

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 8407 / 2020P

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

APPLICANT

and



MSUNDUZI LOCAL MUNICIPALITY

FIRST RESPONDENT

**HEAD OF THE DEPARTMENT OF ECONOMIC
DEVELOPMENT, TOURISM AND
ENVIRONMENTAL AFFAIRS**

KWAZULU – NATAL PROVINCIAL GOVERNMENT

SECOND RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC DEVELOPMENT, TOURISM AND
ENVIRONMENTAL AFFAIRS, KWAZULU – NATAL
PROVINCIAL GOVERNMENT**

THIRD RESPONDENT

FILING NOTICE

**TO: THE REGISTRAR OF THE HIGH COURT
PIETERMARITZBURG**

AND TO: NDLOVU DE VILLIERS ATTORNEYS

APPLICANT'S ATTORNEYS

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AND TO: HEAD OF DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM

AND ENVIRONMENTAL AFFAIRS

SECOND RESPONDENT

270 JABU NDLOVU STREET

PIETERMARITZBURG

3201

AND TO: MEMBER OF EXECUTIVE COUNCIL FOR ECONOMIC

DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS;

KWAZULU-NATAL PROVINCIAL GOVERNMENT

THIRD RESPONDENT

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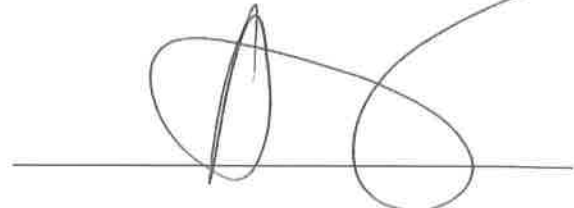
PIETERMARITZBURG

3201

SIRS,

KINDLY TAKE NOTICE that the First Respondent herein files evenly herewith its Answering Affidavit.

DATED at PIETERMARITZBURG on this 15th day of FEBRUARY 2021.



FIRST RESPONDENT'S ATTORNEYS

MATTHEW FRANCIS INC.

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(Ref: A Naidoo/sr/05M003086)

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ECONOMIC DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS,
KWAZULU-NATAL PROVINCIAL GOVERNMENT**

**MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS,
KWAZULU-NATAL PROVINCIAL GOVERNMENT**



APPLICANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

A

P

I, the undersigned,

MADODA PHUMULA KATHIDA

hereby declare under oath as follows, namely:

1.

I am a major male and am the Municipal Manager for the Msunduzi Municipality who is the first respondent in this application. I am duly authorised to depose to this affidavit and prosecute this matter on behalf of the first respondent.

2.

Save where otherwise stated, or where the context indicates the contrary, the facts contained in this affidavit are within my personal knowledge alternatively derived from documents under the first respondent's control. I confirm that all the facts contained herein are true and correct.

3.

The second and third Respondents are collectively referred to as the "*department*". The applicant has not specified any direct relief against the Department. I admit that they have an interest in this matter.

INTRODUCTION

4.

I have read the founding affidavit and the extensive annexures and respond to them as set out hereinbelow. I will structure this affidavit as follows:

- 4.1 First, I will deal with the circumstances under which this application was instituted and the occurrences on the last occasion it was in court;
- 4.2 Second, I will set out the principal grounds on which this application is opposed;
- 4.3 Third, I will deal with the relief sought and demonstrate why the judicial intervention and oversight which the applicant seeks is unwarranted and undesirable;
- 4.4 Fourth, I will set out matters relevant to the general context in which this application must be considered;
- 4.5 Fifth, I will set out the relevant background facts for the relevant period under consideration;
- 4.6 Sixth, I will deal with the contents of the founding affidavit, to the extent that it has already not been dealt with;

4.7 Seventh, I will deal with why the matter is not urgent and instituted based on an ill-conceived alternatively misconceived premise. I will also deal with the obligation to meaningfully comply with Rule 41A of the uniform rules of court;

4.8 Lastly, I will make concluding submissions.

CIRCUMSTANCES UNDER WHICH THE APPLICATION WAS INSTITUTED

5.

The applicant seeks declaratory orders in the form of the rule *nisi* set out in paragraphs 1 to 1.3.6 of the notice of motion. It also seeks structural interdicts for mandatory relief, as set out in paragraphs 2.1 to 2.9 of the notice of motion.

6.

The applicant instituted the matter on 26 November 2020 as an urgent application and set the matter down on 11 December 2020. On that date, the applicant did not seek any interim relief.

7.

At the hearing, the parties attempted to obtain an order issuing the rule *nisi*, without interim relief, set timeframes to deliver affidavits and adjourn the matter to a return date that would serve as a holding date. The court refused to issue the rule *nisi* indicating that it would give a false impression to the court dealing with the matter in the future, that he endorsed that the applicant made out a case for the rule *nisi* to be issued. Instead, the judge adjourned the matter *sine die* and directed the parties to deliver affidavits on dates stipulated by the parties to their convenience. I point out that the parties chose the timeframes on the practical considerations surrounding the matter. These timeframes were not constrained to cater for any urgency and were longer than the timeframes stipulated in the uniform rules of court. The first respondent also reserved its right to argue that the applicant did not make a case for urgency.

GROUNDS OF OPPOSITION

8.

I am advised that it may be useful to set out a synopsis of the main grounds of the first respondents' opposition to this application before expanding on them and responding to the founding affidavit. I submit that these grounds will demonstrate that the first respondent has an unassailable defense to the application. I am advised that

these grounds will be addressed more fully in the legal argument at this application's hearing.

FIRST GROUND: LACK OF URGENCY

9.

It is incumbent on the court to determine whether a proper case is made out for urgency and condone any non-compliance with the court's uniform rules. The applicant procured the final information which it relies on during or about September 2020. It does not offer any explanation of why it delayed until the end of November 2020 to institute the application on an urgent basis. The application ought to be dismissed on this ground alone.

10.

Compounding the applicant's non-compliance is that it failed to procure updated facts or failed to disclose material facts which transpired during the extensive delay. It failed to investigate or establish the immediate circumstances at the New England Landfill Site (hereinafter referred to as the "landfill") before instituting the application. The current circumstances demonstrate that the applicant's complaints have been superseded by the interventions implemented. These measures render urgent relief

unnecessary, and the applicant should not have instituted the matter as an urgent application or at all.

11.

The applicant relied on the justification of urgency to oppose the dispute's referral to mediation in terms of Rule 41A. I pause to point out that the applicant has brought the Rule 41A notice to the court's attention by filing same with the registrar and including it in the indexed court bundle. As a result, the applicant relinquished any privilege contemplated in uniform rule 41A(2)(b). As aforesaid, the applicant did not seek any urgent or interim relief. I submit that the matter is capable of mediation, and the first respondent will invite the applicant to agree to initiate the mediation process. This aspect will also be relevant to determining the costs of the application.

LACK OF ESTABLISHING A FACTUAL FOUNDATION FOR CONSTITUTIONAL COMPLAINT

12.

The first respondent submits that the applicant prosecutes the application on a misinterpretation of the constitutional obligations underpinning the relief it seeks. Alternatively, it has not made a case to prove that the first respondent breached the specific constitutional cause of action on which the application is premised.

13.

The applicant relies on an alleged violation of the rights enshrined in Section 24 of the Constitution.¹ It submits that the reasonable measures and other measures referred to in sub-section (b) extend to violation of the environmental laws including NEMA, the Waste Act, the Water Act, and the permits, licences and enforcement measures provided in the legislation.²

14.

In the circumstances of this case, the above rationale can only refer to Section 24(b)(ii) which marries the right to reasonable legislative and other measures to preventing pollution and ecological degradation.

15.

We submit that read in the proper context, non-compliance with conditions in a permit or licence is not an automatic violation of the rights in Section 24, unless the facts

¹ Paragraph 155 of the Founding Affidavit

² Paragraphs 156, 157 and 158 of the Founding Affidavit

prove that the violation caused unacceptable levels of pollution and ecological degradation.

16.

The wording of the Section does not link sub-section (a) directly to the right "*to have the environment protected....through reasonable legislative and other measures...*" in sub-section (b).

17.

On the broadest interpretation, any person claiming redress on the alleged violation of their Constitutional rights in subsection (a) is required to prove the harm to their health or wellbeing and that it results from the violation of a reciprocal obligation prescribed by the environmental laws.

18.

Unacceptable levels of pollution which result in the harm or degradation and the nature of what is considered harmful, are scientific and possibly medical matters that require intrinsic proof.

19.

The applicant has not established any scientific findings made by any suitably qualified experts that any alleged non-compliances has caused the harm

contemplated or explained how the relief it seeks is necessary to prevent apprehensible harm in the future.

20.

In the premises, we submit that the applicant has failed to establish any factual causation to the Constitutional cause of action that it pursues.

INCOMPETENCE OF THE RELIEF SOUGHT

21.

