



REFERENCE: 14/1/1/E3/7/6/4/L884/17

ENQUIRIES: D Mouton

Mr K Chetty

BY EMAIL

Municipal Manager

Email: mm@knysna.gov.za

Knysna Municipality

PO Box 21

Knysna

6570

DIRECTIVE

Dear Sir

DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. The Department's Pre-Directive issued on dated 12 June 2017, the Rehabilitation Plan dated 20 October 2017 and the Department's letter dated 21 November 2017 have reference.

2. Having considered all the evidence before me, I, Dr Eshaam Palmer, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr Kam Chetty, Municipal Manager of the Knysna Municipality with a Directive in terms of section 28(4) of the NEMA, as you are causing significant pollution and/or degradation of the environment.
3. This Directive relates to non-compliance with section 28(1) of the NEMA.

Details of conduct constituting non-compliance

4. During an investigation into allegations of pollution and/or degradation of the environment, a site inspection of Erf 214 and Erf 14076, Bloemfontein Development in Knysna was conducted by Environmental Management Inspectors from this Directorate with officials from national Department of Environmental Affairs and the Knysna Municipality on 9 May 2017, and it was confirmed that you have unlawfully commenced with the disturbance of vegetation and earthwork activities as stated in Schedule 1 of the Environmental Conservation Act, 1989 ("ECA") without prior approval of an Outeniqua Sensitive Coastal Area ("OSCA") Permit by the Department of Environmental Affairs and Development Planning.



Aerial map 1: Locations of the alleged illegal vegetation clearing and earthworks on Erf 214 and Erf 14076 on the “Bloemfontein” development, Knysna (refer to the non-compliance with ECA).

