



REFERENCE: 14/1/1/E1/1/2/3/0627/19

ENQUIRIES: Grant Dyers

BY EMAIL

Municipal Manager
City of Cape Town
P O Box 298
Cape Town
8000

Email: Lungelo.Mbandazayo@capetown.gov.za ;
Michael.Webster@capetown.gov.za

Attention: Mr Michael Webster (Executive Director: Water and Waste)

DIRECTIVE

Dear Sir

DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (NEMA)

1. Introduction

1.1. I refer to the following:

1.1.1 The Department's Pre-Directive issued to the City on 27 March 2020;

1.1.2 The City of Cape Town's ("the City") representation, which included the City's amended Pollution Abatement Plan, dated 03 April 2020;

1.1.3 The Department's response to the City's representation, dated 16 April 2020;

1.1.4 The City's monthly reports and Lower Diep River: Transversal Action Plan ("Action Plan") from April – 25 August 2020;

- 1.1.5 The numerous complaints received, and inspections conducted by the Department in conjunction with City, in response to the following sewage spills/overflow incidents:
 - 1.1.5.1 Sewage spill at the Woodbridge Island (Milnerton) stormwater outlet, resulting from sewage overflow at the Sanddrif Pump Station, dated 7 May 2020;
 - 1.1.5.2 Sewage overflow from the Koeberg Road Pump Station into the Theo Marias Canal (which flows into the Diep River), dated 14 June 2020;
 - 1.1.5.3 Sewage overflow from a leak in the rising main pipeline (situated in-close proximity to the Koeberg Pump Station) flowing into the Theo Marias Canal, dated 20 June 2020;
 - 1.1.5.4 Sewage seepage incident from Pond No. 5 of the Potsdam Waste Water Treatment Works ("the Facility") into the Diep River, dated 25 June 2020 (Section 30 Incident Report submitted to the Department by the City, dated 03 July 2020, and video footage and sampling report of the incident provided by OUTA);
 - 1.1.5.5 Effluent discharge incident from the Facility flowing from an outlet situated along the reed beds, downstream from the Theo Marias canal (adjacent to the stockpiling areas), directly into the Diep River, dated 26 June 2020;
 - 1.1.5.6 Sewage overflow from the Koeberg Road Pump Station into the Theo Marias Canal (which flows into the Diep River), dated 16 July 2020;
 - 1.1.5.7 The general waste spillage at the Milnerton Beach and Lagoon, dated 27 August 2019;
 - 1.1.6. The meeting with the City and the Department to discuss the overflows/spillages incidents from the Facility and pump stations along the Diep River Catchment, on 14 July 2020;
 - 1.1.7. The Diep River Sampling Report (dated 29 June 2020) and received by OUTA, dated 24 August 2020; and
 - 1.1.8 The Department's recent follow-up inspection along the Milnerton Lagoon and Diep River Catchment on 3 September 2020.
- 1.2 Since the issuance of the Department's Pre-Directive (dated 27 March 2020), the City has been furnishing the Department with monthly progress reports on the measures

undertaken to address the ongoing pollution of the Diep River Catchment and Milnerton Lagoon in accordance with the City's Action Plan.

- 1.3 Whilst the Department acknowledges that there are improvements in the City's attempt to combat the pollution, and that the City has embarked on various remedial activities to improve the overall water quality of the Diep River and Milnerton Lagoon, the frequency of the sewage overflows/ spill incidents from the Facility and Koeberg pump station is a major concern, as it is not only abating the City's efforts, but also continuing to cause significant pollution and degradation of the Diep River Catchment and Milnerton Lagoon.