The declaratory relief that the applicant seeks requests the court to declare that the first respondent has contravened particular paragraphs of the revised compliance notice in breach of the Variation Waste Management License, which the second Respondent issued the applicant on or about 3 July 2017.

22.

The applicant also seeks several further declarations that the first respondent has breached particular sections of the Waste Act; NEMA; the Water Act and Section 24 of the Constitution and its obligations in terms of International Law.

23.

The structural interdict: -

- 23.1. Directs the first respondent to deliver an action plan (which was part of the second and third Respondents demand in the revised compliance notice) to the court;
- 23.2. Prescribes what the action plan must include;
- 23.3. Provides for all the parties to the application and any other interested parties to be entitled to comment on the action plan within one month of the date on which the plan is filed with the court;
- 23.4. Directs the first respondent to provide monthly reports indicating its progress with the implementation of the action plan, after its approval by the second and third Respondents;
- 23.5. Authorises all the parties to the application and any other interested parties to comment on the monthly reports within thirty (30) days after the date on which they are filed;

- 23.6. Provides for the court, on its own accord, to make any further directions or orders that it deems fit;
- 23.7. Stipulates that after the above is done, the matter may be set down for the consideration and determination of the reports, commentary and replies (I point out that the applicant does not specify what determination it requires the above Honourable Court to make at that stage);
- 23.8. Directs the first respondent to discharge its duty of care and remediation of environmental damage as required by the National Environmental management act 107 of 1998; and
- 23.9. Directs the first respondent to file a report, under oath, with the court, on the first respondent's progress regarding discharging its duty of care and remediation in terms of the National Environmental Management Act.

24.

The relief sought in the notice of motion is premised on the first respondent's alleged failure to perform its constitutional and statutory obligations. At the outset, I respectfully submit that the relief which the applicant seeks lacks any factual basis and is misconceived in law. I submit the following regarding the relief:

- 24.1. The declaratory relief is incompetent and serves no lawful purpose because it serves only to duplicate or reinforce existing legislative sanctions; it has no bearing on the structural interdict. Further that it is sought in a vacuum, without any justification or consequence.
- 24.2. The structural interdicts unlawfully usurp the Constitutional and Legislative Authority vested in the second and third respondents;
- 24.3. That the structural interdict offends against the separation of powers principle because the duty to provide the action plan and comply with the other reporting obligations in the notice of motion is exclusively the second and third respondents' statutory functions;
- 24.4. That the applicant has failed to make out a case to justify why the above Honourable Court ought to assume the second and third respondent's Constitutional and Legislative powers and that the allegations contained in the founding affidavit are in direct contrast with this proposition.

25.

The applicant does not have the right to assume the second and third respondents' statutory functions. It is not permissible for the court to be substituted in place of the second and third respondents to fulfil obligations and functions which it is already



doing. Neither the applicant nor the court, with respect, has the power to perform the function proposed in paragraph 2.7 of the notice of motion, more especially when there is no clarity whatsoever on what determination that the presiding Judge is required to make.

26.

It appears that the relief sought by the applicant is a precursory fact-finding process to establish whether there is sufficient cause for any further relief that it may want to seek from the court at a later stage. Without derogating from the contention that this is not permissible, I submit that the statutory obligations and processes stipulated in the legislation sufficiently enable the Department to regulate compliance with the legislation and address any non-compliance with the legislation and to impose sanctions for any non-compliance.

27.

There are also mechanisms available in terms of legislation that will allow any interested party access to all the relevant information they may need to enforce their rights. The court ought not to be unduly burdened in these circumstances by endorsing a sanction already imposed by law or called upon to facilitate or monitor a process that the Department is fulfilling. The applicant's case is not that the Department has failed to fulfil its legislative function, nor has it alleged any facts to

establish this as fact. The factual and legal premise upon which the relief is sought is therefore flawed.

28.

I submit that the applicant's Legislative powers, as derived in terms of Chapter 9 of the Constitution, does not afford it the statutory power to assume the statutory functions of the second and third Respondents, in circumstances where it does not prove that the second and third Respondents have not fulfilled these functions.

29.

The high watermark of the applicant's case, in this regard, is that the second and third respondents are being hamstrung by their obligations to comply with the Intergovernmental Relations Framework Act 13 of 2005 which is promulgated in terms of section 41(3) of the Constitution. The applicant's contentions display a blatant disregard and disrespect for legislation that is well entrenched in our legal system and has a significant purpose.

30.

The second and third respondents have not contended that they have been hamstrung by their obligation to engage with the first respondent as provided in the Intergovernmental Frameworks Act 13 of 2005. The second and third respondents have indicated that after attempts to deal with the first respondent through the

intergovernmental dispute process mechanisms did not yield the desired results, it resorted to issuing a pre-compliance and non-compliance notice and instituted criminal charges regarding the non-compliances. I pause to mention that after the criminal case was opened, there has been substantial redress at the New England Landfill Site and the meaningful engagement between the Department and the first respondent, resulting in substantial compliance. I will address the course of action that the first respondent agreed to with the other respondents as a practical way forward to achieve the long list of non-compliances contained in the revised compliance notice, hereinbelow. The second and third respondents have acknowledged that there has been substantial redress and are working well with the New England Landfill Site officials to formulate a realistic action plan to ensure full compliance.

31.

In any event, the prevailing legislation empowers the second and third respondents to take steps in the event of any non-compliance with the agreed action plan or its implementation. It is not within the purview of the applicant's legislative powers or the court's judicial powers to provide judicial oversight over the second and third respondents' performance regarding providing support, advice and monitoring of the remedial action carried out by the first respondent. The applicant has failed to demonstrate that the second and third respondents have refused or are failed to perform their statutory functions. Consequently, even if it is found that the type of relief

is competent in law, I submit that there is no factual basis or justification for granting the remedies sought the notice of motion.

32.

I submit further that there is no justifiable rationale why the duplication of this function would be appropriate or what better result will be achieved by the court or the applicant playing a roll of watchdog over the second and third respondents. Not only is the relief not permissible on our courts' determination of declaratory relief and a structural interdict but it is also impractical and ought not to be countenanced because it results in a waste of Government resources and an overreach between the various sections of Government.

33.

One must bear in mind that the first respondent formulates the remedial action in consultation with the Department. The Department endorses this remedial plan of action, and the sanctions for non-compliance with the remedial action is the Department's responsibility.

34.

Regarding the historical transgressions, I submit that a criminal investigation is already underway. The relief sought in the notice of motion, particularly the court intervention, will not serve any purpose and more importantly should not needlessly

run parallel to the process stipulated in the legislation for any non-compliance. I submit that the applicant's powers as a Chapter 9 Institution, does not empower it to bypass the legal and legislative requirements, that an authorised functionary is obliged to prescribe to, under the auspices that such conduct has a bearing on human rights. Most if not all, transgressions of the law or non-compliance with legislative obligations are rationally connected to Constitutional Rights. It could never have been contemplated that the applicant has the power to supersede all other judicial, executive and legislative arms of government or assume their responsibilities.

35.

The applicant purports to be coming to the second and third respondents rescue because they are hamstrung by Legislative obligations to interact with the first respondent and resolve the dispute amicably. I pause to mention that the legislation does not prohibit litigation or sanctioning between government departments but merely serves as a precursor to avoid needless and wasteful legal action between government departments. The second and third respondents are consequently not prohibited from approaching the court or taking any other permissible action that it is empowered by legislation to do if it believed that circumstances warranted that.

36.

The Department indicated that it did not approach the court because the first respondent was under administration. It was not because the obligations constrained

it in terms of the intergovernmental dispute legislation. I digress to point out that there has been significant successes and progress with formulating and implementing the remedial action plan since the second and third respondents contemplated approaching the court for relief.

37.

The flawed conceptual and factual premise upon which the applicant instituted this application was exacerbated by its failure to procure updated current information relating to the landfill status, and the updated process agreed to between the first respondent and the Department as we advanced. I will expand on this ground after setting out further facts that will give context and perspective to the grounds of opposition.

CONTEXT IN WHICH THE APPLICATION MUST BE DETERMINED

38.

The applicant deposed to the founding affidavit on 20 November 2020 and issued the application on 26 November 2020. I will demonstrate that the applicant did not procure alternatively has not disclosed any of the material ongoing events between the Respondents, from September to late November 2020. These events demonstrated significant progress regarding the Landfill site's compliance. I will also

point out that the applicant has not disclosed or had due regard to the first respondent's remedial interventions since the final revised non-compliance notice was issued during March 2020.

39.

The first respondent accepts that there was a substantial deterioration of the Landfill site and that there has been historical non-compliance with its operations. I will deal with the Landfill site's historical operation when responding to the founding affidavit. However, I submit that the recent events are of greater significance to determine this application. I will demonstrate significant improvements and that the first respondent is committed to improving the Landfill site's operations and ensuring strict compliance with the legal requirements. Unfortunately, the applicant elected to institute this application without appraising itself with the present circumstances. Had it done so, it would have discovered that the engagement between the first respondent and the Department has reached a synergy that is fast-tracking the path to achieving the desired compliance and resolving historical problems.

