Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette **No. 8859** *Regulasiekoerant*

Vol. 514 **Pretoria, 4 April 2008** **No. 30905**

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GOVERNMENT NOTICE

DEPARTMENT OF MINERALS AND ENERGY

No. R. 342 **4 April 2008**

REGULATIONS IN TERMS OF THE PETROLEUM PIPELINES ACT, 2003 (Act No. 60 of 2003)

The Minister of Minerals and Energy, Buyelwa Patience Sonjica, has, in terms of section 33(1) of the Petroleum Pipelines Act, 2003 (Act No.60 of 2003) made the regulations in the Schedule.

SCHEDULE

ARRANGEMENT OF REGULATIONS

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context indicates otherwise-

"**administrative action**" means an "administrative action" as defined in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), as amended;

"**environment**" means "environment" as defined in section 1(1) of the National Environmental Management Act, 1998 (Act No.107 of 1998), as amended;

"**the Act**" means the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003);

Conditions of a licence

2. (1) Any person aggrieved by one or more conditions imposed by the Authority in terms of section 20(1) of the Act, may apply to the Authority in writing to have such condition or conditions amended.

(2) An application contemplated in sub-regulation (1) must contain the following information:

(a) the name of the licensee to which the objection is applicable;

(b) the licence number;

(c) the name, surname and contact details of the person, company or organisation that is objecting to the licence condition or conditions;

(d) the licence condition or conditions to which the objection is being made;

(e) the details of the objection;

(f) the reason for the objection together with the necessary supporting documentation; and

(g) an indication of whether or not the aggrieved person or party requests an opportunity to orally present the objection to the Authority.

Third party access to storage facilities

3. (1) A storage facility licensee must submit such information to the Authority as may be required by the Authority to determine uncommitted capacity and allow access to the applicable records and facilities by the Authority or its duly authorised representative, including consultants.

(2) The information referred to in sub-regulation (1) must-

(a) be submitted via electronic mail, telefax, post and by hand in a format determined by the Authority;

(b) be submitted on the last Thursday of every month or if the last Thursday falls on a public holiday, then on the preceding business day and must pertain to the requested capacity for the following 90 calendar days; and

(c) be published in a manner determined by the Authority within a reasonable time of receipt thereof.

(3) A storage facility licensee must, on the last Thursday of the month or if the last Thursday falls on a public holiday, then on the preceding business day, forward, electronically to the Authority the average actual utilisation for the preceding month for each storage facility.

(4) A storage facility licensee must keep records of the information contemplated in sub-regulations (1) and (3) for a period of two years.

(5) A storage facility licensee must, if so required by a third party, allow access to uncommitted capacity in a storage facility on commercially reasonable terms.

(6) Storage facility licensees must lodge with the Authority their allocation mechanism for uncommitted capacity within six months of receipt of a licence or, in the case of storage licences granted prior to the

commencement of these regulations, within three months of these regulations coming into effect

(7) An allocation mechanism contemplated in sub-regulation (6) must be published on the storage licensee's website and a written copy must be kept at the facility to enable potential customers to understand the procedure for obtaining access.

(8) An allocation mechanism contemplated in sub-regulation (6) must include-

(a) a tariff schedule;

(b) contractual terms and conditions regarding use and payment;

(c) technical requirements for access to the storage facility; and

(d) the process to be followed by a third party when requesting access.

(9) An allocation mechanism contemplated in sub-regulation (6) must—

(a) be commercially reasonable;

(b) be operationally reasonable;

(c) apply a first come, first serve principle;

(d) apply a use-it-or-lose-it principle;

(e) not discriminate on any grounds as contemplated in section 21 of the Act; and

(f) be technically feasible.

(10) The Authority must, in determining uncommitted capacity, consider the information contemplated in sub-regulation (9) and in addition consider—

(a) contractual obligations; and

(b) whether or not capacity allocations are being used to unreasonably limit access to storage facilities.