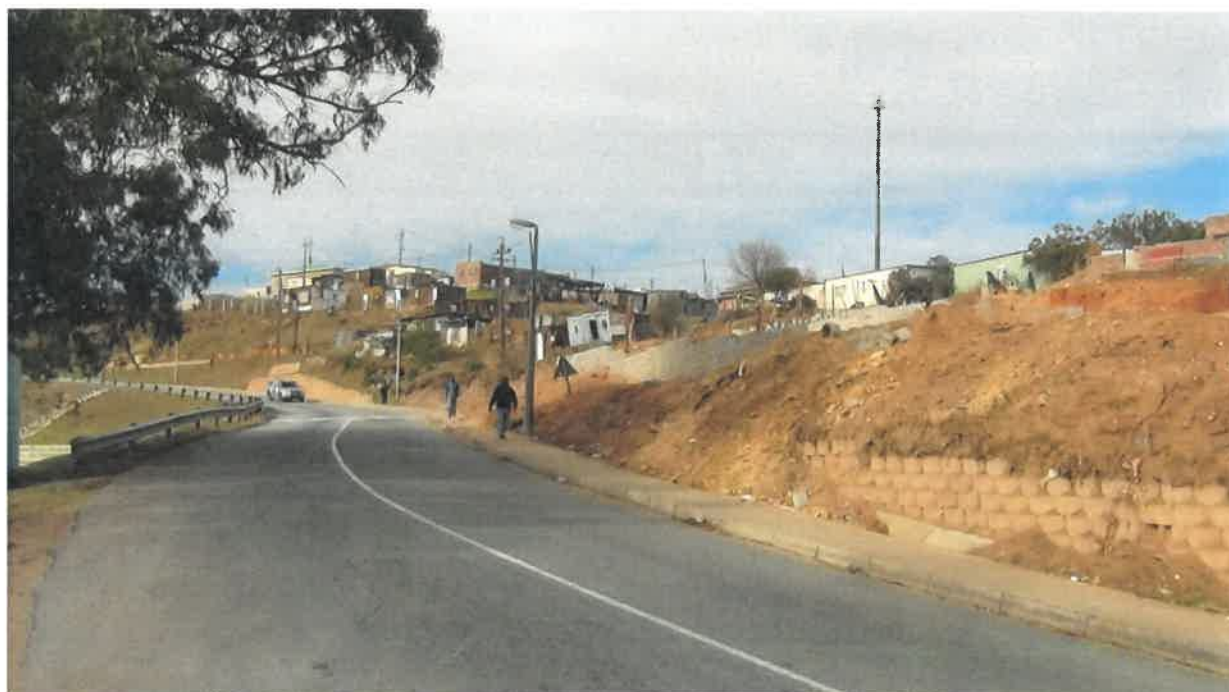


Photo 1: Soil excavations on Erf 14076 causing over spilling onto the pavement and storm water drainage line without prior approved OSCA Permit.



Photo 2: View of waste next to and around temporary housing area (site 1 on Erf 214).



Photo 3: View of septic tank overflow on temporary housing area (site 2 on Erf 214) causing pollution.

5. During a follow-up site inspection on 4 July 2017 conducted by Environmental Management Inspectors from this Directorate it was confirmed that excavations with an excavator were conducted on the

slope below the temporary housing area on site 2 of Erf 214, Knysna, without the requisite OSCA approval or an approved Rehabilitation Plan.



Photo 4: View of the excavator working on the temporary housing area (site 2 on Erf 214) prior to approval / permission granted in terms of the Rehabilitation Plan.

6. During another follow-up site inspection on 11 April 2018 conducted by Environmental Management Inspectors from this Directorate it was confirmed that further pollution and degradation of the environment is evident with additional informal structures being erected, inadequate ablution facilities, waste dumping and illegal electrical / power line connections, etc.



Photo 5: View of the pipes inadequately covered with plastic to prevent leakage of waste water from ablution facilities provided on the temporary housing area (site 1 on Erf 214).



Photo 6: View of the illegal electrical / power line connections crossing the road and being supported on branches to the temporary housing area (site 2 on Erf 214).

7. Furthermore, the Department has received no confirmation of the appointment of an independent environmental consultant and or the 3-monthly rehabilitation audit reports being submitted to this Directorate, as required in the Department's letter dated 21 November 2017.
8. 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.
9. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

10. You are hereby directed to:

- 10.1 immediately cease the activities described in paragraph 4 and 5 above, which are causing the above pollution and/or degradation;
- 10.2 submit to the Department, **within 30 (thirty) calendar days** of receipt of this Directive, the following:
 - 10.2.1 confirmation of the implementation commencement date of the approved Rehabilitation Plan dated 20 October 2017;
 - 10.2.2 confirmation of the appointment of a suitably qualified and experienced independent environmental consultant to assist, advise and monitor the rehabilitation activities as indicated in the Rehabilitation Plan;

10.2.3 provide a time-schedule for the rehabilitation audit reports that must be submitted on a 3-monthly basis or until this Directorate confirms its satisfaction with the progress of the rehabilitation of all the relevant sites / areas on Erf 14076 and Erf 214 as requested by this Directorate in the letter dated 21 November 2017.

11. If the above is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

Offences and penalties, including failure to comply with this Directive

12. 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.

13. According to section 49A(1)(f) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission detrimentally affects or is likely to detrimentally affect the environment.

14. 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.

15. 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.

16. 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.
17. 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.

Appeal against this Directive

18. 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.
19. The appeal must be in writing on the form obtainable from the Appeal Administrator, Mr Jaap de Villiers, at the contact details below and must be accompanied by a statement detailing the grounds for the appeal 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: Jaap de Villiers (Tel: 021 483 3721)

Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: Jaap.DeVilliers@westerncape.gov.za

20. 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.

21. The appeal form as well as assistance regarding the appeal procedure is obtainable from the Appeals Administrator.



Dr E Palmer

Director: Environmental Law Enforcement

Date: 22/4/2018

Cc:

Knysna Municipality pbooth@knysna.gov.za

Knysna Municipality jfearon@knysna.gov.za

DEA&DP Danie.Swanepoel@westerncape.gov.za

DEA mchauke@environment.gov.za