MATERIAL BACKGROUND

40.

Before dealing with the current material events that transpired from February 2020 to date, I must emphasise that the applicant was obliged to ensure that it was aware of

the correct factual position before instituting the urgent application on 26 November 2020. Many of the allegations supporting this application have been overtaken by the recent events. The Department has expressly acknowledged the corporation and improvement concerning the first respondent's management of the Landfill site and its practical and realistic efforts and proposals that are in place to correct the non-compliances. It will be argued that this is the intended purpose of a compliance notice.

41.

I digress to mention that the lengthy-time period which the applicant has referred to in its founding affidavit regarding the history of the Landfill site spans over two decades and consequently deals with matters which arose during the governance of several administrative structures, officials, and during numerous periods of administration in terms of Section 139(1)(b) of the Constitution. I was appointed as the Municipal Manager during April 2020. I confidently submit that there has been tangible improvement and compliance at the Landfill Site since my appointment. I turn to deal with the events from April 2020, which are material to the application's urgency and the appropriateness of the applicant's relief.

42.

The perpetuating deterioration at the Landfill site was identified as one of the first respondent's administrative responsibilities which required immediate and urgent intervention. In April 2020, a one Mr Wilson Mhlongo was appointed as permanent

Senior Management of Waste Management. I pause to mention that, to the best of my knowledge and belief, there has not been a permanent senior manager allocated to this portfolio for several years. From my investigations, it became apparent that there were acting senior managers in the Waste Management Portfolio who frequently changed over the past several years. From my analysis of the historical difficulties that the Landfill site experienced, one of the contributing factors was the lack of continuity regarding the initiatives and efforts introduced by the past administrations to rectify the problem.

43.

I digress to point out that Mr Mhlongo, like myself, was appointed during the first national lockdown that was implemented due to the Covid-19 pandemic.

44.

Mr Mhlongo was required to assess the site's status regarding the various non-compliance notices and become familiar with the general operations and related administrative matters applicable to site operations. He immediately commenced this process. Without delay and on or about 29 April 2020 I, together with Mr Mhlongo and other relevant officials, met with the officials of the Department, we discussed the outstanding requirements of the revised compliance notice issued on 18 February 2020, particularly concerning the outstanding technical plans and reports that needed to have been submitted to the department, and the relevant dates that they were due

to be submitted on. Later that day, the Department officials forwarded a breakdown of the outstanding requirements for further engagement.

45.

We identified various previous undertakings by the erstwhile officials at the meeting on 29 April 2020. They were required to be completed imminently by previously agreed deadlines. This could not be practically achieved as some of these processes had not been embarked upon at all. We undertook nonetheless to revert to them and commence all required interventions without undue delay. We discussed a process plan for hiring plant and covering material, which was already overdue. We requested that the Department afford us an extension to provide the process plan for hiring plant and equipment and confirm cover material in due course. We were aware that some processes had already been set in motion to obtain the approvals.

46.

On or about 5 May 2020, Mr Mhlongo forwarded the first weekly report, during his tenure, to the Department and advised the Department that the Yellow Plant Procurement Plan as well as the Yellow Plant Hiring Plan had already been developed and is currently serving before the City Manager's office for its consideration and approval. On the following day, the Department acknowledged receipt of the weekly report and the first respondent's intention to submit the Landfill plant's procurement plans.

47.

On or about 12 May 2020, the first respondent delivered the second weekly report to the Department. The Department acknowledged receipt of the report and advised that its Head of Pollution and Waste component in the district had returned to work after maternity leave and the lockdown. They requested that a site inspection be conducted at 14h00 on 13 May 2020, to bring her up to speed with the current situation at the Landfill site and confirm and verify current actions addressing the non-compliance issues. Notwithstanding that we were still in level 5 lockdown, all the necessary officials availed themselves, and this inspection took place at the requested time.

48.

I digress to point out that until this stage, all the engagements between the newly appointed officials and the Department were mainly based on the written documentation which was available and that this meeting constituted the first physical verification of the numerous non-compliances which were contained in the compliance notice. It was a fruitful exercise that allowed the Department and the first respondent representatives to discuss and observe the practical elements required to implement remedial action at the site.

49.

I do not intend on, nor am I in a position to, relay verbatim all the interactions between the Department and the first respondent's officials but can state with certainty that

there were ongoing communications on the progress with the site. Mr Mhlongo confirms that every weekly report was forwarded to the Department, since his first engagement, without fail. He confirms that the first respondent has not received a complaint or formal warning from the Department regarding the weekly reports since he was appointed. Mr Mhlongo advises that many of the procurement and process plans, which had been partially worked on, needed to be finalised and, as part of this process, the first respondent needed to identify and secure a specific budget before committing itself to timeframes for compliance as it was already close to the financial year-end which is at the end of June every year. Provisions for these plans had to be made in the subsequent year's budget. He advises further that this was relayed to the Department when discussing these matters at the various meetings and in their interaction.

50.

Mr Mhlongo advises that at the site meeting which took place on 13 May 2020, and the discussions pursuant thereto, it became apparent that some of the suggested times in the revised compliance notice were unachievable and, as per the current circumstances at the site, were not realistic timeframes to ensure proper compliance. He further advises that the Department indicated that any alteration could only be done through a request for variation of the revised compliance notice.

51.

The first respondent's officials worked feverishly during June 2020 to secure allocations and reassignments of funding for the New England Landfill Site's envisaged work before the end of the financial year. They successfully obtained the allocation of specific funding.

52.

On 17 June 2020, the first respondent forwarded a variation request to the department's revised compliance notice. The variation related primarily to the timeframes to undertake specific actions in the initial revised compliance notice.

53.

I pause to point out that this was the third variation requested by the first respondent. It constituted the first variation submitted since Mr Mhlongo and the first respondent's new administration commenced duties during April 2020. More importantly, the first variation considered the meaningful engagement between the Department's officials and the first respondent's officials and the weekly reports and inspections. I also point out that the first two requests for a variation of the revised compliance notice which were issued on 5 March 2020 and 23 March 2020 related primarily to variations in respect of the first respondent's inability to meet the time frames for variation actions due to limitations being experienced because of the COVID-19 lockdown. The first respondent requested extended time frames for, *inter alia*, paragraphs 4.1.3, 4.1.8,



4.1.9, 4.1.14, 4.1.15 and 4.1.16 of the revised compliance notice as varied. The extended dates which were proposed were 31 July (4.1.3) 2020, August 2020 (4.1.8), 15 December 2020 (4.1.9), 30 June 2021 (4.1.15), 30 June 2021 and 15 December 2021 (4.1.15) respectively.

54.

On or about 30 June 2020 the Department forwarded the first respondent an email requesting a meeting to deal with some disparities regarding the request for a variation. The first respondent subsequently responded and on 6 July 2020, it forwarded the relevant parties a Microsoft Teams link for a proposed meeting to be held on 9 July 2020. This meeting was convened on 9 July 2020, and the first respondent and the Departments officials attended.

55.

At the meeting on 9 July 2020, the representatives discussed the time frames suggested in the request for a variation and the circumstances and reasons why it was envisaged that these time frames would be sufficient for compliance. Mr Mhlongo recalls that the discussion revolved around what outstanding processes were required to be completed for compliance and how this would be achieved in the extended period.

56.

On or about 11 August 2020, the first respondent received a response to the Department's variation request. I pause to mention that the Department indicated that it was initially sent on 7 August 2020 however it was returned to sender as not being delivered. I attach a copy of the Department's response hereto marked Annexure "MK1". I point out the following regarding the response:

56.1. In paragraph 3 of the response, the Department indicated that the request to vary the time frames was submitted after the time frames in the revised compliance notice had already expired for most of the actions required. I point out that paragraphs 4.1.3 and 4.1.8 had already been complied with before the first respondent's receipt of the response.

56.2. The Department indicated that they had obtained legal advice that it could not extend or vary the time frames provided in the compliance notice if the request was not submitted before the dates specified in the compliance notice for the specific actions to have been undertaken. I reiterate that the previous extensions and the various compliance dates, save for the action contemplated in 4.1.17. I point out that many of the time frames for the actions had already expired before my tenure and before Mr Mhlongo was appointed as a Senior Manager. I have set out hereinabove the engagements, which resulted in the third variation request, pursuant to our engagement, as the new administration.



56.3. The Department refused the request to approve the variation to the revised compliance notice as requested, apart from the action specified in paragraph 4.1.17 of the revised compliance notice which related to the submission of the decommissioning and rehabilitation plan for the Landfill site within six months of the compliance notice which was due on 18 August 2020.