Setting of tariffs for petroleum pipelines

4. (1) The Authority may, when setting tariffs for petroleum pipelines—

(a) require tariffs to follow the general principle of increasing with increasing distance over which petroleum products are or will be transported;

(b) consider batch size;

(c) consider funding requirements and debt service requirements of the licensee by adjusting the licensee's allowed revenue to enable the licensee's debt service cover ratio to be maintained at a reasonable level; and

(d) consider any other relevant matter.

(2) The tariffs set by the Authority must enable an efficient licensee to—

(a) recover the reasonable operational and maintenance expenses of the pipeline in the year in which they are incurred;

(b) recover capital investment and make profit thereon commensurate with the risk; and

(c) rehabilitate land used in connection with a licensed activity .

(3) If the recovery of expenses contemplated in sub-regulation (2) (a) results in an increase of real tariffs by more than 10%, the Authority may direct that the recovery of such expenses be effected over a period of more than a year.

(4) The tariffs set by the Authority must relate to investment in, operation and maintenance of and profits arising only from those parts of a licensed activity for which tariffs are being set.

(5) The allowable rate of return for licensees must be determined by using the expected efficient weighted average cost of capital (WACC). WACC must be calculated using the weighted average of the licensee's-

(a) average cost of debt that can realistically be attained during the period under review; and

(b) cost of equity capital calculated by means of the capital asset pricing model or any other appropriate model.

(6) The allowed revenue to be derived from tariffs contemplated in sub-regulation (2) must include—

(a) reasonable operating expenses;

(b) reasonable maintenance expenses;

(c) depreciation expenses;

(d) reasonable working capital;

(e) reasonable real return on the regulatory asset base which should be determined based on the assets' inflation-adjusted historical cost less accumulated depreciation; and

(f) other applicable obligations.

(7) The regulatory asset base contemplated in Regulation 4 (6) (e) must-

(a) be calculated as the total investment in the regulatory asset base;

(b) for assets in operation at the time of promulgation of these Regulations and for which historical cost records do not exist, an estimated value that the Authority accepts as most closely approximating their historical cost; and

(c) include only those assets that are prudently acquired.

(8) In determining depreciation expenses, the Authority must, except in cases where deemed inappropriate—

(a) use a straight line methodology; and

(b) depreciate all assets over their useful life.

(9) The Authority must as appropriate-

(a) for a period between 3 and 5 years, adjust pipeline tariffs in a manner that seeks to-

i. take into account rising operating and maintenance costs; and

ii. increase efficiency of the operation of the pipeline; and

(b) at the end of period contemplated in sub-regulation (a), or any other time if the need arises, conduct a comprehensive tariff setting exercise in the manner contemplated in sub-regulation (2).

Approval of tariffs for loading and storage facilities

5. (1) The Authority must, when approving tariffs for storage facilities and loading facilities, consider—

(a) batch size;

(b) the capacity to take petroleum into a storage facility and the capacity to discharge petroleum from that facility;

(c) the throughput capacity of loading facilities; and

(d) any other relevant matter.

(2) The provisions of regulations 4(2), 4(3), 4(4), 4(5), 4(6), 4(7) and 4(9) apply, subject to the changes required by the context, to the approval of tariffs for loading and storage facilities.

(3) The Authority may require licensees to provide copies of contracts signed with customers.

Rendering of information to Authority

6. (1) Licensees must submit to the Authority, in addition to any other information that may be required by the Authority, the following-

(a) in the case of pipelines, the monthly volumes shipped by each customer;

(b) in the case of storage facilities, average monthly volumes of petroleum stored belonging to the licensee and to third party customers, based on measurements taken at the same time each day in that month as may be required by the Authority; and

(c) in the case of loading facilities, the average monthly volumes of petroleum loaded and discharged.

