

23rd April 2010

Chairman and Members of the CDM Executive Board
Mr. Clifford Mahlung
Chairman
UNFCCC Secretariat
Martin-Luther-King-Strasse 8
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Germany

Response to the call for public inputs on procedures for appeals in accordance with the CMP requests in paragraphs 42-43 of Decision 2/CMP.5

All DOEs and AIEs were invited to contribute to this submission. Some entities have made their own submissions to the call for public inputs. The following DOEs contributed to the text presented in this document: ERM Certification and Verification Services Ltd, TÜV SÜD Industrie Service GmbH, and Det Norske Veritas Certification AS.

Dear Chairman and Honorable Members of the Executive Board,

We welcome the opportunity to provide inputs on the process for appeals against EB and DOE decisions. We support the need to have appeals processes in place for both DOE decisions and decisions taken by the Executive Board. Any appeals process established by the Board should also consider appeals against the decisions on project specific registration and issuance cases. Increasing the interaction between the DOE, PPs and the secretariat during the request for review and review process, and further improving the explanation of the rationale behind review and rejection decisions may also lessen the need for appeals in the longer term. However we would like to emphasise that DOEs already have processes in place to hear appeals against their decisions, and would urge the Board to consider these existing DOE appeals processes and only add new layers where this is strictly needed.

DOEs have existing appeals processes in place

We would like to emphasise that all DOEs already have in place systems for handling complaints, appeals and disputes in a professional, impartial and timely manner. These procedures are evaluated by the Accreditation Panel at the time of accreditation and re-accreditation. Under these procedures, all complaints and appeals must be satisfactorily investigated and addressed if a resolution has not been identified between parties. Therefore it is important that any procedure established by the Board recognises the appeals processes already in place by the DOEs, and adds additional layers only where these are necessary to fill in

gaps in existing processes. An appeal should not be considered if the entity appealing the DOE decision has not raised the appeal within a reasonable timeframe (e.g. 60 days) and followed the existing DOE process for appeals.

Appeals against DOE decisions should only be heard once the validation or verification process has been completed

Maintaining environmental integrity should be at the heart of the appeals process. DOEs must be allowed to err on the side of conservativeness if there is any room for interpretation in the methodology or the evidence presented. Appeals against DOE decisions should be based on the outcome of validations or verifications once the process of validation/verification has been allowed to run its course, the DOE has considered all the evidence, gone through its internal process of technical review and approval, and issued a final validation or verification opinion. Then the DOEs own appeals process should be followed before appealing to any external body. It is very important that appeals, or the threat of an appeal, is not used as a means to put pressure on a DOE to change a validation/verification opinion or relax its stance on conservativeness, otherwise the appeals process could harm environmental integrity.

Appeals against DOE decisions should be based on the evidence that was presented to the DOE at the time of validation or verification

Appeals against technical decisions by DOEs should not be a means for project participants to present new evidence that was not previously made available to the DOE in order to try and re-validate or re-verify certain aspects. It is not fair to overturn the decision of the DOE if the evidence presented at appeal was not presented to the DOE before it made its original decision. The appeals body should make its decision based on the same evidence that was presented to the DOE during the course of validation/verification. If new evidence has arisen, the correct procedure would be for the project participant to contract with a DOE for the re-validation or re-verification of the project in question.

The appeals body should be independent

The body hearing the appeals should be independent from the decisions that are being appealed against – i.e. it should be independent from the Executive Board (or Project assessment Committee if such is established) and the DOEs.

The appeals process should not cover commercial or contractual disputes

We would like to stress that any appeals process against DOE decisions should

cover technical decisions by the DOE on validations and verifications only, and not contractual or commercial issues between the DOE and its clients. Such issues are already regulated under the contractual terms and conditions and the national laws of the jurisdiction governing the contracts, and mechanisms for appeal are already in place under the relevant systems of national law.

Outcome of appeals

The outcome of appeals should be to uphold or overturn the original decision being appealed, and the appeals body should not have the right to award damages or compensation. A swift appeals process would also make such compensation unnecessary since the decision would be quickly addressed.

The DOE should not bear the costs of an appeal unless it is found to be incompetent

The costs of the appeal should be capped at a reasonable rate and should not be passed on to the DOE unless its own process for appeal have been fully exhausted, and the outcome of the appeal finds that the DOE is guilty of incompetence. Technical decisions by any DOE are subject to different interpretations as the CDM methodologies are very complex and multifaceted, and applying a conservative principle of estimating emission reductions often necessitates that the option generating fewer emission reductions should be chosen, to ensure emission reductions are not overstated and that environmental integrity is upheld. A DOE should not be held responsible for the costs of an appeal simply because the appeals panel takes a different technical interpretation of the rules, methodologies or evidence presented, and should only pass on additional costs to the DOE in the event of incompetence on the part of the DOE, for example not following the proper procedures or using competent staff.

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We would like to thank the Board for the invitation to provide these inputs, and we are happy to provide further information or clarifications as required.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jonathan Avis', with a long horizontal flourish extending to the right.

Jonathan Avis

Chair, DOE/AIE Forum (CDM) 2010

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