56.4. It indicated that it required an urgent response whether the first respondent could indeed complete the action by the proposed date of 31 January 2021.

57.

The response of 7 August 2020 was canvassed among the first respondent's officials. A decision was taken to revert to the Legal Department because it referred to a legal representative's advice based on a legal interpretation of the legislation.

58.

The Department was busy determining the correctness of the response and any further steps available to it, when, on 17 August 2020, the Department forwarded a further comprehensive response to the response received 11 August 2020. The response appears as annexure "JBS6" to the founding affidavit. The response of 17 August 2020 specifies the obligations in respect of which an extension was requested.



It also refers to the sections upon which the Department relied upon and listed the sanctions which the legislation provided for non-compliance with a compliance notice.

59.

On or about 27 August 2020, the first respondent delivered an objection against the revised compliance notice issued in terms of Section 31L of the National Environmental Management Act. The objection was lodged in terms of Section 31M of the NEMA. I attach a copy of the notice of objection hereto marked "**MK2**". The contents of annexure "**MK2**", particularly the objection grounds, are set out in this notice and are self-explanatory.

60.

On or about 16 September 2020, the department forwarded correspondence to the first respondent requesting a virtual meeting to discuss the actions which had not been addressed within the time frames specified within the revised compliance notice, and the Department requested responses in respect of the actions being taken to address these non-compliances. The Department listed the required actions and further requested verification of what was complied with, I attach a copy of the email hereto marked "**MK3**".

61.

On 16 September 2020, the first respondent responded by forwarding the Department a Microsoft Teams meeting invitation for 21 September 2020 at 15h00.

62.

On 16 September 2020, the Department forwarded an email confirming the invitation and advising on the meeting agenda. This included progress towards achieving compliance with the outstanding requirements of the revised compliance notice and the establishment of time frames within which these outstanding issues are to be addressed; and the management measures for the ongoing management of the Landfill site in short to medium term; and the deterioration and management of the Link Road Garden Refuse site.

63.

I pause to mention that the notice of intention to institute legal proceedings attached to the founding affidavit as annexure "**JBS28**" was received on 27 August 2020, before the request for a meeting and the correspondence. The first respondent's response to the letter of demand attached to the founding affidavit marked annexure "**JBS29**" also predated the sequence of emails and was sent on 1 September 2020.

64.

I attach a copy of an email that sets out the meeting agenda hereto marked Annexure "MK4". On 21 September 2020, the Teams meeting was convened, and the officials from the Department and the first respondent attended. At this meeting, the items on the agenda were discussed. The first respondent provided the Department with a synopsis of the progress towards achieving compliance with the special requirements and estimated time frames within which these outstanding issues could be addressed. The ongoing management of the Landfill site was discussed. Matters such as the yellow plant's procurement process and a specialist/engineer appointment as envisaged by paragraphs 4.1.14 and 4.1.15 of the revised compliance notice were also discussed. Mr Mhlongo advised the Department that the tender evaluation process was still underway in respect of the specialist. The advertisements in respect of the plan had been finalised and published.

65.

After that, there was little interaction except for a meeting and correspondence relating to the previous Section 30 incident report about the fire on 20 July 2020. I do not wish to duplicate matters and will deal with the fire incident comprehensively when dealing with the allegations and attachments in the founding affidavit that refer to this incident.

On or about 6 November 2020, the second respondent delivered a decision on the first respondent's objection regarding the Department's refusal to vary the revised compliance notice received on 17 June 2020. I attach a copy of the objection decision hereto marked Annexure "MK5". The second respondent deals with the background of the matter, the grounds of objection, the first respondent's submissions and the second Respondent's response to the objection and the legal considerations. He further sets out his assessment of the grounds of appeal and his final decision in paragraph 8. He dismissed the objection and confirmed the revised compliance notice issued on 18 February 2020. He qualified this dismissal by providing that the revised compliance notice was amended to allow the followings, namely:

41.1 that the first respondent will submit to his office by no later than 30 November 2020, a proposal setting out dates for compliance with the remaining instructions in the revised compliance notice;

41.2 when developing the proposal, he required adherence to the following dates, which must also be recorded in the proposal, namely:

41.3 the action plan referred to in paragraph 4.1.16 shall be submitted by no later than 15 December 2020;

41.4 the closure plan referred to in paragraph 4.1.18 of the revised compliance notice shall be submitted by no later than 30 June 2021; and

41.5 the Landfill Monitoring Committee contemplated in paragraph 5.1 of the revised compliance notice shall be constituted and their first meeting convened by no later than 15 December 2020.

67.

The first respondent duly complied and forwarded the proposal with the action plan as directed by the third Respondent. I attach copies of same hereto marked annexures "**MK6**" and "**MK7**" respectfully.

68.

I point out that annexure "**MK6**" contains the November weekly report and a proposal table with the corresponding periods for compliance. The proposal portion appears from pages 4 – 8 of the document. I point out that there was substantial compliance, and most of the actions had already been completed.



69.

We recorded the outstanding actions relating to paragraphs 4.1.15, 4.1.16, 4.1.17 and 4.1.18 of the revised action plan on page eight of the letter. We listed the corresponding dates for compliance, as requested by the third respondent.

70.

I digress to mention that the tender process in paragraph 4.1.15, had already commenced and concluded. The service providers who submitted bids for the tender were all non-responsive which necessitated that the tender be readvertised. This was the only reason that an extension was sought until 30 June 2021. The re-advertisement for the tender has already been published and is presently underway.

71.

Importantly, I am advised that the suitably qualified specialist/engineer's appointment is a necessary action required for the first respondent to comply with all the outstanding non-compliances. I attach a copy of the advert demonstrating the scope of works it covers hereto marked Annexure "MK7".

72.

Consequently, the first respondent has substantial compliance and considerable financial input to comply with the initial list of non-compliances. It had already made significant efforts and initiated the required actions to achieve its final compliance.

73.

I attach hereto the action plan which the first respondent forwarded to the third Respondent according to his decision on the objection, marked annexure "MK8". I point out that pursuant to our engagement with the first respondent, we had agreed that they would consider further engagements before any periods were accepted once this action plan was received.

74.

On or about 5 January 2021, the Department's officials forwarded an email to the first respondent regarding the action plan. They indicated that they wished to conduct an inspection at the Landfill site and have a brief meeting with the first respondent's representatives to discuss aspects of the plan and associated time frames related thereto. They proposed that it be convened on Friday 8 January 2021 at 10h00. I attach a copy of the email market hereto "MK9".

75.

The inspection took place on 8 January 2021, and the meeting took place thereafter. The representatives discussed the proposed dates and their suitability and further whether they could realistically be implemented within that time frame to avoid further unnecessary extensions as has occurred in the past. The Department's

representatives also advised that they believed that the action plan should incorporate more detail and suggested that it may be useful to include a column containing estimated costs to be later used as a reference point regarding the projects' funding.

76.

The first respondent submitted the amended action plan on 5 February 2021. I attach a copy of the action plan that was amended after the Department hereto marked Annexure "**MK10**".

77.

As part of the detail discussed at the previous meeting, the first respondent updated the action plan to include and adequately describe the situation, particularly regarding the partially met actions. In addition to providing the amounts, the first respondent updated the descriptions regarding the past and proposed actions. The first respondent also included a brief description of the interim measures that have been put in place as partial compliance until it achieves full compliance on the specified dates.

78.

Mr Ian Felton acknowledged receipt of Annexure "**MK10**" on 10 February 2021 by email. He indicated to Mr Mhlongo that the Department received the draft action plan submitted in fulfilment of paragraph 4.1.16 of the revised compliance notice. He also

indicated that the Department would review the plan submitted and revert in respect of any outstanding issues and requirements to be met for the Department to accept the plan.

79.

I digress to mention that the annexure further demonstrates the significant improvement and progress towards full compliance, which was made, particularly from April 2020. It also demonstrates that the applicant had prematurely approached the court in circumstances where the information before it was outdated and surpassed by engagements and interventions authorised by the second and third respondents and implemented by the first respondent. With the utmost respect, we submit that it was nothing less than irresponsible of the applicant to have resorted to such drastic measures without fully appraising itself of the current circumstances present immediately before it launched its "urgent" application.

80.

I point out the following in respect of annexure **"MK10"**:

80.1. The first three items numbered 5.1.5, 5.1.6 and 5.1.7 relate to notifications and advertisements regarding the license. The periods for full compliance were discussed with the first respondent at our meeting in January 2021. As aforementioned, we await their response on the document, which was amended pursuant to those discussions.

