



REFERENCE: 14/1/1/E3/10/10/3/L934/18

ENQUIRIES: D Mouton

BY EMAIL

Mr A Paulse

Email: suerhete@oudtmun.gov.za

Municipal Manager Oudtshoorn Municipality

PO Box 255

Oudtshoorn

6620

DIRECTIVE

Dear Sir

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

1. The Department's Directorate: Environmental Law Enforcement's Pre-Directive issued on 27 February 2018, your attorney, Stadler & Swart Inc's representation on behalf of the Oudtshoorn Municipality dated 19 March 2018, this Directorate's response letter dated 26 April 2018, your attorney's letter dated 23 May 2018, our Director's response letter dated 4 June 2018

and the Directorate's follow-up site inspection on 26 June 2018 have reference.

2. Having considered all the evidence before me, I, Ayub Mohamed, in my capacity as Chief Director: Environmental Governance, Policy Co-ordination and Enforcement, hereby issues Mr A Paulse, as Municipal Manager of the Oudtshoorn Municipality with a Directive in terms of section 28(4) of the NEMA, as you are continuing to cause 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 degradation of the environment a site inspection was conducted at Farm De Cango 2/26, Oudtshoorn by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement together with Oudtshoorn Municipal officials and Mr Andre Swart (Stadler & Swart Attorneys) on 23 January 2018 and it was confirmed that you have permitted access and the use of machinery for the cleaning/clearing of a cave opening situated within a watercourse without an approved maintenance management plan ("MMP").



Aerial map 1: Estimated location of the Cave within the watercourse on the Farm De Cango 2/26, Oudtshoorn (the property).



Photo 1: View of the Cave within the watercourse that the Oudtshoorn Municipality granted TBI access and approval to open up the cave using machinery.



Photo 2: View of the channel that was constructed to divert the water away from the Efflux Cave opening.

5. During a follow-up site inspection on 26 June 2018 conducted by Environmental Management Inspectors from this Directorate it was found that due to no reasonable measures being taken to prevent the degradation of the environment from continuing the illegal channel has eroded wider and deeper.



Photo 3: View of the channel that was constructed to divert the water away the Efflux Cave opening, now eroded wider and deeper.

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6. Section 28(1) of the NEMA provides that every person (including the property owner and any organisation making use of the Efflux Cave in this regard) 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.
7. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

8. You are hereby directed to:

- 8.1 immediately cease the activities described in paragraph 4 and 5 above, which are causing the above pollution and/or degradation;
- 8.2 submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Directive, rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 8.2.1 assessment and evaluation of the impact of the pollution and/or degradation;
 - 8.2.2 identification of proposed remedial and/or mitigation measures;
 - 8.2.3 confirmation that a Maintenance Management Plan (MMP) will be compiled, after the Rehabilitation of the channel has been attended to and approved by the Directorate: Development Management prior to any further clearing/cleaning of the opening of the Efflux Cave within the watercourse;

8.2.4 Inclusion of such an approved MMP into all contractual agreements with tenants on this property.

9. If the above plan 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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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

16. 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.

17. 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

18. 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.

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



Ayub Mohamed

Chief Director: Environmental Governance, Policy Co-ordination and Enforcement

Date: 18/09/2018

Cc:

Oudtshoorn Municipality koch@oudtmun.gov.za

Stadler & Swart Attorneys andre@stradlers.co.za