(2) A licensee must submit electronically to the Authority on or before the end of May each year, the information contemplated in sub-regulation (1) for the preceding year ending on 31 March, together with—

(a) a copy of any report made to an inspector in compliance with section 24 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

(b) the number of incidents of damage to licensed facilities caused by third parties and the resulting assessed damage costs; and

(c) the encroachment on servitudes measured in square meters of a servitude.

(3) Licensees must report annually to the Authority on their liaison with local authorities regarding excavations by third parties that could damage licensees' pipelines.

Expropriation procedures and timelines

7. (1) A licensee referred to in section 32(1) of the Act may request the Authority, in writing, to expropriate land, or any right in, over or in respect of land on his or her behalf.

(2) A request referred to sub-regulation (1) must contain the following information:

(a) the reason for the request;

(b) evidence of attempts to acquire the land or right in, over or in respect of such land, by agreement with the owner;

(c) reasons for failures to reach agreement with the owner of the land or a holder of any right in, over or in respect of such land;

(d) reasons why the land, or any right in, over or in respect of such land is required by the licensee;

(e) reasons why the acquisition of the land or any right in, over or in respect of such land is in the public interest and will enhance the Republic's petroleum pipeline infrastructure;

(f) a plan of the project contemplated; and

(g) specifications of the proposed land required.

(3) The Authority must, in the absence of a voluntary agreement—

(a) hold a public hearing to which the following persons must be invited in writing:

(i) the applicant;

(ii) the land owner or the holder of any right in, over or in respect of such land and if the land or any right in, over or in respect of such land is leased, the lessee of the land or any right in, over or in respect of such land; and

(iii) other affected persons who must be invited by means of a notice contemplated in paragraph *(b)*; and

(b) publish a notice setting out the date, time and venue of the hearing at least two weeks in advance in a newspaper circulating in the area in which land, or any right in, over or in respect of land is situated.

(4) The Authority must make a decision on an expropriation application within 60 days after the completion of the public hearing contemplated in sub-regulation (3).

(5) The acquisition, amendment, or cancellation of an expropriation of any land or any right in, over or in respect of such land servitude by virtue of a decision of the Authority takes effect when the decision is noted in terms of the legislation applicable to the registration of title deeds.

(9) The owner of any land or any right in, over or in respect of such land subject to an expropriation award made by the Authority, or the licensee concerned may apply to the Authority for the cancellation thereof—

(a) if the relevant licence associated with the expropriation award is terminated;

(b) if the rights and obligations in respect of the expropriation award have not been exercised for a continuous period of three years; or

(c) for any other lawful reason.

Mechanisms to promote historically disadvantaged South Africans

8. (1) Applicants for licences or existing licensees must, on an annual basis at the time of the anniversary of the licence, provide information to the Authority regarding the commercial arrangements made for the participation of historically disadvantaged South Africans in the licensees' activities.

(2) The information contemplated in sub-regulation (1) must include—

(a) the number of shareholders from historically disadvantaged background and their respective shareholding in the company that holds or will hold the licence;

(b) the numbers and positions of historically disadvantaged South Africans who are members of the Board of Directors of the company that holds or will hold the license;

(c) the numbers and positions of historically disadvantaged South Africans who hold senior management positions in the company that holds or will hold the licence;

(d) the value and percentage of subcontracted work to companies with more than 50% ownership by historically disadvantaged South Africans;

(e) proof of compliance with the Employment Equity Act, 1998 (Act No. 55 of 1998); and

(f) the plans for and actions taken to develop historically disadvantaged South Africans in the petroleum sector through training, procurement and enterprise development.

(3) The Authority must utilize the information provided in terms of sub-regulation (1) in such a manner so as to facilitate ownership, control or management of operations of petroleum pipelines, storage facilities and loading facilities by historically disadvantaged South Africans.

Rehabilitation of land

9. (1) Licensees must, not less than six months prior to termination, relinquishment or abandonment of licensed activities, submit to the Authority a plan for approval for the closure, removal and disposal, as the case may be, of all installations relating to such licensed activities.

