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POLLUTION AND DEGRADATION OF THE DIEP RIVER CATCHMENT AND THE MILNERTON LAGOON: YOUR LETTER DATED 23 JULY 2021

Background

1. On 21 September 2020, the Director: Environmental Law Enforcement of the Western Cape Provincial Department of Environmental Affairs and Development Planning (DEA&DP) issued the City of Cape Town ("City") with a Directive in terms of section 28(4) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) (September Directive). The Directive relates to the City's non-compliance with section 28(1) of the NEMA.
2. Pursuant to the City's appeal against the September Directive, the Provincial Minister of Local Government, Environmental Affairs and Development Planning issued the City with a modified Directive on 22 January 2021 (modified Directive).
3. The Appeal Directive directed the City to continue with the implementation of the City's Action Plan and provide updates in so far as the identified sources of pollution are concerned. The City was also directed to continue to implement the measures as directed in the September Directive except for the measures as modified in paragraphs 4.2.1 to 4.2.7 of the modified Directive.

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4. OUTA has requested the following:
- That the City provides conclusive evidence demonstrating that it has complied with its obligations in terms of the Directives.
 - Conclusive evidence that the City has submitted to the provincial head of the Department of Human Settlements, Water and Sanitation, from the date of commencement of the Water Use License, the annual internal and external audit reports on compliance with the conditions of the license, as prescribed in the general conditions attached to the license, as well as evidence that all incidents causing pollution to the Diep River and Milnerton Lagoon, since January 2021.
 - Conclusive evidence that accurate and up to date records have been kept of all system malfunctions resulting in treated water containing waste disposal not in accordance with the requirements of the license, as well as action plans submitted to the provincial head, with a detailed time schedule, of the measures taken to correct the impacts resulting from the incident, prevent the incident from causing any further impacts and prevent a recurrence of similar incidents.
5. OUTA indicates that the necessary information is required to enable it to assess the extent to which the City has, or has not, complied with its obligations under the Directive and Water Use License as at the date of its letter. The information is furthermore required to assess, the City's compliance with its water use licence.

Directives and NEMA

6. Both the September Directive and the modified Directive were issued in terms of the provisions of the NEMA to ensure compliance with the requirements of NEMA. NEMA sets out processes to be taken against the relevant person in the event of non-compliance with the Directive.
7. In terms of section 49A(1)(g), read with section 49B(1) of NEMA, a person is guilty of an offence if that person fails to comply with a directive issued in terms of NEMA and 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.
8. Furthermore, in terms of section 28(7) of NEMA, should a person fail to comply or inadequately comply with a Directive, the Provincial Head of Department may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief. The Provincial Head of Department is also permitted to recover costs for reasonable remedial measures undertaken to remedy the situation from the person concerned. (Section 28(8) NEMA)

9. As apparent from the above provisions of the NEMA, there are sufficient measures in place to be taken by the Provincial Head of department (DEA&DP in this instance) to enforce the provisions of the NEMA and ensure compliance with both the September Directive and the modified Directive.
10. The same principle applies as regards to requirements of the National Water Act, 1998, there are sufficient measures in place in terms of the National Water Act to enforce the provisions of sections 19(1) and 20(3) and (4) of this Act, in the event of non-compliance by the City.

The City has received recent correspondence from the National Department of Water & Sanitation in terms of its water use license for the Potsdam Wastewater Treatment Works to which it is complying.

11. OUTA indicates that the necessary information is required to enable it to assess the extent to which the City has, or has not, complied with its obligations under the Directive and Water Use License.

However, in our view, if there are any concerns as regards to the City's compliance with the Directives, the appropriate process would be to address those concerns with DEA&DP so that DEA&DP can enforce compliance with the Directives and/ or, take appropriate actions in that regard.

12. In line with Directive 5.9 of the September Directive, the City is committed to conduct regular engagements with OUTA and inform the affected communities of the City's short-, medium- and long-term actions contained in its Action Plan, and providing them with copies of the updated reports.

13. In the spirit of this engagement, we have prepared our responses to the measures set out in the Directives in a table format as appears in the annexed document marked City Compliance Responses.