- 80.2. I point out that in respect of 5.3.7, the first respondent's license makes provision for waste reclaiming. One will note that the action to address this regulation and the previous partial non-compliance by the first respondent entails enhancing the site security and restricting the waste reclaiming area identified for waste reclaiming. I point out that security has already drastically enhanced at the Landfill site and an area where recycling has already been identified.
- 80.3. The action date proposed to complete constructing a concrete floor and fencing off the reclaiming area is 30 May 2021.
- 80.4. The matter of waste reclaiming is mostly a social issue being dealt with on a National Level. Various policies and recommendations are constantly evolving according to the negotiations between Waste Pickers and the National Government.
- 80.5. I point out that notwithstanding that the first respondent's conditions of license authorise it to allow waste reclaiming on-site, the first respondent is not obliged in terms of any prevailing law or legislation to allow Waste Picker to attend at the Landfill. The first respondent can take more drastic steps through lawful channels to remove the Waste Pickers from the site until an area is built for them, alternatively prohibit their entrance into the site entirely. However, the ongoing social problem and engagement and the powers that be and the

Waste Pickers' representative constrains the first respondent to restrict but not wholly prohibit Waste Pickers access to the site on National Directives.

- 80.6. I understand that the protagonist who postulates that Waste Pickers have a right to reclaim waste from a Landfill site do so primarily because Waste Pickers are indigenous persons who have no other means to secure an income.
- 80.7. On that backdrop, I submit that the first respondent has made every effort to find a middle ground that promotes the Waste Pickers' safety and the Landfill integrity until the social problem is resolved by legislation.
- 80.8. I pause to mention that Waste Pickers' attendance at the site has been attributed to many of the other non-compliances and the Section 30 incidents referred to in the founding affidavit. I will deal with these aspects at the appropriate stage hereunder. However, it suffices to state that this is the only reason we have indicated that the non-compliance is 'partially met' and why it has not been fully resolved.
- 80.9. Concerning Section 5.3.9. this is an ongoing requirement on the Landfill site. It encompasses compacting the on-site waste daily and procuring soil or other approved materials referred to as covering materials.

80.10. When Mr Mhlongo was appointed as the Senior Manager, and after his initial engagements with the Department, it was apparent that this was an aspect which needed urgent attention. He established that a procurement process had already been set in motion to procure the covering material and immediately set out to fast track the same within the Supply Management Policy's prescripts.

80.11. The weekly reports provided to the Department demonstrate that from approximately June 2020, covering materials were procured. The frequent covering was done to the best of the first respondent's ability considering the available funding. We have also made provision for covering materials to be sourced from the existing Municipal Infrastructure Projects where excavation and construction are ongoing. I attach hereto marked annexures "**MK11.1 – MK11.5**", photographs of the Landfill site taken during or about the end of October 2020.

80.12. Photograph "**MK11.1**" depicts the waste compacted on the upper operational part of the Landfill site. The tipper truck depicted on the left is depositing cover material. The front-end loader is the yellow plant depicted on the right and spreads the cover material over the compacted waste.

80.13. Photographs "MK11.2" and "MK11.3" depict the cover material used to cover the compacted waste.

80.14. Photographs "MK11.4" and "MK11.5" depict the Landfill compacter compacting the waste on cell three of the upper operational level. The photographs demonstrate the first respondent's employees in the process of covering the compacted waste on the site.

80.15. I digress to mention that during or about November 2020, severe rains impeded access to the elevated portions of the Landfill, which is the main waste dumping area. We were forced out of necessity to collect waste on the lower level for a while whilst the access road was being repaired. I reiterate that the waste on the higher level remained covered with appropriate cover materials. There was no need to apply further covering material as no compact waste was being dumped on the higher level during this time. As soon as the access road was, we began relocating all the waste from the lower temporary level to the operational area. We are pleased to advise that the transitional area flagged as a non-compliance is now free of permanent waste outside the transfer station.

80.16. I attach photographs hereto marked Annexure "MK12". They depict the refurbishment of the access road leading from the lower side to the upper

operational level. There are five photographs which I have labelled photo 1 to photo 5 respectively for ease of reference. The photographs were taken during January 2021 after the engagement between the first respondent and the Department and, most importantly, after the Department's inspection. The improvements depicted were in line with the proposed action plan and the warning letter served on the first respondent on 11 December 2020. I point out the following about the photographs, namely:

80.16.1. Photo 1 depicts the refurbish access road, which leads from the transfer station on the lower level of the Landfill to the upper operational level where waste is finally disposed of;

80.16.2. Photo 2 depicts the work in progress regarding the transfer of waste from the transfer station, which accumulated whilst we experience heavy rains to the upper operational level;

80.16.3. Photo 3 depicts the transfer station after the waste had been cleared;

80.16.4. Photo 4 is another photograph from a different perspective depicting the non-operational area and the transfer area after the operation was conducted and the roads refurbished;



80.16.5. Photo 5 depicts the transfer station, restricted by the concrete fence on the left of the photograph. It used to temporarily accommodate waste until it was transported to the upper operational level. It also confirms that the non-operational area outside of the transfer station is presently cleared of waste.

80.17. The item dealing with Section 5.3.12 relates to a non-compliance of failing to only accept waste on the site's active working area between 7 am and 4 pm during weekdays and between 7 am and 3 pm on Saturdays. The non-compliance related to a period before Mr Mhlongo's tenure. There has been compliance with this section from or about April 2020. I pause to mention that the section and time limitations apply to waste dumped on the operational area. Only the waste collected during the City's regular cleaning is accepted outside the times stipulated in the section. It is dumped at the transitional area until it is transferred to the operational area.

80.18. In respect of Section 5.3.14, I submit that there is ongoing compliance. The Landfill site is fully fenced with an installed lockable gate, legible notice board written in isiZulu and English, which stipulates the operation hours, contains the contact and emergency details, stipulates the type of waste allowed, and the tariffs. There are also appropriate warning signs displayed at the entrance on the notice board. Admittedly, the action in respect of this section is ongoing

because there are breaches of the fence and gaps which arise from such breaches from time to time which require repairs.

80.19. In respect of Section 5.3.15, I am advised that existing signs comply with this requirement. However, additional signs are required as the existing signage is insufficient. The first respondent will procure these signs upon approval and agreement by the Department of the action plan and has proposed a reasonable timeframe for doing so.

80.20. In respect of Section 5.3.17, I have dealt with the ongoing procurement of the cover materials and where this was seen to be insufficient additional materials are being sourced to cover all operational areas.

80.21. With regards to Section 5.3.18, I point out that additional signage will be put up. About security, I am advised that a private security service provider has already been appointed and the security has been beefed up significantly, which demonstrates full compliance with this component of the action.

80.22. With regards to Section 5.3.19, I point out that the first respondent has measures in place. We submit that the timeframe is a reasonable one. However, we point out that the present measures deployed have significantly

reduced any waste blown to any non-operational area and outside the Landfill site itself. Any waste that escapes the present measures is promptly removed.

80.23. I point out in respect of Section 5.3.21 that although it indicates that there has not been compliance, the descriptions demonstrate partial compliance. The first respondent intends to use vegetative propagation instead of planting seedlings to benefit from the action immediately. I also point out that there are existing plants and trees which are provided partial cover.

80.24. In respect of Section 5.3.22, I submit that this is an extensive exercise dependent on negotiation. This falls under the ambit of the Economic Development Planning Division of the first respondent, who will be engaged to fulfil this action. I point out that this provision aims to prevent private owners from land encroaching on the Landfill buffer zone. I also point out that this process seeks to acquire adjacent land developed in the future. However, any current developments fall within the ambit of the Department's jurisdiction in respect of the development. No further developments will be allowed even if the adjacent landowners do not negotiate or sell the properties. Therefore, at present, the process of negotiating with adjacent landowners and entering into written agreements and registering servitudes is not causing a hazards situation or immediately detrimental situation to the operation of the Landfill or the community at large. It can only cause harm if the community encroaches

on the existing buffer zone, and if they do so without approval (which will not be granted), this will be unlawful. There are mechanisms in the Town Planning and Building Regulations to prohibit such conduct.

80.25. Regarding Section 5.3.26, I point out that the first step to solving this difficulty was clearing and upgrading the access roads. We have already demonstrated by referring to photographs that the access roads have been significantly upgraded and consequently submit that the process of complying fully with the requirements of this section have been commenced with and are underway. There are significant design works which accompany further work. The appointment of the service provider required to undertake these tasks is subject to the Supply Chain Management Policies. I have already referred to the procurement process, which resulted in non-responsive bidders and have attached the advertisement Annexure "MK7" above.

80.26. In respect of Section 5.3.33, there is the subsurface infrastructure which drains the leachate at present. Admittedly, there is insufficient surface drainage. However, the first respondent is currently relying on using a water tanker to reduce leachate from spilling out of the sump at the leachate station. The first respondent has also engaged the electrical department to service and repair the stolen circuit boards at the leachate station. We intend on engaging internal environmental control to assist with ad-hoc monitoring until a specialist service

provider is procured. I point out that the problem only occurs when there excessive rainfall. We further point out that the site has a leachate spillage dam to alleviate any damage when there is excessive rain.