2. Enforcement Action

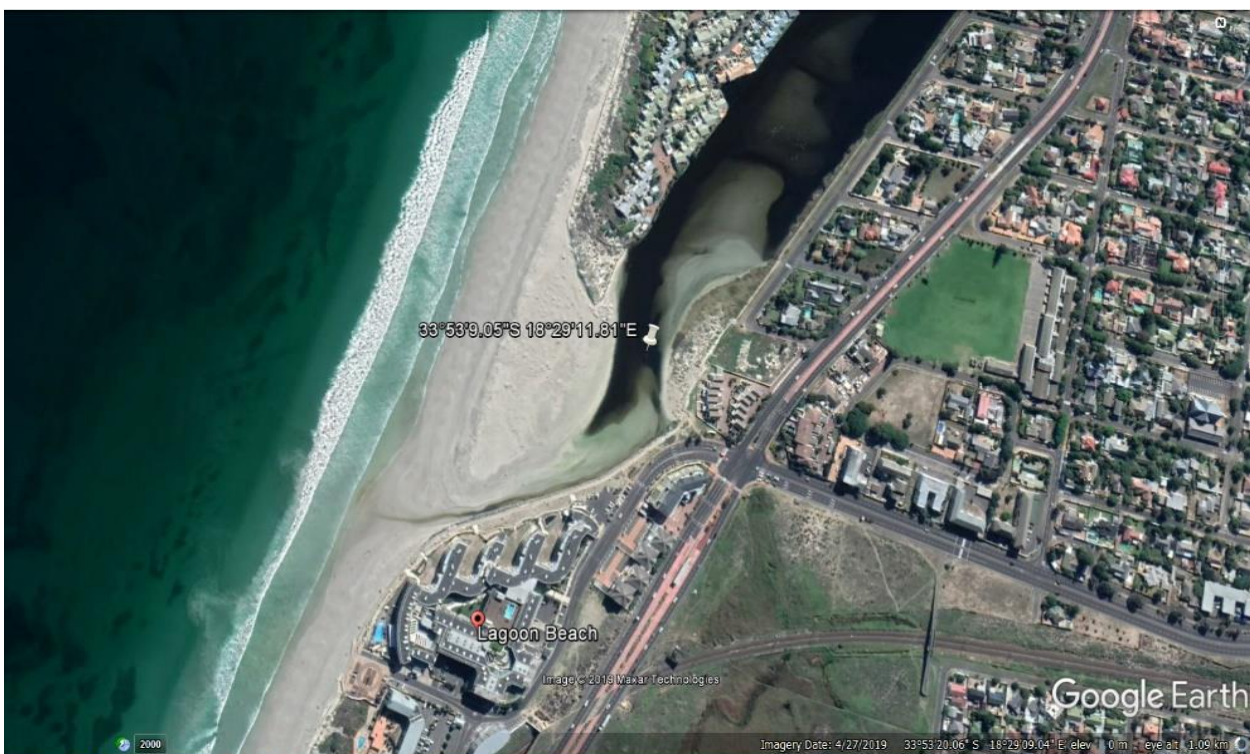
- 2.1. After considering the above, and the evidence before me, I, Achmad Bassier, in my capacity as Director: Environmental Law Enforcement, hereby issue you, Mr Michael Webster, in your capacity as the Executive Director: Water and Waste of the City of Cape Town, with a Directive in terms of section 28(4) of the NEMA, as the City is causing, and has caused significant pollution and degradation of the Diep River and Milnerton Lagoon and the its respective aquatic and marine/coastal ecosystems by failing to take reasonable measures to prevent such pollution from continuing or recurring.
- 2.2. The current state of pollution within the Diep River and Milnerton Lagoon is not only causing significant pollution to the aquatic and coastal environment, but may also impacts negatively on the health and well-being of the public and the residents residing along the Diep River Catchment and Milnerton Lagoon.
- 2.3. This Directive relates to non-compliance with section 28(1) of the NEMA.

3. Findings and Observations

- 3.1. The following observations provide the basis upon which the Department, as a custodian of the environment, is issuing this Directive:
 - 3.1.1. During an investigation into allegations of pollution of the environment, numerous follow-up inspections were conducted along the Diep River

Catchment and Milnerton Lagoon in response to the number of complaints received as a result of the sewage spillage incidents occurring within the Diep River (as indicated paragraph 1.1.5 above) by Environmental Management Inspectors from the Department in conjunction with officials from the City, the national Department of the Environmental, Forestry and Fisheries (" DEFF") and the national Department of Human Settlements, Water & Sanitation, confirmed that remnants of sewage from the overflows/ spill incidents were evident in the Theo Marias Canal and further along the canal towards the Diep River, with foul odours emanating from the area.