(2) The plan contemplated in sub-regulation (1) must include information regarding—

(a) alternatives investigated for further use and alternative disposal of the installations;

(b) decommissioning activities;

(c) site clean up, removal and disposal of dangerous material and chemicals; and

(d) an environmental impact assessment of the termination and abandonment of the licensed activity concerned.

(3) The Authority may approve the plan contemplated in sub-regulation (1)

subject to any condition or amendment that the Authority may determine.

(4) The Authority must require the licensee to provide financial security for purposes of rehabilitating land used in connection with a licensed activity and the composition and amount of such security.

(5) Financial security contemplated in sub-regulation (4) may be in any form acceptable to the Authority and may only be used with the approval of the Authority.

(6) The Authority may, in writing, at any time, require written confirmation from a licensee that it is in compliance with the requirements of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

(7) The Authority may require written proof from the licensee that the authority responsible for administering the Act referred to in sub-regulation (6) has approved the environmental impact assessment required by the Act in question.

(8) The Authority may not, before it is in receipt of a certificate from an independent consultant competent to conduct environmental impact assessments in accordance with the provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998), stating that the site has been rehabilitated, give consent to the termination of a financial security arrangement contemplated in sub-regulations (4) and (5).

Liaison between licensees and local authorities

10. (1) Local authorities and licensees concerned must meet at least once a year but as frequently as may be necessary to—

(a) review an emergency plan;

(b) review the number and causes of damage to petroleum pipelines in the preceding year;

(c) review the time lines contemplated in sub-regulation (1) including the contact details of their respective responsible persons;

(d) review the extent of encroachment on petroleum pipelines servitudes and the measures taken to prevent such encroachment;

(e) review the steps taken by the local authority to convey knowledge of the existence of petroleum pipelines servitudes to all relevant divisions of the local authority; and

(f) review the local authorities future development plans in so far as they may impact on petroleum pipeline servitudes.

(2) The minutes of the meetings contemplated in sub-regulation (1) must be sent to the municipal manager concerned and the manager in charge of the licensed entity for their attention and action where necessary.

Fair administrative action

11. Any administrative action conducted or decision taken by the Authority must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness subject to the Promotion of the Administrative Justice Act, 2000 (Act No.3 of 2000) and the National Energy Regulator Act, 2004 (Act No. 40 of 2004).

Mediation

12. (1) A request for the Authority to act as a mediator must be made in writing and must set out the nature of the dispute between the parties.

(2) A suitable person recommended for appointment as a mediator in terms of section 30(2) *(a)* of the Act must be so appointed within 10 working days of receipt of the request by the Authority.

(3) At the commencement of mediation, the appointed mediator must-

(a) inform the parties that he or she does not have any conflict of interest;

(b) inform the parties about the procedure and manner in which the mediation will be conducted;

(c) inform the parties how the fees, if any, to be paid by the parties for the mediation service will be determined and to whom payments should be made; and

(d) secure agreement from the parties to the dispute with regard to paragraphs *(a)*, *(b)* and *(c)*, before proceeding with the mediation.

Arbitration

13 (1) A request for the Authority to act as an arbitrator must be made in writing and must set out the nature of the dispute between the parties.

(2) A suitable person recommended for appointment as an arbitrator in terms of section 30(2) *(a)* of the Act must be so appointed within 10 working days of receipt of the request by the Authority.

(3) At the commencement of arbitration, the appointed arbitrator must—

(a) inform the parties that he or she does not have any conflict of interest;

(b) inform the parties about the procedure and manner in which the arbitration will be conducted;

(c) inform the parties how the fees, if any, to be paid by one or more of the parties for the arbitration will be determined and to whom payments should be made;

(d) inform the parties that any award made will be final and binding; and

(e) secure agreement from the parties to the dispute with regard to paragraphs *(a)* to *(d)*, before proceeding with the arbitration.

