



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

**ENQUIRIES:** Dale Wakefield/ Grant Dyers

Executive Director of the Accountability Division

OUTA – Organisation Undoing Tax Abuse

**By email:** [stefanie.fick@outa.co.za](mailto:stefanie.fick@outa.co.za)

Attention: Adv S. Fick

Dear Madam

**MILNERTON/DIEP RIVER WATER CONTAMINATION [YOUR REF: L9/BD/04]**

1. The above matter and your letter dated 24 August 2020, refers.
2. The Department wishes to express its sincere appreciation for the important contribution that your organisation is making, in conjunction with Government and the public, in ensuring a healthy and sustainable environment to the benefit of the people of our country, as advocated in paragraphs 2 - 4 of your letter referred to above.
3. Kindly note that the Directorate does not propose to respond to all the issues and allegations raised in your letter, and therefore such omissions do not constitute an acknowledgement or admission thereof.
4. After careful consideration of the concerns raised in your letter, the Department's Directorate: Environmental Law Enforcement ("the Directorate") wishes to respond and advise as follows:

#### 4.1. Ad paragraphs 5 and 6

4.1.1 The Directorate takes cognisance of the complainants' frustration and their decision to reach out to OUTA in representing them in order to find solutions to the ongoing sewage pollution of the Diep River Catchment and the Milnerton lagoon.

4.1.2 However, contrary to your statement of the complainants "having exhausting all normal channels", the Directorate has been informed by the City of Cape Town ("the City") that some of the residents of the Milnerton Central Ratepayers Association ("MCRA") have raised their concerns directly with the Deputy Mayor of the City, and have been provided with feedback (either via their Sub-Council structure or through social media platforms) on the City's actions/progress in respect of the sewage problem emanating from the Potsdam Waste Water Treatment Works ("the Facility") and flowing into the Diep River Catchment and the Milnerton lagoon, resulting in pollution and offensive odours.

#### 4.2 Ad paragraphs 7, 8 and 9

4.2.1 Whilst the Directorate acknowledges that the Facility contributes to the pollution of the Diep River, our investigation has revealed that there are other significant sources of pollution, which include the frequent overflows from the Koeberg Pump Station (situated adjacent to the Theo Maria canal, leading into the Diep River); sewage and run-off from informal settlements and industrial areas (i.e. diffuse pollution).

4.2.2 In order to minimise the above sources of pollution, particularly with regards to the overflowing at the Koeberg Pump Station, these incidents were reported by the City to the Department's Directorate: Pollution and Chemicals Management ("D: P&CM"), and the required remedial measures were immediately implemented to contain the pollutants.

4.2.3 Insofar as the thresholds of the conditions in the Water Use Licence ("WUL") being exceeded, kindly be advised that the competent authority for monitoring and enforcing the WUL of the Facility is the national Department of Human Settlements, Water and Sanitation ("DHSW&S") in terms of the National Water Act, 1998. The DHSW&S is mandated to conduct sampling and monitoring of the water quality within the Diep River Catchment area and surrounding watercourses. The sampling exercise conducted by the Department was undertaken as part of its investigation and formed the basis for the issuing of the Pre-Directive.

4.2.4 The Directorate wishes to advise that OUTA should engage the DHSW&S regarding its mandate and the alleged non-compliance with the WUL, as it is the key authority in this instance.

#### 4.3 Ad paragraphs 10, 11, 12, 13 and 14

4.3.1 The contents of these paragraphs relate to legislative requirements and are noted.

4.3.2 Regarding the content of paragraph 12, please refer to paragraph 4.2.3 above.

#### 4.4 Ad paragraphs 15, 16, and 17

The content of these paragraphs are noted, and relates to the Pre-Directive issued by the Department on 26 March 2020.

#### 4.5 Ad paragraph 18

4.5.1 The Directorate shares the frustration of residents, the public and OUTA with regards to the long history and ongoing pollution of the Diep River Catchment.

