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No. 17514

TERMS OF REFERENCE

of the

President of the Republic of South Africa

to the

COMMISSION OF INQUIRY INTO THE SULPHUR FIRE AT SOMERSET WEST

The Commission's terms of reference are as follows:

- (a) To investigate the origin and establishment of the sulphur stock pile at Somerset West site of AECL Limited;
- (b) to investigate and determine the events leading up to and the cause of fire at the said site on or about 16 December 1995, the adequacy of emergency response plan and effectiveness of its execution;
- (c) to investigate and determine the impact of the fire on the surrounding communities and the environment; and
- (d) to report to me as soon as this can conveniently be done, using all diligence, the result of your inquiry.

OPDRAG*van die****President van die Republiek van Suid-Afrika****aan die***KOMMISSIE VAN ONDERSOEK NA DIE SWAELBRAND BY SOMERSET-WES**

Die Kommissie se opdrag is soos volg:

- (a) Om die oorsprong en instelling van die swaelopberging by die perseel van AECL Beperk by Somerset-Wes te ondersoek;
- (b) om die gebeure wat tot die brand op of ongeveer 16 Desember 1995 by die genoemde perseel aanleiding gegee het en die oorsaak daarvan, die toereikendheid van die noodreaksieplan en die doeltreffendheid van die uitvoering daarvan, te ondersoek en te bepaal;
- (c) om die inwerking van die brand op die omliggende gemeenskappe en die omgewing te ondersoek en te bepaal; en
- (d) om so spoedig moontlik, en met alle ywer, aan my verslag te doen oor die uitslag van u ondersoek.

PROCLAMATION*by the****President of the Republic of South Africa*****No. R. 65, 1996****COMMISSION OF INQUIRY INTO THE SULPHUR FIRE AT SOMERSET WEST**

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby declare that the provisions of that Act shall be applicable to the Commission of Inquiry into the Sulphur Fire at Somerset West and I hereby make the regulations in the Schedule with reference to the said Commission.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Eleventh day of October, One thousand Nine hundred and Ninety-six.

N. R. MANDELA**President**

By Order of the President-in-Cabinet:

Z. P. JORDAN**Minister of the Cabinet****SCHEDULE****REGULATIONS**

1. In these regulations, unless the context otherwise indicates—

“Chairman” means the Chairman of the Commission;

“Commission” means the Commission of Inquiry into the Sulphur Fire at Somerset West, referred to in this proclamation;

“document” includes any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph or picture;

“inquiry” means the inquiry conducted by the Commission;

“member” means a member of the Commission;

“officer” means a person in the full-time service of the State who has been appointed or designated to assist the Commission in the execution of its functions;

“premises” includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft;

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairman.

3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded shall at the outset take an oath or make an affirmation in the following form:

I, A.B., declare under oath/affirm and declare—

- (a) that I shall faithfully and to the best of my ability take down/record the proceedings of the Commission of Inquiry into the Sulphur Fire at Somerset West, in shorthand/by mechanical means as ordered by the Chairman of the Commission;
- (b) that I shall transcribe fully and to the best of my ability any shorthand notes/mechanical record of the proceedings of the said Commission made by me or by any other person.

(2) No shorthand notes or mechanical record of the proceedings of the Commission shall be transcribed except by order of the Chairman.

4. Every person employed in the execution of the functions of the Commission, including any person referred to in regulation 3 (1), shall aid in preserving secrecy in regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information shall be necessary for the purposes of the report of the Commission, and every such person, except the Chairman, a member or any officer, shall, before performing any duty with the Commission, take and subscribe before the Chairman an oath of fidelity or secrecy in the following form:

I, A.B., declare under oath/affirm and declare that except in so far as it shall be necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into the Sulphur Fire at Somerset West, or by order of a competent court, I shall not communicate to any person any matter or information which may come to my knowledge in connection with the inquiry of the said Commission, or suffer or permit any person to have access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer.

5. No person who is in terms of regulation 4 required to take and subscribe an oath of fidelity or secrecy shall communicate to any other person any matter or information which any have come to his or her knowledge in connection with the inquiry of the Commission or suffer or permit any other person to have access to any records of the Commission, except in so far as it shall be necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.

6. The Chairman may designate one or more knowledgeable persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member.

7. The Chairman or an officer generally or specially authorized thereto by the Chairman shall administer an oath or affirmation to any witness appearing before the Commission.