(4) The party initiating a dispute, the applicant, shall submit to the arbitrator and to the other party involved in the dispute, the respondent, a written statement including the following information:

(a) the name and address of the person who will represent the claimant at the proceedings;

(b) a detailed description of the dispute; and

(c) the relief or remedy sought and the amount claimed, if applicable.

(5) The respondent must, after receipt of the statement referred to in sub-regulation (4), submit a written statement of defence to the arbitrator and the applicant by a date determined by the arbitrator.

(6) During arbitration proceedings, any party may amend or supplement its claim, counterclaim or defence, unless the arbitrator considers it inappropriate to allow such amendment or supplement, because of the party's delay in making it, if it would be prejudicial to the other parties or because of any other circumstances.

(7) A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate.

(8) Any party to arbitration may be allowed representation.

(9) The names, addresses and telephone numbers of representatives must be communicated in writing to the other parties and to the arbitrator.

(10) The parties or their representatives may communicate in writing directly with the arbitrator, provided that copies of such documents are provided to all the other parties to the dispute.

(11) The arbitrator must conduct the arbitration in a manner ensuring that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(12) Documents or information supplied to the arbitrator by one party must, at the same time, be supplied by that party to the other party or parties.

(13) Each party shall have the burden of proving the facts relied on to support its claim or defence.

(14) At any time during the proceedings, the arbitrator may order parties to produce other documents, exhibits or other evidence that he or she deems necessary or appropriate.

(15) The arbitrator may appoint one or more independent experts to report to him or her, in writing, on specific issues designated by the arbitrator and communicated to the parties.

(16) The parties must provide an expert contemplated in sub-regulation (15) with any relevant information or produce for inspection any relevant documents or goods that such expert may require.

(17) Any dispute between a party and an expert as to the relevance of the requested information or goods must be referred to the arbitrator for decision.

(18) Upon receipt of an expert's report, the arbitrator must send a copy of the report to all parties to the dispute and must give the parties to the dispute an opportunity to express, in writing, their opinion on the report.

(19) A party may examine any document upon which an expert had relied in a report contemplated in sub-regulation (18).

(20) At the request of either party, the arbitrator must give the parties an opportunity to question an expert at a hearing.

(21) Parties may present expert witnesses to testify on the points at issue during arbitration proceedings.

(22) Awards by an arbitrator must be made in writing and shall be binding on the parties and the parties must carry out any such award immediately.

(23) The arbitrator must state the reasons for the award.

(24) An award may be made public only with the consent of the parties to the dispute, or as required by law.

(25) In addition to making a final award, the arbitrator may make interim, interlocutory or partial orders and awards.

(26) The arbitrator must, upon request of the parties, terminate the arbitration if the parties settle the dispute before an award is made.

(27) If, in the opinion of the arbitrator, the continuation of the proceedings becomes unnecessary or impossible for any other reason, the arbitrator must inform the parties of his or her intention to terminate the proceedings and must thereafter issue an order terminating the arbitration.

(28) Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator.

(29) The arbitrator must keep confidential all matters relating to the arbitration or the award, unless otherwise agreed upon by the parties, or required by applicable law.

(30) An arbitrator shall not be liable for any act or omission in connection with

any arbitration conducted under these regulations, except for the consequences of gross negligence and conscious and deliberate wrongdoing.