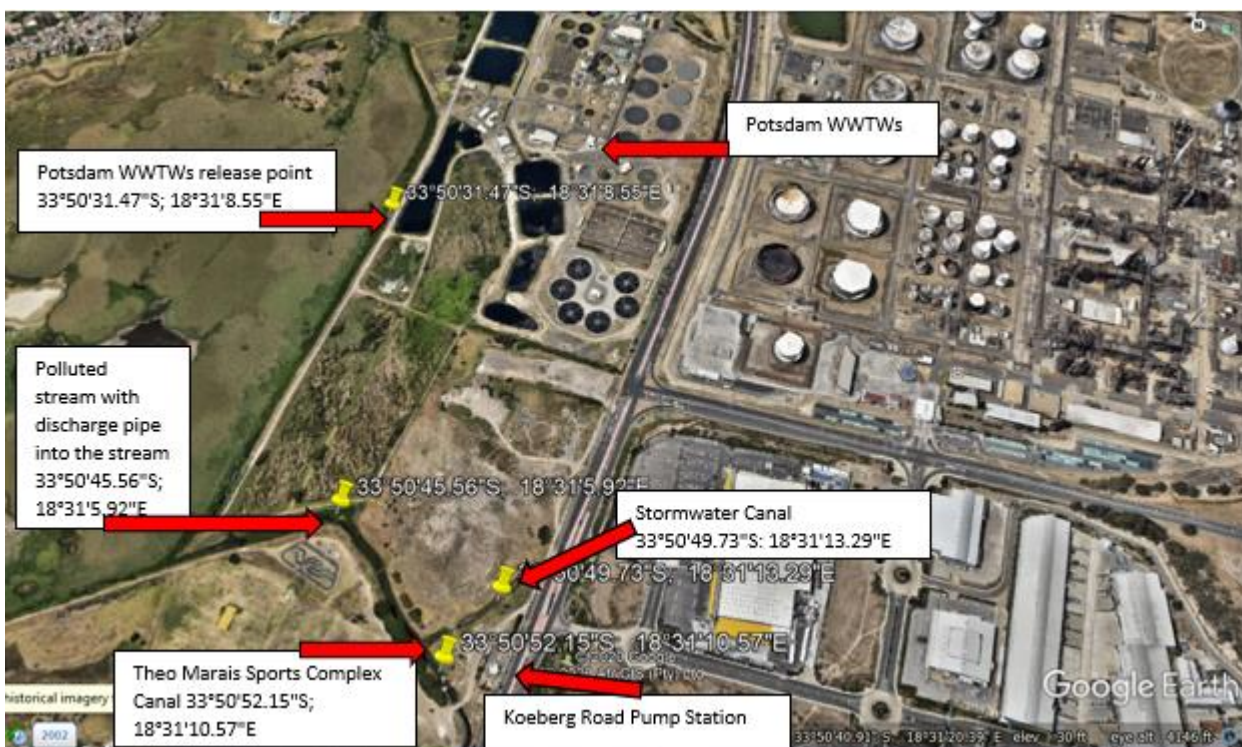
- 3.1.2. It has been observed that the water in the Milnerton Lagoon was dark and discoloured, with foul odours emanating from it. The sediment in the lagoon was dark grey/black in colour, which suggests the sediment may be hypoxic (oxygen deprived), coupled with the poor water quality which may cause significant harm to estuarine organisms and coastal environment.
- 3.1.3. Further observations revealed that the stormwater outlets, flowing into the Milnerton Lagoon transmitted large amounts of solid waste which have accumulated along the water's edge and mouths of the stormwater outlets. Similar observations of solid waste also occurred within the Theo Maria Canal and the canal at the Duikersvlei junction.
- 3.1.4. At the Theo Maria Canal and Duikersvlei junction, a historical outlet leading from the Facility was observed discharging a white foam-like effluent into the Diep River (as indicated in paragraph 1.1.5.5.).
- 3.1.5. Although there are plans to upgrade the Facility and the Koeberg Pump Station, the current occurrence of overflows and spillages into the Diep River and Milnerton Lagoon is unacceptable and undesirable, as it is further deteriorating the water quality and causing significant pollution and degradation of the aquatic and marine environment.