8. All the evidence and addresses heard by the Commission shall be heard in public: Provided that the Chairman may, in his discretion, exclude from the place where such evidence is to be given or such address is to be delivered any class of persons or all persons whose presence at the hearing of such evidence or address is, in his opinion not necessary or desirable.

9. Where, at the time of any person giving evidence before the Commission, members of the general public are or have been excluded in terms of regulation 8 from attendance at the proceedings of the Commission, the Chairman may, on the request of such a person, direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

10. Any witness appearing before the Commission may only be cross-examined by a person if the Chairman permits such cross-examination by such person because the Chairman deems it necessary in the interest of the functions of the Commission.

11. Any witness appearing before the Commission may, in the discretion of the Chairman and in such manner as may be determined by him, be assisted by an advocate or an attorney.

12. An officer, attorney or advocate designated thereto by the Chairman may be present at the hearing of evidence at the inquiry and adduce evidence and arguments relating to the inquiry.

13. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation shall be dealt with by the Commission in such a manner as not to affect adversely such legal proceedings or investigation.

14. (a) No person shall, without the written permission of the Chairman, disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document.

(b) No person may without the written permission of the Chairman peruse any document, including any statement, which is destined to be submitted to the Chairman or intercept it whilst it is being taken or forwarded to the Chairman.

15. No person shall, except in so far as it may be necessary in the execution of the terms of reference of the Commission, publish or furnish to any other person the report of the Commission or any copy or any part thereof or information regarding the consideration of evidence by the Commission before the expiration of a period of 14 days after the report has been submitted to the President: Provided that the President may authorize such publication or furnishing before the expiration of that period.

16. No person may disrupt or prejudice the proceedings or anticipate the findings, of the Commission.

17. Any person who—

(a) contravenes a provision of regulations 5, 9, 14 or 15; or

(b) contravenes a provision of regulation 16, shall be guilty of an offence and liable on conviction—

(i) in the case of an offence referred to in paragraph (a), to a fine, or to imprisonment for a period not exceeding six months; and

(ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding 12 months.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 65, 1996

KOMMISSIE VAN ONDERSOEK NA DIE SWAELBRAND BY SOMERWET-WES

Kragtens die bevoegdheid my verleen by artikel 1 van die Kommissiewet, 1947 (Wet No. 8 van 1947), verklaar ek hierby dat die bepalings van daardie Wet van toepassing is op die Kommissie van Ondersoek na die Swaelbrand by Somerset-Wes, en vaardig ek hierby die regulasies in die Bylae vervat met betrekking tot genoemde Kommissie uit.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad, op hede die Elfde dag van Oktober Eenduisend Negehonderd Ses-en-negentig.

N. R. MANDELA

President

Op las van die President-in-Kabinet:

Z. P. JORDAN

Minister van die Kabinet

BYLAE

REGULASIES

1. In hierdie regulasies, tensy uit die samehang anders blyk, beteken—

"beampte" iemand wat in die volydse diens van die Staat is en wat aangestel of aangewys is om die Kommissie by die verrigting van sy werkzaamhede behulpsaam te wees;

"dokument" ook 'n boek, pamphlet, aantekening, lys, omsendbrief, plan, plakkaat, aanplakbiljet, publikasie, tekening, foto of prent;

"Kommissie" die in hierdie proklamasie bedoelde Kommissie van Ondersoek na die Swaelbrand by Somerset-Wes;

"lid" 'n lid van die Kommissie;

"ondersoek" die ondersoek wat deur die Kommissie ingestel word;

"perseel" ook grond of 'n gebou, bouwerk, gedeelte van 'n gebou of bouwerk, voertuig, vervoermiddel, vaartuig of lugvaartuig;

"Voorsitter" die Voorsitter van die Kommissie.

2. Die verrigtinge van die Kommissie word genotuleer op die wyse deur die Voorsitter bepaal.

3. (1) Iemand wat aangestel of aangewys is om die verrigtinge van die Kommissie in snelskrif aan te teken of op meganiese wyse op te neem of om sodanige verrigtinge wat aldus aangeteken of opgeneem is, te transkribeer, moet vooraf 'n eed of bevestiging in die volgende vorm aflê:

Ek, A.B., verklaar onder eed/bevestig en verklaar—

- (a) dat ek getrou en na my beste vermoë die verrigtinge van die Kommissie van Ondersoek na die Swaelbrand by Somerset-Wes, in snelskrif sal aanteken/op meganiese wyse sal opneem soos deur die Voorsitter gelas;
- (b) dat ek enige snelskrifaantekeninge/meganiese opname van die verrigtinge van genoemde Kommissie deur my of iemand anders gemaak, volledig en na my beste vermoë sal transkribeer.