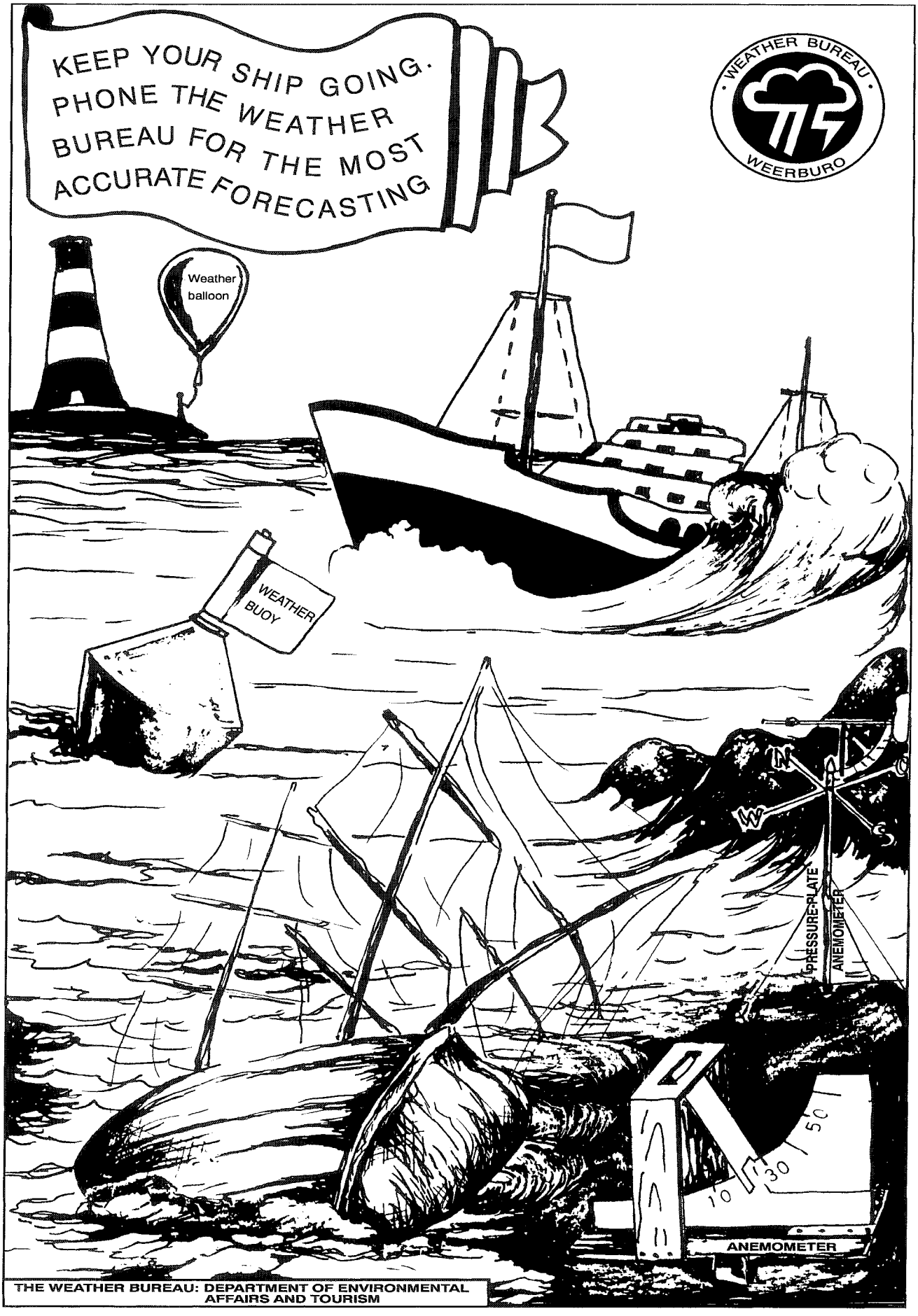
Mediation and arbitration fees

14. (1) Fees determined by the Authority for mediation and arbitration must be-

(a) sufficient to recover all or part of the costs incurred by the Authority including, if applicable, the costs of a person contemplated in section 30(2)*(a)* of the Act; and

(b) paid by one or more of the parties to the dispute as is determined by the mediator or arbitrator concerned, taking into account the circumstances of the dispute.

