



REFERENCE: 14/1/1/E1/3/3/1/0561/19

ENQUIRIES: Grant Dyers

BY EMAIL

Head of Department

Email: Beth.Engelbrecht@westerncape.gov.za

Department of Health Western Cape

Provincial Government

4 Dorp Street

CAPE TOWN

8001

Attention: Dr Beth Engelbrecht

DIRECTIVE

Dear Madam

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

1. The site inspection and meeting held at Helderberg Hospital on 5 April 2019, in response to the unearthing of Health Care Risk Waste discovered on the hospital's premises, has reference.
2. Having considered the evidence before me, I, Achmad Bassier, Director: Environmental Law Enforcement (this Directorate), hereby issue Dr Beth Engelbrecht in your capacity as the Head of the provincial Department of Health a Directive in terms of section 28(4) of the NEMA, for the significant pollution of environment which is occurring at the Helderberg Hospital, Somerset West.
3. This Directive relates to non-compliance with section 28(1) of the NEMA.
4. A Pre-Directive has not been issued prior to this Directive as there is reason to believe that giving such notice will cause a delay resulting in significant and irreversible pollution and/or degradation.

Details of conduct constituting non-compliance

5. During an investigation into allegations of pollution of the environment, a site inspection was conducted by Environmental Management Inspectors from this Directorate on 5 April 2019, at Erf 2363, Helderberg Hospital, Somerset West, and it was confirmed that Health Care Risk Waste (HCRW) was unearthed and discovered during construction activities at the hospital on the abovementioned property.



Aerial Image 1: Location and coordinates of the alleged illegal activity (34° 4' 30.33" S; 18° 51' 27.41" E).



Photograph 1: Area fenced off by the hospital containing medical waste dumping.



Photograph 2: Medical waste has surfaced after excavating the area intended for constructing a parking-bay.



Photograph 3: Sharps container containing sharps/ syringes surfaced after excavation took place.



Photograph 4: Close-up view of the medical waste.

6. 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.
7. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.
8. 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.
9. Section 67(1) (a) of the NEM: WA provides that it is an offence to contravene a provision of section 16(1) (c) - (f).
10. **You are hereby directed to:**
- 10.1 Immediately cease all construction activities and cordon-off the affected site on which HCRW was unearthed in order to prevent any danger to staff and the public;
 - 10.2 Immediately ensure the presence of 24-hour security at the affect site in order to prevent unauthorised access to the area;
 - 10.3 Immediately remove all HCRW from the affected site to an authorised waste disposal facility or treatment plant, and make the necessary arrangements through the relevant procurement process to appoint a registered contractor to handle and remove the HCRW from the site;
 - 10.4 The HCRW must be disposed of at a registered facility that can accept such waste;
 - 10.5 Provide proof of disposal of waste as stipulated in paragraph 10.3 and 10.4 above, to the Director: Environmental Law Enforcement, at Achmad.Bassier@westerncape.gov.za.

10.6 Within **21 (twenty-one) calendar days** of receipt of this Directive submit a waste impact report to the Department compiled by a suitably qualified and experienced independent Environmental Assessment Practitioner which must include the following:

10.6.1 Investigate and assess the extent of the contamination of HCRW on the site; and

10.6.2 Identify proposed remedial measures should any contamination still exist on the site.

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. 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 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.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 8/04/2019

CC: (1) Leisl Pasquallie	(Helderberg Hospital)	Email: Leisl.Pasquallie@westerncape.gov.za
(2) Anita Theron	(Helderberg Hospital)	Email: Anita.Theron@westerncape.gov.za
(3) Stephanie Coetzee	(CoCT)	Email: Stephanie.Coetzee@capetown.gov.za
(4) Adam Thomas	(Dept. Health)	Email: Adam.Thomas@westerncape.gov.za
(5) Davie Louw	(Dept. Health)	Email: Davie.Louw@westerncape.gov.za
(6) Ayub Mohamed	(DEA&DP)	Email: Ayub.Mohamed@westerncape.gov.za
(7) Pieter van Zyl	(DEA&DP)	Email: Pieter.vanZyl@westerncape.gov.za
(8) Simon Botha	(DEA&DP)	Email: Simon.Botha@westerncape.gov.za
(9) Eddie Hanekom	(DEA&DP)	Email: Eddie.Hanekom@westerncape.gov.za
(10) Belinda Langenhoven	(DEA&DP)	Email: Belinda.Langenhoven@westerncape.gov.za
(11) Sharon Leo	(Dept. Health)	Email: Sharon.Leo@westerncape.gov.za
(12) Giovanni Perez	(Dept. Health)	Email: Giovanni.Perez@westerncape.gov.za