Aerial photography: Coordinates of Milnerton Lagoon (33° 53' 9.05"S; 18° 29' 11.81"E)



Aerial photography 2: Areas of Concern with highly polluted water and offensive odour



Aerial photography 3: Areas of concern causing pollution of the Diep River and Milnerton Lagoon



Aerial photography 4: Possible source of pollution to the Diep River and Milnerton Lagoon

4. Details of conduct constituting non-compliance

4.1. Section 28(1) of the NEMA provides that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring,

continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

- 4.2. In addition, section 28(2) of the NEMA provides that without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures includes an owner of the land or premises, a person in control of the land or premises or a person who has a right to use the land or premises on which or in which-
- (a) any activity or process is or was performed or undertaken; or
 - (b) any other situation exists;
- which causes, has caused or is likely to cause significant pollution or degradation of the environment.
- 4.3. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

5. You are hereby directed to:

- 5.1. Continue with the implementation of the City's Action Plan and provide updates insofar as the identified sources of pollution. However, the following action points in the Action Plan in respect of the timeframes must be reprioritised:
- 5.1.1. Ref: Diep 111 (Item no. 801 - 803) – expedite the investigation of illicit discharge into the stormwater drainage systems and surrounding water courses, and submit a report of the City's findings and proposed actions to prevent ongoing pollution to the Department **within 60 (sixty) calendar days** of receipt of this Directive;
 - 5.1.2. Ref: Diep 113 – submit the revised pollution incident protocols and contingency plans for the Facility, Koeberg and Sanddrift Pump Stations to the Department's Directorate: Pollution and Chemical Management ("D: P&CM") for review and comment, **within 30 (thirty) calendar days** of receipt of this Directive, to address future incidents which may occur while the upgrade of the aforementioned facilities are in progress;

- 5.1.3. Ref: Diep 114 (Item no. 105 – 107) – Update to enable the expediting of the upgrade of the Facility, which must be completed **by 31 December 2022**, in order to prevent/minimise further pollution of the lower Diep River/ Milnerton Lagoon;
- 5.1.4. Ref: Diep 116 (Item 301) – Update to enable the expediting of the upgrade of the Montague Gardens Bulk Sewer Gravity Reticulation Network and screening system **by 31 December 2022**, in order to prevent sewer network blockages and spillages into the Theo Maria Canal;
- 5.1.5. Ref: Diep 117 - Update to enable the expediting of the upgrade of the Du Noon and Doornbach Sewer Gravity Reticulation Network (which includes plan, design, and construction of stormwater to sewer diversion/s) **by 31 December 2022**, in order to prevent sewer network blockages and spillages into the lower Diep River via the stormwater drainage system and the two outflow channels;
- 5.1.6. Ref: Diep 120 & 122 – Update to enable the expediting of the upgrade the Koeberg Road Pump Station (which includes plan, design, and construction of stormwater to sewer diversion/s) to be completed **by 31 December 2021**, in order to prevent/minimise pollution into the lower Diep River/ Milnerton Lagoon via the stormwater drainage system inlets and underground pipes;
- 5.1.7. Ref: Diep 121 – submit the sewer pump station audit report to the Department's Directorate: P&CM for review and comment, **within 60 (sixty) calendar days** of receipt of this Directive;
- 5.1.8. Action: Increase frequency of refuse collection and area cleaning - submit a plan to the Department's Directorates Waste Management and D: P&CM for approval, **within 30 (thirty) calendar days** of receipt of this Directive, to address the littering and solid waste pollution occurring through wind dispersion, illegal dumping and within the stormwater drainage systems (including the lack of proper waste collection services for "back yard dwellings") within Du Noon, Doornbach and Joe Slovo Park. The plan must

include clear action deliverables, proposed budgets and adequate timeframes;

Interim measures to be implemented at the Facility

- 5.2. Conduct a thorough clean-up of the sludge within the Diep River at the Final Effluent discharge point of the Facility, within **14 (fourteen) calendar days** of receipt of this Directive;
- 5.3. Add an additional sampling point at Final Effluent discharge point of the Facility (at the point of entry into the Diep River), in order to reflect the water quality of the final effluent entering the environment;
- 5.4. Effectively seal-off all historical outlets and underground pipes leading from the Facility (including the maturation ponds) into the Diep River, **within 30 (thirty) calendar days** of receipt of this Directive, and provide proof to the Department **within 7 (seven) calendar days** after completion;
- 5.5. The standby generators **must immediately come online** in the event of a power outage, and not have 15 – 30 mins delays, and provide proof to the Department **within 7 (seven) calendar days** after completion;

Additional measures to be implemented in order to limit the pollution within Diep River and Milnerton Lagoon