4.5.2 Since the Directorate's investigation into this matter, during November 2019, we have issued a Pre-Directive on 26 March 2020 to the City for the ongoing pollution, as a result of partially/untreated sewage emanating from the Facility and other stormwater canals flowing into the Diep River Catchment. The Pre-

Directive requested the City to undertake a number of measures, one of which was for the City to create a platform where it communicates the progress on the clean-up to the public and interested parties (such as the MCRA and OUTA), as well as to report complaints and incidents within the Diep River Catchment area. Subsequently, the City has provided the Directorate with bi-monthly progress reports on the work being conducted within the Diep River, which according to the City, has also been reported to the MCRA.

- 4.5.3 In addition, numerous compliance inspections were undertaken by the Directorate and the D: P&CM in order to ensure compliance with the Pre-Directive and to monitor progress in respect of the bi-monthly reports.
- 4.5.4 Considering this Directorate's relatively recent investigation into this matter (November 2019), we cannot account for the past events and the reasons as to why criminal proceedings were not instituted.
- 4.5.5 That being said, the City has complied with the requests outlined in the Department's Pre-Directive issued on 26 March 2020 (as stipulated in par. 17 of your letter), and therefore the assertion that the Department should institute criminal action against the City at this stage of the investigation, is premature. Failure to comply with the provisions contained in a Pre-Directive results in the issuing of Directive in terms of section 28(4) of the NEMA.
- 4.5.6 However, with the recent overflows from the Koeberg Pump Station and the unidentified discharge outlet flows from the Facility into the Diep River (which has also been identified by OUTA's Diep River Sampling Exception Report (dated 8 July 2020)), has prompted the Directorate to further investigate these sources of pollution and the causes thereof, as well as to include the implementation of an estuary management plan for the Milnerton Lagoon.

4.6 Ad paragraphs 19, 20, 21, 22, 23 and 24

- 4.6.1 The contents of paragraphs 19, 20, 21, 22, 23 and 24 are noted. The Directorate wishes to advise that OUTA could raise these concerns with the City and its Mayoral Committee Member for Water and Waste (Ald Xanthea Limberg).
- 4.6.2 In respect of paragraph 24 relating to the role of the "oversight authority", please note that the oversight authority in relation to all organs of state, including local government resides exclusively with the national Parliament

(section 55 of the Constitution). In terms of section 155 (7) of the Constitution, both national and provincial government have the legislative and executive authority to see to the effective performance of local government in respect of matters listed in Part B of Schedules 4 and 5.

#### 4.7. Ad Paragraph 25

The content of this paragraph is noted and is addressed in paragraph 4.2.3 above.

#### 4.8. Ad paragraphs 26 and 27

The contents of these paragraphs are noted and is addressed in paragraph 4.5.5 above. The Directorate will consider including this aspect in the proposed additional interventions and investigation as it resorts within its mandate.

#### 4.9. Ad paragraphs 28 and 29

The content of these paragraphs relates to legislative requirements and are noted.

#### 4.10 Ad paragraph 30

Should the findings of the Directorate's further investigation, inclusive of OUTA's Sampling Exception Report (dated 8 July 2020), confirm that the City's Abatement Plan is not adequately addressing the sources of pollution, as indicated in paragraphs 4.5.5 and 4.8.1 above, the Department will institute the necessary enforcement action against the City and issue a Directive.

5. In conclusion, the Department is committed in ensuring that the sources of pollution and its impact on the Diep River Catchment and the Milnerton Lagoon are addressed and to take the necessary enforcement action, within its mandate, should the City fail to address the problem adequately.

6. I trust that the above response to your letter has provided you with sufficient insight into the ongoing investigation by the Directorate, and wish to thank you for your assistance and concerns in the protection and preservation of our environment, to ensure the health and wellbeing of the people in this country.



**Achmad Bassier**

**Director: Environmental Law Enforcement**

**Date: 08/09/2020**

**Cc:**

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