(2) Geen snelskrifaantekeninge of meganiese opname van die verrigtinge van die Kommissie word getranskribeer nie behalwe op las van die Voorsitter.

4. Elke persoon wat diens doen by die verrigting van die Kommissie se werksaamhede, met inbegrip van iemand in regulasie 3 (1) bedoel, moet ten aansien van enige aangeleentheid of inligting wat by die vervulling van sy of haar pligte in verband met bedoelde werksaamhede tot sy of haar kennis kom, geheimhouding help bewaar, behalwe vir sover bekendmaking van sodanige aangeleentheid of inligting vir die doeleindes van die Kommissie se verslag nodig is, en elke sodanige persoon, behalwe die Voorsitter, 'n lid of 'n beampete, moet, voordat hy of sy enige diens by die Kommissie verrig, 'n eed van getrouwheid of geheimhouding voor die Voorsitter in die volgende vorm aflê en onderteken:

Ek, A.B., verklaar onder eed/bevestig en verklaar dat, behalwe vir sover dit by die uitvoering van my pligte in verband met die sake van die Kommissie van Ondersoek na die Swaelbrand by Somerset-Wes, of ingevolge 'n bevel van 'n bevoegde hof nodig is, ek geen aangeleentheid of inligting wat in verband met genoemde Kommissie se ondersoek tot my kennis kom, aan enigiemand sal medeeel nie en niemand sal toelaat of veroorloof om toegang tot stukke van die Kommissie te verkry nie, met inbegrip van enige aantekening, opname of transkripsie van die verrigtinge van genoemde Kommissie in my besit of bewaring of in die besit of bewaring van genoemde Kommissie of 'n beampete.

5. Niemand wat ingevolge regulasie 4 'n eed van getrouwheid of geheimhouding moet aflê en onderteken, mag enige aangeleentheid of inligting wat in verband met die Kommissie se ondersoek tot sy of haar kennis gekom het, aan iemand anders medeeel of iemand anders toelaat of veroorloof om toegang te verkry tot stukke van die Kommissie nie, behalwe vir sover dit by die uitvoering van sy of haar pligte in verband met die werksaamhede van die Kommissie of ingevolge 'n bevel van 'n bevoegde hof nodig is.

6. Die Voorsitter kan een of meer kundige persone aanwys om die Kommissie in 'n ander hoedanigheid as 'n lid behulpzaam te wees by die verrigting van sekere van sy werksaamhede.

7. Die Voorsitter of 'n beampete deur die Voorsitter in die algemeen of spesiaal daartoe gemagtg, moet 'n getuie wat voor die Kommissie verskyn 'n eed ople of van hom of haar 'n bevestiging afneem.

8. Al die getuienis en betoë deur die Kommissie angehoor, word in die openbaar angehoor: Met dien verstande dat die Voorsitter, in sy diskresie, enige persoon of klas persone of alle persone wie se teenwoordigheid by die aanhoor van sodanige getuienis of betoog na sy mening onnodig of onwenslik is, van die plek waar sodanige getuienis afgelê staan te word of waar sodanige betoog gelewer staan te word, insluit.

9. Waar lede van die algemene publiek kragtens regulasie 8 uitgesluit is van bywoning van die verrigtinge van die Kommissie terwyl 'n persoon voor die Kommissie getuienis aflê, kan die Voorsitter, op die versoek van so 'n persoon, gelas dat niemand die naam en adres van so 'n persoon of enige inligting wat waarskynlik sy of haar identiteit sal openbaar, op enige wyse hoegenaamd bekend mag maak nie.

10. 'n Getuie wat voor die Kommissie verskyn, kan slegs deur 'n persoon in kruisverhoor geneem word indien die Voorsitter sodanige kruisverhoor deur daardie persoon toelaat omdat die Voorsitter dit in die belang van die werksaamhede van die Kommissie nodig ag.

11. 'n Getuie wat voor die Kommissie verskyn, kan na goeddunke van die Voorsitter en op die wyse wat hy bepaal, deur 'n advokaat of prokureur bygestaan word.

12. 'n Beampie, prokureur of advokaat deur die Voorsitter daartoe aangewys, kan by die aanhoor van getuienis by die ondersoek aanwesig wees en getuienis en argumente wat op die ondersoek betrekking het, aanvoer.

