



REFERENCE: 14/1/1/E2/4/7/3/0138/15

ENQUIRIES: Mogammad Arshad Holliday

BY EMAIL

The Municipal Manager

Email: municipal.manager@ Stellenbosch.gov.za

Stellenbosch Municipality

Tel: 021 808 8111

P O Box 17

STELLENBOSCH

7600

Attention: Ms Geraldine Mettler

DIRECTIVE

Dear Madam

DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 ("NEMA") IN RESPECT OF A CONTRAVENTION OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT, 2008 ("NEM:WA")

1. The Department's Pre-Directive issued on 13 April 2015 and your representations dated 15 May 2015, has reference.

2. Having considered your representations and the evidence before me, I, Dr Eshaam Palmer, in my capacity as Director: Environmental Law Enforcement, hereby issues Ms Geraldine Mettler in her capacity as Municipal Manager of the Stellenbosch 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 and section 16(1) of the NEM: WA.

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 3229, Franschoek was conducted by Environmental Management Inspectors from this Directorate on 27 January 2015 and 01 March 2018 and it was confirmed that large quantities of general waste (inert waste and builder's rubble) was disposed on the property without the requisite Waste Management Licence ("WML") which has caused significant pollution of the environment.



Aerial map: Location of alleged illegal activity.



Photo 1: The extent of the area where the illegal dumping has occurred on the property. Most of the waste heaps were overgrown with vegetation.



Photo 2: Disposal of inert waste to develop a sand berm which is located in close proximity to a residential area.



Photo 3: Disposal of inert waste to develop a sand berm which is adjacent to Le Roux Road.

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. 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 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, a waste impact report and a 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; and
 - 8.2.3 a method statement detailing rehabilitation methods with specific time-frames to remove the waste from the site and rehabilitate the impacted area to its original condition.
- 8.3 implement reasonable measures to either restrict or control access to the property so as to immediately prevent further illegal dumping and contamination or degradation of the environment in and around the property **within 14 (fourteen) calendar days**;
- 8.4 Notify the Department in writing **within 14 (fourteen) calendar days** once those measures have been implemented in order for a follow-up inspection to be conducted; and
- 8.5 Remove all the waste which has been illegally disposed on the site. The disposal of the waste must be carried out at a lawful waste disposal site, for which proof must be submitted.

9. If the above report and 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. Section 67(1) (a) of the NEM: WA provides that it is an offence to contravene a provision of section 16(1) (c) - (f).
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. 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.
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: 18/5/2018

Cc: Saliem Haider (Stellenbosch Municipality) Email: Saliem.Haider@stellenbosch.gov.za

Ayub Mohamed (CD: EG, PC&E)

Email: Ayub.Mohamed@westerncape.gov.za

Pieter Van Zyl (HOD)

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