- 5.6. Implement measures at strategic stormwater outlets to trap all the general waste from flowing into the Diep River and Milnerton Lagoon (e.g. nets at the mouths of stormwater outlets to capture the general waste, as implemented in the Soet River Catchment), **within 30 (thirty) calendar days** of receipt of this Directive, and provide proof to the Department **within 7 (seven) calendar days** after completion. These stormwater outlets must be cleaned regularly in order to prevent blockages;
- 5.7. Submit an Estuary Management Plan for the Milnerton Lagoon, which must address improving the estuary water quality, marine and coastal ecosystem functions and the overall management of the Milnerton Lagoon Eustuary, to this

Department for comment and the DEFF for approval, **within 60 (sixty) calendar days** of receipt of this Directive;

Additional Actions

- 5.8. Continue to submit to the Department the monthly update reports on the implementation of the Action Plan as indicated in paragraph 5.1., above, which must include the progress of actions outlined in paragraphs 5.1.3 – 5.1.6., 5.3., and 5.5. above, to this Department; and
- 5.9. Continue to conduct meetings or engagements with affected groups to communicate and inform the communities along the Diep River Catchment of the City's short-, medium and long-term actions contained in the Action Plan, and provide them with copies of the update reports.

6. Offences and penalties, including failure to comply with this Directive

- 6.1. In terms of section 49A(1)(e) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission which causes significant pollution and/or degradation of the environment or is likely to cause significant pollution and/or degradation of the environment.
- 6.2. According to section 49A(1)(f) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the environment.
- 6.3. A person convicted of the above offences is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
- 6.4. Furthermore, in terms of section 49A(1)(g) of the NEMA failure to comply with a Directive is an offence. A person convicted of failing to comply with a Directive is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
- 6.5. Furthermore, in terms of section 28(7) of the NEMA, if you fail to comply or inadequately comply with this Directive, the Provincial Head of Department may

take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.

- 6.6. In terms of section 28(8) of the NEMA, the Provincial Head of Department may recover costs for reasonable remedial measures undertaken to remedy the situation from, amongst others, you.
- 6.7. The NEMA makes provision for the criminal prosecution of officials of an organ of state, such as national or provincial government departments, municipalities or public entities.

7. Appeal against this Directive

- 7.1. You may appeal against the decision to issue this Directive to the Minister of Local Government, Environmental Affairs and Development Planning ("the Minister") within **30 (thirty) calendar days** from the date of receipt of this Directive.
- 7.2. The appeal must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental Affairs
and Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Marius Venter (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: DEADP.Appeals@westerncape.gov.za

- 7.3. For purposes of electronic database management, you are requested to submit an electronic copy (Microsoft Word format) of the appeal form and any supporting documents.
- 7.4. The appeal form as well as assistance regarding the appeal procedure is obtainable from the Appeals Administrator.
8. I wish to make it clear that the instructions contained herein are made in the interest of responsible environmental management and to ensure the health and well-being of the people, with a view to a co-operative resolution of this matter.
9. Should you be unclear about any aspect of this Directive, kindly contact the official dedicated for enquiries as soon as possible.



Achmad Bassier

Director: Environmental Law Enforcement

Date: 21/09/2020

Cc:

(1) Honourable Mayor Dan Plato (CoCT)	Email: Dan.Plato@capetown.gov.za
(2) Councillor Xanthea Limberg (CoCT)	Email: Xanthea.Limberg@capetown.gov.za
(3) Richard Nel (CoCT)	Email: Richard.Nel@capetown.gov.za
(4) Linda Ndlela (CoCT)	Email: Linda.Ndlela@capetown.gov.za
(5) Keith Wiseman (CoCT)	Email: Keith.Wiseman@capetown.gov.za
(6) Conrad Frehse (CoCT)	Email: Conrad.Frehse@capetown.gov.za
(7) Piet van Zyl (DEA&DP)	Email: Pieter.vanZyl@westerncape.gov.za
(8) Ayub Mohamed (DEA&DP)	Email: Ayub.Mohamed@westerncape.gov.za
(9) Gottlieb Arendse (DEA&DP)	Email: Gottlieb.Arendse@westerncape.gov.za
(10) Wilna Kloppers (DEA&DP)	Email: Wilna.Kloppers@westerncape.gov.za
(11) Saliegh Jacobs (DEFF)	Email: sjacobs@environment.gov.za
(12) Ashwin Syme (DEFF)	Email: ASyme@environment.gov.za