80.27. Regarding Section 5.3.37, we advise that this requires the appointment of a suitable specialist service provider which is part of the scope of the tender advertised and attached hereto marked as annexure "MK7". I point out that there is a typographical error with the action date, and it ought to read 30 April 2021. The first respondent will monitor the ground surface water locations identified in the Water Quality Monitoring Plan in the interim.

80.28. I reiterate that the specialist service provider's appointment encompasses the appointment of a consultant who has all the necessary expertise within their portfolio to cater to this action and the present non-compliance. I also point out that there is a strong probability that upstream contaminants will render the water quality monitoring to be inconclusive at this stage; however, the first respondent undertakes to comply and conduct the necessary assessments to ensure that the Landfill site is not contributing to any deterioration in the water quality. I point out that the water quality monitoring is a requirement even if all infrastructure at the site is compliant and that no conclusive tests have been brought to the first respondent's attention to demonstrate that the water quality



is adversely affected. This would undoubtedly have been a priority if it constituted an immediate concern or hazard.

80.29. I respectfully submit that the periods for the remainder of the actions that remain incomplete are reasonable. We are hopeful that the Department agrees as the action plan was formulated after fruitful engagement with them and not entirely independently by the first respondent. We are working with the Department to solve the historical problem and historical damage to the Landfill site in the most efficient and timely manner possible. I reiterate that interim measures have been put in place or have been undertaken by the first respondent to alleviate any prejudice pending the full compliance envisaged by the compliance notice.

81.

In all the prevailing circumstances, I respectfully submit that there has been substantial progress towards full compliance. The objective and purpose of the compliance notice are consequently being achieved most efficiently. I reiterate that had the applicant made further enquiries immediately before launching the application alternatively had the respondents been given proper notice, we would have demonstrated to the applicant that the application is entirely unnecessary and was unwarranted given the current circumstances.

82.

I turn now to deal with the allegations contained in the founding affidavit.

AD PARAGRAPHS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 AND 11

83.

I admit the allegations contained herein.

AD PARAGRAPH 12

84.

I deny that the Landfill operations offend against any of the rights contained in the Bill of Rights. I further advise that the first respondent has implemented all the necessary safeguards to protect against offending any of its citizens' rights as enshrined in the Bill of Rights and to ensure that the Landfill site is not a health hazard to its users or the citizens who reside within the area of the first respondent. Insofar as there are any outstanding actions, these have been provided for in the action plan compiled pursuant to an engagement with the Regulating Authority. The second and third Respondents are empowered to cancel the license and cease operations if they believe that this is warranted.



85.

The substantial compliance and the efforts to achieve full compliance viewed together with the substantive interim interventions put in place, mainly, over the past ten (10) months, does not warrant or justify the cause of action. The Department would undoubtedly have resorted to more drastic measures earlier if it found that the Landfill site's operations were irredeemable or causing harm to members of the public.

86.

Without making light of the historical non-compliance and numerous incidents which are referred to over a period spanning approximately twenty (20) years, I submit that this alone does not justify the closure of the Landfill site or the need for judicial intervention or oversight in circumstances where the first respondent has already implemented every intervention within its means and when the past compliant no longer posed a problem due to these interventions. Moreover, there are no allegations that the Department is not fulfilling its Legislative obligations and for the reasons already dealt with hereinabove the relief sought is wholly inappropriate.

AD PARAGRAPH 13

87.

I admit that the allegations contained herein.

AD PARAGRAPHS 14 AND 15

88.

I admit the allegations contained herein.

AD PARAGRAPH 16

89.

Save to point out that the Landfill site receives waste from three sister municipalities within the uMgungundlovu District, namely, Umvoti, Mkhambathini and uMshwathi the first respondent, I admit the further allegations contained herein.

AD PARAGRAPHS 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 AND 36

90.

I admit the allegations contained herein.

AD PARAGRAPH 37

91.

I point out that the Waste Management License award to the first respondent on 3 July 2017 was an administrative action based on a rational and reasonable assessment of the Landfill site. The decision and award have never been challenged through any legitimate review or appeal process to the best of my knowledge. I further submit that issuing the Waste Management License to the first respondent by the second Respondent during July 2017 makes the historical non-compliance a moot point. We repeat that the first respondent does not ignore any historical difficulties which the Landfill site experienced. However, we submit that it is only relevant to strategise and avoid these difficulties from arising in the future.

AD PARAGRAPHS 38 AND 39

92.

I admit the allegations contained herein.

AD PARAGRAPHS 40, 41, 42 AND 43

93.

Handwritten signature and scribble in the bottom right corner of the page.

I do not dispute the allegations contained herein.

AD PARAGRAPH 44

94.

I admit the allegations contained herein. I submit that the first respondent is currently complying with its obligations in Section 28(1) of NEMA. In particular, the first respondent is taking all reasonable measures to prevent any pollution or degradation from occurring, continuing, or recurring, or, insofar as to the environment as authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

AD PARAGRAPHS 45, 46 AND 47

95.

I admit the allegations contained herein.

AD PARAGRAPHS 48 AND 49

96.

Handwritten signature and scribble in the bottom right corner of the page.

I admit the allegations contained herein.

AD PARAGRAPH 50 AND 51

97.

I do not dispute the contents of the paragraph quoted herein. However, to put the applicant's allegations in context, I submit that it has extended what the second Respondent informed it in its letter dated 2 October 2020. It is evident that the second Respondent indicated that four warning letters were forwarded to the first respondent on 27 June 2001, 11 May 2006, 27 November 2006, and 29 January 2007. The contents of these warning letters are not disclosed. It described the nature of the warning letters generally by referring to the Municipalities failure to manage the Landfill per their obligations of duty of care contained in Section 28 of NEMA. There is a reference to fire incidents and a general deterioration of the Landfill site.

98.

Firstly, I submit that the four warnings span over nine years. This does not in itself, does not demonstrate repeated or continues violations by the first respondent. The applicant contends that the first respondent failed to discharge its duty of care during 2002 to 2009. As stated, this is not what is said in the second Respondent's letter.



99.

I have instructed the Landfill officials to obtain as much information regarding any non-compliance from 2000 to 2009. One will appreciate that several years have passed, officials who were intimately involved in the operations at that time are no longer in the employee of the first respondent.

100.

There have been numerous changes to the Governance structures and officials since then. Despite a diligent search, the officials could not obtain copies of the warning letters specified herein. I specifically requested them to embark on this task to gain perspective on the nature and gravity of these letters' incidents. A warning letter could be issued for matters which do not affect the service delivery or safety of the Landfill site. I also point out that it is unlikely that a fire or major incident would have been the subject of a warning letter as these are reported in terms of a Section 30 notice, and any more severe non-compliance would have warranted a non-compliance notice.

101.

I also point out that in paragraph 8.4 of the letter dated 2 October 2020, the second Respondent indicated that there were varying responses from the first respondent to the warning letters which were "either positive" in respect to improved management and the submission of required audit reports and the rehabilitation of the site, or "negative" in that there was little, or no response received from the Municipality. This

certainly does not intimate total disregard or non-compliance by the first respondent. It does not support the inference that the first respondent continually failed to discharge its duty of care over an extended period of approximately nine years.

AD PARAGRAPHS 52 AND 53

102.

I note the reference to the letter of 2 October 2020 and point out that it only contains information between 2001 and 2014. We find it somewhat strange that notwithstanding that the Human Rights Commission made a request during or about this period, which was responded to, the material facts which I have set out hereinabove at length do not seem to have been investigated or requested before the institution of this application. The applicant quotes paragraph 8.5 which refers to a few warning letters by the Department of Water Affairs and Forestry but fails to emphasise paragraph 8.6 which alludes to the Department conducting a site inspection and receiving confirmation that the first respondent was to secure ten million rands to construct a containment berm and undertake maintenance and repairs at the site. The first respondent further contended at that stage that a new weighbridge had been commissioned and that external monitoring was being done quarterly. In any event, these do not matter that I intend on dwelling on and submit



that despite my best efforts I could procure little clarity on the precise sequence of events to put these allegations in the proper context.

AD PARAGRAPH 54

103.

Similarly, I could not procure sufficient information to set out what transpired during this period. I admit that the second Respondent became the competent authority responsible for enforcing the Waste Act during this period.

AD PARAGRAPHS 55 AND 56

104.

Mr. Cyril Naidoo, a member of the Landfill Monitoring Committee, confirms that the Committee failed to sit because of a lack of attendance by members and interested and affected parties. I point out that the interested and affected parties are organisations and public members who attend the Landfill Monitoring Committee meetings to raise any concerns that they may have. I do not have any further information and do not dispute the allegations in this paragraph for the purpose of opposing this application.

AD PARAGRAPH 57

105.