13. Wanneer die Kommissie op getuienis of inligting aan hom voorgelê, oortuig is dat die Kommissie se ondersoek enige bestaande, ingestelde of hangende regssproses of enige ondersoek wat ingevalle die bepalings van enige wet ingestel is, nadelig kan raak, word getuienis wat relevant is tot sodanige regssproses of ondersoek op so 'n wyse deur die Kommissie hanteer dat daardie regssproses of ondersoek nie daardeur nadelig geraak word nie.

14. (a) Niemand mag, sonder die skriftelike toestemming van die Voorsitter, 'n dokument wat in verband met die ondersoek deur enige persoon aan die Kommissie voorgelê is, versprei of die inhoud of 'n gedeelte van die inhoud van so 'n dokument publiseer nie.

(b) Niemand mag sonder die skriftelike toestemming van die Voorsitter enige dokumente, met inbegrip van enige verklaring, wat bestem is om aan die Voorsitter voorgelê te word, insien of onderwyl dit na die Voorsitter geneem of aan hom versend word, onderskep nie.

15. Niemand mag, behalwe vir sover dit by die uitvoering van die Kommissie se opdrag nodig mag wees, die verslag van die Kommissie of 'n afskrif of 'n gedeelte daarvan of inligting met betrekking tot die oorweging van getuienis deur die Kommissie publiseer of aan iemand anders verstrek nie voor die verstryking van 'n tydperk van 14 dae nadat die verslag aan die President voorgelê is: Met dien verstande dat die President sodanige publikasie of verstrekking voor die verstryking van daardie tydperk kan magtig.

16. Niemand mag die verrigtinge van die Kommissie ontwig of benadeel of die bevindings van die Kommissie vooruitloop nie.

17. Iemand wat—

- (a) 'n bepaling van regulasies 5, 9, 14 of 15 oortree; of
 - (b) 'n bepaling van regulasie 16 oortree, is aan 'n misdryf skuldig en is by skuldigbevinding strafbaar—
 - (i) in die geval van 'n misdryf in paragraaf (a) bedoel, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens ses maande; en
 - (ii) in die geval van 'n misdryf in paragraaf (b) bedoel, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.
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GOVERNMENT NOTICE GOEWERMANTSKENNISGEWING

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

No. R. 1709

21 October 1996

APPOINTMENT OF A COMMISSION OF INQUIRY INTO THE SULPHUR FIRE AT SOMERSET WEST

It is hereby notified for general information that the President has been pleased to appoint Mr Justice Sirajudien Desai as member and Chairman and Professor Colin Thomas Johnson, Ms Farieda Kahn and Dr Barney de Villiers as members of the Commission of Inquiry into the Sulphur Fire at Somerset West.

The Commission's terms of reference are—

- (a) to investigate the origin and establishment of the sulphur stock pile at Somerset West site of AECL Limited;
- (b) to investigate and determine the events leading up to and the cause of fire at the said site on or about 16 December 1995, the adequacy of the emergency response plan and the effectiveness of its execution; and
- (c) to investigate and determine the impact of the fire on the surrounding communities and the environment.

Representations to the Commission should be in writing and addressed to The Secretary, Commission of Inquiry into the Sulphur Fire at Somerset West, Private Bag X447, Pretoria, 0001, within two weeks from the date of publication of this notice.

No. R. 1709**21 Oktober 1996****AANSTELLING VAN 'N KOMMISSIE VAN ONDERSOEK NA DIE SWAELBRAND BY SOMERSET-WES**

Hierby word vir algemene inligting bekendgemaak dat dit die President behaag het om Sy Edele Regter Sirajudien Desai as lid en Voorsitter en professor Colin Thomas Johnson, me Farieda Kahn en dr Barney de Villiers as lede van 'n Kommissie van Ondersoek na die Swaelbrand by Somerset-Wes aan te stel.

Die Kommissie se opdrag is om—

- (a) die oorsprong en instelling van die swaelopberging by die perseel van AECI Beperk by Somerset-Wes te ondersoek;
- (b) om die gebeure wat tot die brand op of ongeveer 16 Desember 1995 by die genoemde perseel aanleiding gegee het en die oorsaak daarvan, die toereikendheid van die noodreaksieplan en die doeltreffendheid van die uitvoering daarvan, te ondersoek en te bepaal; en
- (c) om die inwerking van die brand op die omliggende gemeenskappe en die omgewing te ondersoek en te bepaal.

Vertoë tot die Kommissie moet skriftelik wees en binne twee weke vanaf die datum van publikasie van hierdie kennisgewing gerig word aan Die Sekretaris, Kommissie van Ondersoek na die Swaelbrand by Somerset-Wes, Privaatsak X447, Pretoria, 0001.

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