14. Indeed, in accordance with both the September Directive and the modified Directive, the City had undertaken the following:

- Implemented its Action Plans and providing updates in so far as the identified sources of pollution;
- Implemented interim measures at the Potsdam WWTW;
- Implemented additional measures to limit pollution within Diep River and Milnerton Lagoon;
- Taking additional actions;
- Implementing measures as modified in paragraphs 4.2.1 to 4.2.7 of the modified Directive,

in accordance with the timeframes set out in the Directives.

15. Furthermore, the City submits to the DEA&DP its monthly progress reports and interim response plans within the timelines set out in the Directives.
16. The City has submitted all the requested information required in terms of the September Directive and the modified Directive as per the deadlines given.

Feedback regarding the City's compliance with the Directives was received from DEA&DP on 2 August 2021 and it was confirmed that of the 16 (sixteen) conditions, as stipulated in the modified Directive, the City is partially compliant with 8 (eight) conditions, compliant with 6 (six) conditions, and non-compliant with 2 (two) of the conditions.

In this regard, the City was requested to submit to DEA&DP, within 21 (twenty-one) calendar days of receipt of DEA&DP's letter, a detailed response to the requests outlined in the letter, in order to provide clarity and address the concerns raised following the compliance audit conducted in respect of the modified Directive and the City's monthly's reports.

The City is busy considering DEA&DP's feedback and will furnish its response thereto together with the requested information within the set period.

Conclusion

17. We hope this clarifies OUTA's concerns. However, if there are any areas of clarity regarding this letter, the City will gladly assist in clarifying same during our meetings/ engagements on the matter.

Yours faithfully

MICHAEL JOHN WEBSTER
Executive Director: Water & Waste

Attached: City of Cape Town compliance with DEADP Directive

Attachment 1: City of Cape Town compliance with DEADP Directive

Appeal Directive of 22 January 2021			
Appeal Directive Actions			
Ref.	Description	Deadline	Annotation
4.1	Continue with implementation of the City's Action Plan & Provide updates in so far as the identified sources of pollution. Update as per Items listed.	Ongoing	Monthly Reporting
As Per Original Directive	DIEP 111 (Item No. 801 - 803): Pollution to Lower Diep River / Milnerton Lagoon via illegal point discharges into the stormwater drainage system inlets and underground pipes.	60 calendar days 23 March 2021	Completed – correspondence with evidence sent on 23 March 2021.
	801 Investigate, educate & regulate illicit discharges into stormwater drainage systems, rivers & water bodies.	60 calendar days 23 March 2021	Completed – evidence, Annexure A, sent on 23 March 2021.
	802 Investigate, educate & regulate race horse facilities at Milnerton Race Horse Stables	60 calendar days 23 March 2021	Completed – evidence, Annexure B1 and B2, sent on 23 March 2021.
	803 Montague Gardens Industrial Illicit Discharge	60 calendar days 23 March 2021	Completed – evidence, Annexure A, sent on 23 March 2021.
	Investigate, educate & regulate illicit discharges in conjunction with DEA&DP : Environmental Law Enforcement		Completed – correspondence with evidence sent on 23 March 2021.
4.2.2	DIEP 113 Submit revised pollution incident protocols and contingency plans for Potsdam WwTW, Koeberg & Sanddrift (East) Pump Stations. 4.2.2.1 Submit by end October 2021 4.2.2.2 Overarching document within 30 calendar days. 4.2.2.3 Interim remediation / incident management response plan to deal with instantaneous pollution events / emergency incidents that may occur.	4.2.2.1 Submit by end October 2021 4.2.2.2 Overarching document within 30 calendar days -. 4.2.2.3 Interim remediation / incident management response plan to deal with instantaneous pollution events / emergency incidents that may occur.	4.2.2.1 In progress 4.2.2.2 Completed – correspondence with evidence sent on 19 February 2021. 4.2.2.3 Completed – correspondence with evidence sent on 19 February 2021.
4.2.3	DIEP 114 Potsdam WW Treatment Works Upgrade 4.2.3.1 Implement by end August 2025 4.2.3.2 Monthly Progress Reporting	End August 2025	Ongoing
4.2.4	DIEP 116 Montague Gardens Sewer Gravity Reticulation Network Item 301 Montague Gardens Bulk Sewer Upgrade. Includes screening system. 4.2.4.1 Complete by 30 June 2025 4.2.4.2 City to indicate measures to reduce blockages in sewer retic. network within 60 calendar days.	4.2.4.1 30 June 2025 4.2.4.2 60 calendar days -23 March 2021	4.2.4.1 Ongoing 4.2.4.2 Included in Action Plan – ongoing.
4.2.5	DIEP 117 Dunoon & Doornbach Sewer Gravity Reticulation Network: Sewer Network Blockages & Spillages + Sewerage & Greywater into Lower Diep River via stormwater drainage system and the 2 outflow channels - Plan, Design & Construct stormwater to sewer diversion/s. 4.2.5.1. Complete by end December 2023. 4.2.5.2. Monthly progress reporting.	4.2.5.1. Complete by end December 2023. 4.2.5.2. Monthly progress reporting.	4.2.5.1. Ongoing 4.2.5.2. Monthly progress reporting.