The then Manager of the Landfill site, Mr Cyril Naidoo, advises that to the best of his knowledge the matters raised in the warning letters referred to herein were dealt with during the annual Landfill Upgrade Projects. It would seem from paragraph 8.17 of the second respondent's letter dated 2 October 2020, that the first respondent provided substantial reports to the Department. It is unclear why the applicant refers to the warning letters dated 29 September 2010 and 2 June 2015 as being sent as a "last resort". The statement does not accord with the purpose of a warning letter which is a preliminary step to curb any potential non-compliance from occurring. If indeed it was a last resort, then one would have expected a non-compliance notice to have been issued. The nature of what the warnings were for is not elaborated upon and I cannot comment on these allegations any further.

AD PARAGRAPHS 58 AND 59

106.

Save to state that I cannot confirm that the Landfill site was at its worst on 10 March 2015, I admit the further allegations contained herein. Significantly, the applicant

acknowledges the improvement that occurred up to June 2017. However, the applicant seems to skirt this improvement and not deal extensively with the condition or what these improvements entailed and then reverts to detail the initial audit of 2015, which demonstrates significant non-compliance.

AD PARAGRAPH 60

107.

It will not serve any legitimate purpose to deal with these non-compliances in detail. They serve as background and have little or no bearing on the relief sought. As aforesaid, I have limited access to all the information relating to this period despite my extensive efforts to procure the same. It is important to point out that all the non-compliances listed herein were remedied and are not currently present. In this regard I point out the following in respect of numbered points 1 to 5 quoted from page 9 of the Audit Report, namely:

107.1. Strict enforcement of prohibiting hazardous waste from being dumped at the Landfill site takes place. We have gone to the extent of prohibiting culprit businesses entities from disposing of their waste at the Landfill site. There are extensive waste classification and assessment systems and processes which are in place.



- 107.2. There are no occupiers and unlawful structures on the disposal area. Insofar as any unlawful occupation is attempted, swift action will be taken to remove these occupiers by following the prescribed legal process.
- 107.3. The site is fully fenced. It is restricted to two entrances, one at the rear and the other at the front. The previously unmanned gate at the rear of the Landfill has been closed off and adequately blocked. There is sufficient security at the main/front entrance gate which leads to the weighbridge, and we keep meticulous records of the waste entering or leaving the Landfill through these gates.
- 107.4. I confirm that no vehicles are serviced or repaired at the maintenance area. The first respondent employs specialist service providers for all repairs that are affected. There are no oil spillages, and this area is regularly cleaned.
- 107.5. The leachate seeping into the environment from the dysfunctional leachate area has been resolved. All waste disposed of in the Landfill site's non-functional area has been excavated to the operational area. The leachate system is functional. If the leachate system malfunctions for any reason whatsoever, then it is repaired immediately. The first respondent has appointed a panel of service providers for this purpose. In an emergency, a water tanker is used to suck the leachate, and the leachate pump system is

used during occasions when the system is down. The leachate is then disposed of at the Danville Sewer Works Plan.

107.6. I attach photographs confirming the above, hereto marked Annexure "MK13".

AD PARAGRAPH 61

108.

I do not dispute the allegations contained herein. Similarly, to the preceding paragraph, I submit that these allegations constitute background which does not justify the relief sought. I submit that it is unnecessary to dwell on the alleged non-compliances listed in the 2015 report as it is common cause that the Landfill improved after that and operated at its best towards 2017. These non-compliances have been substantially remedied. Provision is to rectify those in the recent action plan for those non-compliances that present long term or sporadic operational difficulties. I reiterate that the department and the first respondent have engaged upon and will imminently finalise this plan. I point out the following in respect of points 1 to 5, which appear as part of paragraph 61. namely:

108.1. The first respondent has a leachate management system in place. This system is admittedly not entirely effective. I point out that the action for this

proposed non-compliance has commenced. As aforementioned, the first respondent advertised the post for a specialist service provider in August 2020, and unfortunately, all the bids received were non-responsive. It was only done in August because the first respondent's financial year commenced in July 2020 and provision had to be made in the yearly budget. This post has since been readvertised, and I have attached the advert as "MK7" hereinabove. I also reiterate that a service provider was engaged and provided the services for six months until August 2020. The first respondent could not extend the contract further as this would have amounted to a deviation of the SCM policies.

- 108.2. The action herein forms part of the tender specifications for the appointment of a specialist service provider per the advert attached above as "MK7".
- 108.3. I have already demonstrated that we compact and cover waste as required. I have also dealt with the interim interventions in place and demonstrated that the Landfill site is organised. There is provision made for transporting cover materials from other construction sites that the Municipality owns if funding is insufficient to procure sufficient covering materials.
- 108.4. I have dealt with the clearing of the transfer station and provided photographs depicting that it has been completely cleared. It is only used or waste in transit.

I point out that the water management and contamination issue referred to herein only presents itself if waste is allowed to remain in the transfer station for extended periods, which does not occur.

108.5. I have alluded that although the license makes provision for the reclaiming of waste, envisaged to be primarily by Waste Picker, this is a social issue that is being dealt with at a National Government level. The Department has requested that we keep the Landfill site open to Waste Pickers considering the National engagement on this issue. The first respondent and the Department are devising a strategy for a "Material Recovery Facility". The Municipality has also applied for formal waste recovery funding with the Municipal Infrastructural Support Agent (MISA). We acknowledge that allowing Waste Pickers on the Landfill site, albeit by imposition, creates a security issue. To this end, the first respondent has employed a private security company to enhance the Landfill's security. I attach hereto a copy of a table listing the New England Landfill Site's latest interventions, marked **"MK14"**. I make specific reference to item 6, which deals with community services, public safety, and enforcement and emergency services; however, the remainder of the document also has relevance to the general interventions adopted and implemented.

AD PARAGRAPHS 62 AND 63

109.

These paragraphs relate to the historical operations of the Landfill site, particularly between 2015 and 2017. I have remarked hereinabove on the sequence of events relating to this period. It is apparent that the Department's letter dated 7 September 2020 emanated from a request by the applicant to provide it with a history of the Landfill site between the period mid-2015 to mid-2017. It is disconcerting that the Department only made requests for historical information. It seems to have not requested, alternatively not disclosed the circumstances during September 2020 and preceding few months. I repeat that we do not hide from the Landfill site's historical operations and submit that the current status is most significant for the determination before the court.

AD PARAGRAPH 64

110.

I note the allegations contained herein.

AD PARAGRAPHS 65, 66, 67, 68 AND 69

111.

I have dealt with the import of the Audit Report of 25 October 2017. I have also dealt with the complaints which prevailed at that stage. I point out that to the best of my knowledge, there were no contravention notices issued for the items listed in paragraphs 61.9, 69.2 and 69.3. The applicant has referred to the contravention of particular sections merely as a reference, and this did not form part of the Audit Report.

AD PARAGRAPHS 70 AND 71

112.

112.1. I deny the allegations contained therein.

112.2. I repeat that the contents of the letter of 7 September 2020 relate to historical events and submit that it was disingenuous for the Department to have requested information only for a confined period which was several years prior, and not request the status of the Landfill site or details of the engagements that were already on the way.

- 112.3. I reiterate that by this stage an appeal had already been lodged in respect of the request for a variation of the timeframes contemplated in the non-compliance notice. It subsequently transpired that the MEC of the Department requested the first respondent to provide an updated plan with intended actions and revised periods, and we have complied.
- 112.4. I have demonstrated above that there have been material and significant improvements to the operations and infrastructure at the Landfill site according to the Department's engagement. The Department has confirmed the significant improvement and indicated its comital to continuing with this process.
- 112.5. The applicant's disregard to the measures implemented over the past few months, particularly those months immediately preceding the application, is nothing less than irresponsible and recalcitrant. It also demonstrates the applicant's lack of objectivity. The applicant fixates on the historical events to bolster the case against the first respondent.
- 112.6. I further point out that if these non-compliances persisted continuously from 2017, then the Department would have undoubtedly issued non-compliances at that stage. The sporadic incidents which the applicant refers to do not amount to proof of continuous contraventions. I point out that many of the

operational requirements require ongoing interventions and remedial work to be carried out, which is not occasioned by any negligence on the part of the first respondent. An example of this would be the vandalism and social problems that plague all Landfill sites throughout the country, such as the Waste Picker industry's recent formalisation.

AD PARAGRAPHS 72, 73 AND 74

113.

I note the incidents that the applicant says drew its attention to the Landfill site. It did not justify instituting this urgent application on 26 November 2020 without obtaining the full and accurate status quo immediately before launching the application. I point out that newspaper articles are not based on scientific findings and are mere conjecture and innuendo. I do not take the incidents referred to in these articles lightly; however, I submit that the best possible mechanisms have been put in place to avoid the re-occurrence of similar incidents.

AD PARAGRAPH 75

114.

I do not dispute the allegations contained herein.

