



REFERENCE: 14/1/1/E3/3/10/3/L1037/19

ENQUIRIES: Raheem Dalwai

BY EMAIL

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6970

Attention: Mr Kosie Haarhof

DIRECTIVE

Dear Sir

DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998 IN RESPECT OF A CONTRAVENTION OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT AND THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008

1. The Department's Pre-Directive issued to the Beaufort West Municipality on 27 August 2013(attached hereto for ease of reference) for the mismanagement activities occurring at Murraysburg Waste Disposal Facility (WDF) which was causing significant pollution or degradation of the environment; the Department's Directorate: Waste Management (D:WM) Compliance Audit of the Waste Management License (WML) (reference no. 19/2/5/4/C3/13/WL0108/17) issued for the Murraysburg WDF conducted on 28 August 2018; the inspections conducted by the D:WM on 17 and 18 February 2019; the Department's Directorate: Environmental Law Enforcement (this Directorate) site inspection at the Murraysburg WDF on 09 April 2019 and subsequent meeting with officials from the Beaufort West Municipality on 10 April 2019, has reference.
2. Having considered the evidence before me, I, Achmad Bassier, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr Kosie Haarhof, Municipal Manager of the Beaufort West Municipality, with a Directive in terms of section 28(4) of the NEMA, as the Beaufort West Municipality has failed to adequately ensure compliance with the WML which has resulted in the mismanagement of the Murraysburg WDF and 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 the Murraysburg WDF was conducted by Environmental Management Inspectors from this Directorate on 09 April 2019 and it was confirmed that your municipality have failed to comply with

the conditions set out in the WML (dated 28 August 2018) issued for the Murraysburg WDF by the Department and as a result is causing significant pollution and/or degradation of the environment.



Aerial map 1: Locations of the Murraysburg Waste Disposal Facility.



Photo 1: A combination of builder's rubble, garden waste and general household waste. Two drums containing suspected oil or bitumen were also observed, while the garden waste adjacent to these drums were burning.



Photo 2: Entrance to the WDF. The gate was open, and no personnel were on duty controlling access to the WDF.



Photo 3: A member of the public was seen scavenging through the WDF collecting waste items. Several areas on the WDF was being burnt.

5. 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.
6. In addition, section 16(1) of the NEM: WA provides that a holder of waste must, within the holder's power, take all reasonable measures to:
 - (a) avoid the generation of waste and where such generation cannot be avoided, to minimise the toxicity and amounts of waste that are generated;
 - (b) reduce, re-use, recycle and recover waste;
 - (c) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner;
 - (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts;
 - (e) prevent any employee or any person under his or her supervision from contravening this Act; and
 - (f) prevent the waste from being used for any unauthorised purpose.
7. Section 67(1) (a) of the NEM: WA provides that it is an offence to contravene a provision of section 16(1) (c) - (f).
8. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

9. You are hereby directed to:

- 9.1 immediately ensure compliance with the conditions of the WML (reference no. 19/2/5/4/C3/13/WL0108/17) dated 28 August 2018, in order to prevent/minimise further pollution and/or degradation of the environment;
- 9.2 immediately cease all burning of waste at the WDF;
- 9.3 conduct a clean-up operation of all illegal dumping situated along the access road leading towards the WDF and all windblown litter situated in the open areas surrounding the WDF, in order to prevent further pollution and/or degradation of the environment **within 30 (thirty) calendar days** of receipt of this Directive and dispose of it at the Murraysburg Waste Disposal Facility;
- 9.4 submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Directive, a detailed action plan with adequate timeframes and budget allocations, in conjunction with the Department's Directorate: Waste Management, which must include the following:
 - 9.4.1 implement reasonable measures in order to prevent any further illegal dumping along the access road leading towards the WDF;
 - 9.4.2 a schedule for compacting and covering of waste at the WDF in order to prevent future windblown litter;
 - 9.4.3 the appointment of an official to manage, operate and ensure compliance with the WML at the WDF, as well as operational personal (provide the names and designations of those officials);
 - 9.4.4 the timeous submission of the quarterly audit reports for the WDF;
 - 9.4.5 a plan for the commencement of the decommissioning of the WDF which is scheduled for 18 July 2019; and
 - 9.4.6 the control of unauthorised access to the WDF and the fixing of the perimeter fence;

10. If the above plans are 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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

17. 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.

18. 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

19. 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.

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

21. 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.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 25/04/2019

Cc:

1) Mr P van Zyl (HoD – DEA&DP)

Email: Piet.VanZyl@westerncape.gov.za

2) Mr A Mohamed (CD:EG,PC&E -DEA&DP) Email: Ayub.Mohamed@westerncape.gov.za

3) Mr E Hanekom (D:WM -DEA&DP)

Email: Eddie.Hanekom@westerncape.gov.za