Ref.	Description	Notes / Comments	Annotation
4.2.6	4.2.6.1. Montague Bulk Gardens to be completed between 1 July 2022 and 1 June 2024 4.2.6.2. Monthly reporting.	4.2.6.1. Montague Bulk Gardens to be completed between 1 July 2022 and 1 June 2024 4.2.6.2. Monthly reporting.	4.2.6.1 Koeberg Road Pump Station Refurbishment - some of which has been completed and other work planned.
As Per Original Directive	DIEP 121 Sewer Pump Station Audit: Submit audit report to DEA&DP: Pollution & Control Management.	60 calendar days 23 March 2021	Completed – correspondence and pump station assessment report sent on 23 March 2021.
Issue as can't be serviced more frequently.	Increase Frequency of Waste Collection & Area Cleansing: Submit a plan (with clear action deliverables, proposed budgets and adequate timeframes) to DEA&DP: Pollution & Control Management that addresses the littering and solid waste pollution occurring through wind dispersion, illegal dumping and in stormwater drainage systems. Plan should include lack of proper waste collection services for "backyard dwellings within Du Noon, Doornbach & Joe Slovo Park.	30 calendar days 21 February 2021	Completed – correspondence with evidence sent on 20 February 2021.
As Per Original Directive	Conduct a thorough clean-up of the sludge within the Diep River at the Potsdam WWTW FE discharge point.	14 calendar days 5 February 2021	Completed – correspondence with evidence sent on 5 February 2021.
As Per Original Directive	Add & monitor sampling point at Potsdam WWTW FE discharge point to monitor the water quality of the FE entering the environment.	Not specified	In progress
As Per Original Directive	Effectively seal-off historical outlets from Potsdam WWTW including the maturation ponds.	30 calendar days - 21 Feb 2021 Proof 7 days after completion.	Completed – correspondence with evidence sent on 20 February 2021.
As Per Original Directive	Standby Generators to have immediate response during power outage. (Not 15 to 30 minute delay)	Proof 7 days after completion.	In progress, has been tested – proof to be sent.
4.2.7.	Stormwater Outlet Nets at Strategic Locations. 4.2.7.1 Implement by November 2021. 4.2.7.3. Monthly progress reporting. 4.2.7.2. Interim response plan within 60 days.	4.2.7.1 Implement by November 2021. 4.2.7.3. Monthly progress reporting. 4.2.7.2. Interim response plan within 60 days.	4.2.7.1 In progress. 4.2.7.3. Ongoing. 4.2.7.2. Completed – correspondence sent on 23 March 2021.
As Per Original Directive	Submit an Estuary Management Plan for Milnerton Lagoon that must address improving the estuary water quality, marine and coastal ecosystem functions as well as the overall management of the Milnerton Lagoon Estuary for comment & DEFF approval.	60 calendar days 23 March 2021	Correspondence sent on 23 March 2021 with existing plan and proposal for the compilation of a revised Estuary Plan.
As Per Original Directive	Continue to conduct meetings / engagements with affected groups to communicate & inform the communities of the City's short, medium & long term actions as per the Action Plan and provide them with copies of updated reports.	Not Specified	Ongoing: <ul style="list-style-type: none"> • OUTA / MCRA Engagements. • Sub-Council 3 & 15 Reporting • Ad-hoc communications with OUTA, MCRA & Others