(2) The fees contemplated in this regulation must be paid within 30 calendar days of receipt of an invoice unless the Authority determines a longer period.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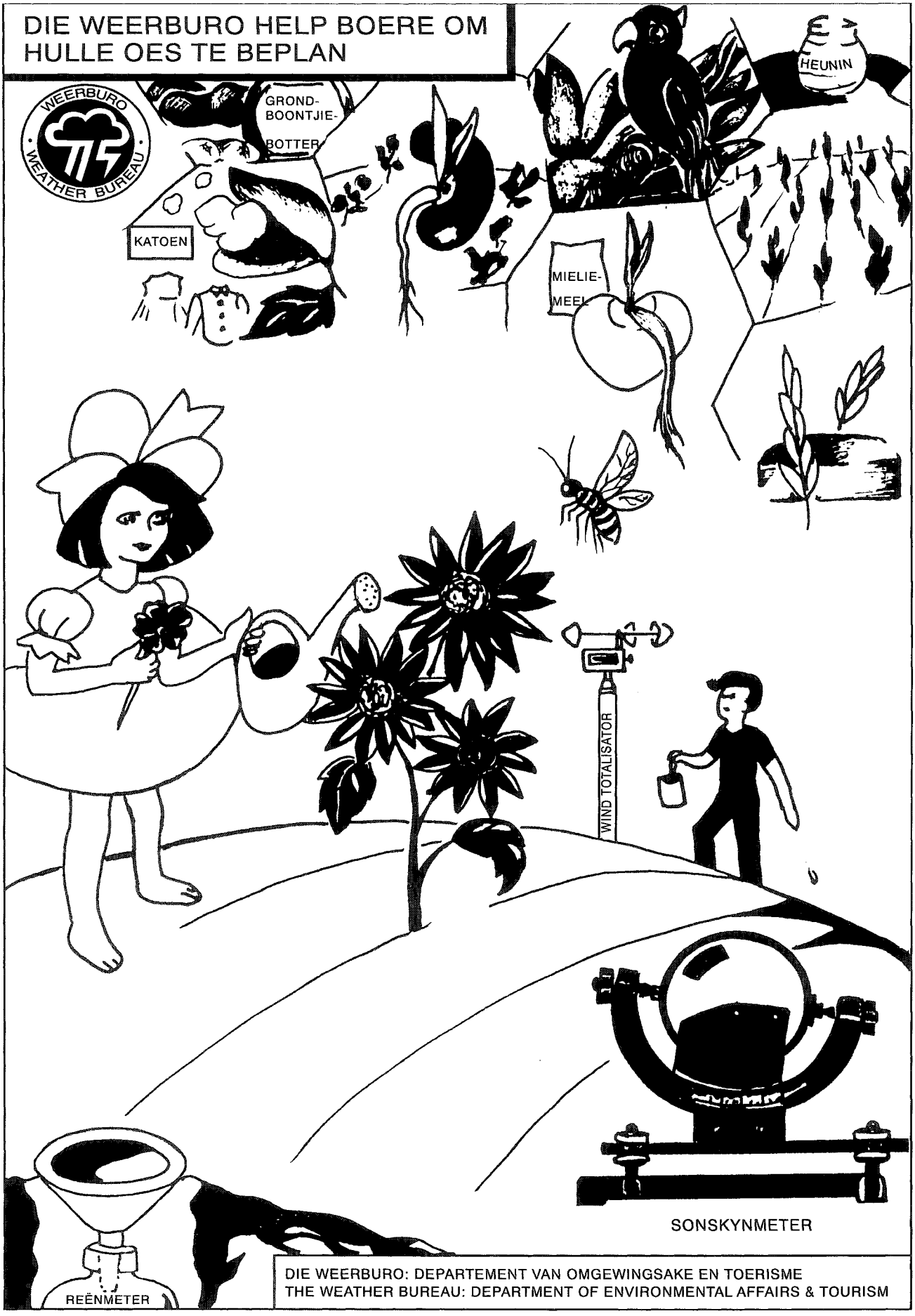
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Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

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