



REFERENCE: 14/1/1/E1/7/2/4/0429/17

ENQUIRIES: Najah Ben Jeddou

VIA EMAIL

Mr R. Maseko

Email: RMaseko@metrorail.co.za

Metrorail Western Cape

P O Box 5446

CAPE TOWN

8000

DIRECTIVE

Dear Mr Maseko

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

1. The Department's Pre-Directive dated 15 September 2017 issued to Mr Deon Ellis on 15 September 2017, which was also re-issued to yourself on 11 November 2017 and 1 June 2018, has reference,
2. Having considered the evidence before me, I, Dr Eshaam Palmer, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr Raymond Maseko representing South African Railway Agency "PRASA" with a

Directive in terms of section 28(4) of the NEMA, as you are causing, have caused or may 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 pollution and/or degradation of the environment a joint site inspection was conducted at Erf 24165 situated between Maitland Railway Station and Tiger Brands Ltd (Jungle Oats Factory) at No. 1 Product Street Maitland, Cape Town by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement and officials from the City of Cape Town on 2 August 2017, 8 February and 11 June 2018 and it was confirmed that you have failed to take reasonable measures to prevent the unlawful storage and disposal of hazardous waste (i.e. asbestos) on the above- mentioned property, which may have significant impact on human health and the environment.

33°55'31.06"S and 18°29'19.83"E



Aerial Map: Location of illegal storage of hazardous waste (asbestos) at PRASA's old building.



Photo 1: View of the collapsed asbestos roof of PRASA's old building.



Photo 2: Asbestos left unattended.



Photo 3: Asbestos left unattended



Photo 4: Asbestos left unattended



Photo 5: closer view of asbestos left unattended.

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. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

7. You are hereby directed to:

- 7.1 immediately cease the activities described in paragraph 4 above, which are causing / have caused / may cause the above pollution and/or degradation;

- 7.2 submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Directive, a waste impact report and a rehabilitation plan and a method statement compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
- 7.2.1 assessment and evaluation of the impact of the pollution and/or degradation;
 - 7.2.2 identification of proposed remedial and/or mitigation measures;
 - 7.2.3 appoint a registered service provider to remove the asbestos from the property to a registered landfill site;
 - 7.2.4 submit safe disposal certificates to this Department once the contractor has disposed of the waste;
 - 7.2.5 inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution and/or degradation of the environment
 - 7.2.6 cease, modify or control any act, activity or process causing the pollution or degradation;
 - 7.2.7 contain or prevent the movement of pollutants or the causant of degradation;
 - 7.2.8 eliminate any source of the pollution or degradation; and or
 - 7.2.9 remedy the effects of the pollution or degradation.
8. If the above report and rehabilitation 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

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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

15. 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.

16. 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

17. 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.

18. 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: 29/6/2018

CC: (1) Donne Prinsloo (DEA)

Email: DPrinsloo@environment.gov.za

(2) Mr Linda Ndlela (City of Cape Town)

Email: Linda.Ndlela@capetown.gov.za

(3) Ms. Chandre Fredericks (Metrorail)

Email: cfredericks@prasa.com

(4) Henry Masimla (Metrorail)

Email: HMasimla@metrorail.co.za

(5) Deon Ellis (Metrorail)

Email: DELLIS@metrorail.co.za
