) air;
 - (vii) the coast and sea;
 - (viii) weather and climate;
 - (ix) the landscape;
 - (x) the interaction between any of the foregoing;
 - (xi) material assets;
 - (xii) the cultural heritage;
- (f) an evaluation of the alternatives to the activity, giving consideration to concerns of environment, alternative sites, designs, approaches and processes;
- (g) an account of the assessment of the methods used and the level of uncertainty of any predictions;
- (h) an account of the measures proposed to avoid, reduce, mitigate or remedy any of the significant adverse effects identified;

- (i) an identification of the potential hazards and an assessment of the level of risk that may be caused by the proposed activity and an account of the measures envisaged to address any environmental emergencies that may result from the activity;
- (j) a description of the programme proposed for monitoring actual impacts and the effects of the mitigation measures at the various stages of the activity;
- (k) the data and methods used to obtain the information in paragraph (e).

Transfer of Certificate

11. (1) The Authority may, on an application by a person to whom a Certificate has been issued, transfer the Certificate.

(2) The Authority shall not approve an application under subrule (1) unless the application is in respect of the designated activity to which the Certificate applies.

(3) An application for a transfer shall be in accordance with the form as determined by the Authority and shall be submitted to the Authority together with the prescribed fee.

- (4) An application for a transfer shall contain-
- (a) the name and address of the transferee;
 - and
 - (b) the signatures of the transferee and the applicant;

(5) An application for a transfer shall be accompanied by the Certificate which is to be transferred.

(6) Where the transferee is a company, an application for a transfer shall be accompanied by a Certificate furnished by the Registrar of Companies under section 486(1) (b) of the Companies Act stating that the name of the company is on the Companies Register.

- (7) Where the Authority approves an application under subrule(1), the Authority shall-
- (a) endorse the Certificate submitted under subrule(5);
 - (b) substitute the name of the applicant on the Certificate for that of the transferee;
 - and
 - (c) date the application.

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(8) The applicant shall be deemed to be the person to whom the Certificate applies from the date specified in subrule (7) (c).