AD PARAGRAPHS 76 AND 77

115.

Save to state that during this time an independent service provider was appointed to administer the Landfill site as referred to hereinabove, the services providers contract was not extended beyond a period of 6 months because it would have constituted a deviation. The first respondent has no continued contractual relationship with the service provider, and I could not confirm the correctness of the allegations herein.

AD PARAGRAPH 78

116.

I deny that the Commission intensified its investigations from July 2020. This contradicts the information in its founding affidavit. I am unaware of the applicant's engagements with other potential interested parties. I respectfully submit that after receiving the initial response from the first respondent and the Department, the applicant requested specific information that it new would serve only to discredit the first respondent instead of adopting an objective approach and reviewing all the

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prevailing circumstances at the time. With respect, it seems that the applicant was already intent on pursuing legal action as of June 2020 irrespective of the material change of circumstances at the Landfill site.

AD PARAGRAPHS 79 AND 80

117.

I accept that Ms. Hardman submitted the representations and petition to the applicant. I note the contents of Ms. Hardman's preamble to the petition but deny that the allegations contained therein, which are levelled at the operations carried out at the Landfill site when the petition was drafted. I have set out the significant improvements and remediation actions that occurred and which the first respondent continues to affect. I further point out that the allegations contained therein are purely speculative and generalised. In any event, the first respondent has demonstrated hereinabove that the objective of the interventions it is engaging with the Department on and has already substantially complied with serves to prevent any hazardous occurrence. The Department is obliged and empowered to enforce sanctions and mechanisms to ensure compliance which safeguards against hazards. The non-compliance notices must have been served to achieve this purpose. Furthermore, it is not the applicant's case that the Landfill site's operations must cease because of any prevailing continues hazard.



AD PARAGRAPHS 81, 82, 83 AND 84

118.

I have no knowledge of allegations contained herein. I note the document attached as annexure "**JBS13**" and dispute the contents of the entire document. It is unclear what the organisation Groundwork is. Annexure "**JBS13**" does not constitute evidence under oath, and more importantly, no specific reference is made in the applicant's founding affidavit to precisely what is relied upon therein.

AD PARAGRAPH 85

119.

The officials from the Landfill site have no knowledge of the applicant's alleged sight visit on 18 September 2020. If they did attend unannounced, they would have noticed a significant improvement. It is unfortunate that the Commission's representatives elected not to take any photographs or contact the first respondent's officials to show them the improvement at the Landfill.

AD PARAGRAPH 86

120.

I am not aware when the Commission was furnished with the document attached as annexure "**JBS14**". This document does not constitute evidence under oath, and the applicant has not made any reference or drawn any conclusion from the document. I deny the contents of the document in its entirety. I do, however, point out that the document purports to be written in August 2020. The Author of the document alleges in paragraph (A) on page 320 of the indexed papers under the heading "*the Subanto Human's Right Violation Case*" that the weighbridge was not working. This statement is false, and I confirm that the weighbridge was working during 2020 and that at all material times thereto. The attachment is riddled with factual and legal inaccuracies. The applicant has not referred to this document with any degree of particularity, and I need not deal with it further.

AD PARAGRAPHS 87 AND 88

121.

I note the letter dated 26 October 2020, which is attached as annexure "**JBS15**" and expressly deny the contents thereof insofar related to the first respondent. Similarly, the applicant has not made any specific reference to the previous two annexures, nor

does the attachment constitute evidence on oath. It is riddled with inaccuracies and conjecture. The applicant has not made any specific reference or drawn any conclusions from the document.

AD PARAGRAPH 89

122.

The applicant did address correspondence to the first respondent on 14 July 2020, wherein it requested the first respondent to provide detailed information relating to the operation at the Landfill. The first respondent forwarded comprehensive documents detailing the operations at the Landfill site, including, but limited to, the weekly reports the airspace reports, and responded to the applicant's questions. The applicant has not alleged material facts that emanated from the documentation. The applicant's failure fortifies my earlier submission that the applicant did not intend on meaningfully engaging with the first respondent to obtain an objective perspective of this matter. The applicant also does not allude to any progress made at the Landfill site since April 2020, which I have dealt with hereinabove. Given the nature of the application and the relief sought, I respectfully submit that this alone amounts to a material non-disclosure and warrants this application's dismissal.

AD PARAGRAPH 90

123.

I have described the interactions between the Department and the first respondent and mention that there were dozens upon dozens of these interactions and engagements, which are too numerous to list. I refer the above Honourable Court to annexure "A" on page 233 of the index papers. Annexure "A" appears as an annexure "JBS8".

AD PARAGRAPH 91

124.

At the outset, I point out that the applicant has reverted to relaying facts from 2017 to 2019. One would have expected the applicant to deal in detail with whatever information was provided to it and to have procured further relevant information before instituting the "urgent" application.



AD PARAGRAPHS 92 AND 93

125.

I admit the allegations contained herein.

AD PARAGRAPHS 94, 95, 96, 97, 98, 99, 100, 101, 102 AND 103

126.

I do not dispute the allegations contained herein. I point out that the sequence of events occurred before my tenure. I do not intend to suggest that the first respondent's responsibilities commenced only from the beginning of my tenure but merely contend that I was not involved in any of these processes or engagements.

127.

I am aware that the second respondent considered whether to initiate an interdict against the first respondent. The Department did indicate that it considered instituting interdict proceedings but did not pursue this because of the existing provincial intervention in Section 139(1)(b) of the Constitution. I point out that this did not prohibit the Department from instituting any contemplated proceedings and submit that it elected to follow the process of a revised pre-compliance notice to the first respondent. The first respondent responded with an action plan and turnaround

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strategy for the New England Landfill Site setting out a detailed action plan. I pause to reiterate that this was before the appointment of the present Senior Manager and myself.

128.

In the representations submitted by the first respondent on 14 February 2020, it included an action plan attached as annexure "A". I point out that most of the actions in Annexure "A" of "JBS18" were to be performed by the Senior Manager of Waste. Mr Mhlongo was appointed as the Senior Manager of Waste in April 2020. He had to assess the action plan afresh and the periods proposed for its implementations as a starting point.

AD PARAGRAPHS 104, 105 AND 106

129.

I admit the allegations contained herein. I point out that the first instruction of the non-compliance notice which appears in paragraph 4.1.1 was to ensure that a Senior Manager with appropriate experience and skills was based and given the mandate and responsibility to oversee and manage the daily functions of the New England Landfill site. The first respondent did comply by appointing an independent service provider whose scope of engagement included a manager's appointment to the site.

I pause to point out that the appointment preceded the appointment of Mr Mhlongo. The subsequent action plans and timeframes were formulated and requested without Mr. Mhlongo's input.

130.

The request was rejected, and the Department insisted that the first respondent provide an action plan within seven days from the date it was issue. The applicant alleges that the second respondent confirmed that the first respondent had not submitted the plan contemplated in paragraph 4.1.7 of the revised compliance notice. This statement is false. The first respondent did indeed comply by issuing the action plan. More importantly, we have demonstrated that all the waste outside the operational area had been removed and relocated to the operational area. We have also demonstrated that the access roads have been improved and cleared and that all open areas outside of the approved and line waste disposal are free of any waste. I point out that the second Respondent has confirmed that it has received the action plan.

AD PARAGRAPH 107

131.

I admit to the allegations contained herein.



132.

I point out that the first respondent indicated that it would carefully consider the timelines of the revised notice in consultation with the service provider and informed the Department that if necessary, it shall invoke the invitation outlined in paragraph 5 of the revised compliance notice which provided for an extension of the periods to which the actions relate.

AD PARAGRAPH 108

133.

As aforementioned, the first respondent's commitment on 19 February 2020 made express mention of the possible intention to request an extension of the timeframes in terms of paragraph 5 of the revised notice.

AD PARAGRAPH 109

134.

After Mr. Mhlongo's appointment, the action plan referred to herein was provided on or about 17 July 2020, pursuant to engagements between Mr. Mhlongo and the Department after his appointment. I also pause to mention that the action plan for

removing significant volumes of waste was dependent on budgetary allocations and could only be realistically assessed under the new financial year budget that commenced on 1 July 2020. We point out that we immediately took steps to finalise the plan when the new financial year started. I also point out that we have demonstrated hereinabove full compliance with the factual implementation of the action referred to herein. We have referred hereinabove to various photographs which depict full compliance with this action.

AD PARAGRAPHS 110 AND 111

135.

I point out that the varied revised compliance notice was subsequently subject to other processes including an appeal process which culminated in the rescheduling for the provision of submitting the detailed and comprehensive action plan referred to herein. The applicant has made no mention of this process or the MEC's decision to provide the further dates in December 2020 and early 2021 for compliance with all these requests. I further confirm that we have demonstrated hereinabove that there has been full compliance with the requirement to submit this action plan. There are ongoing engagements between the Department and the first respondent to finalise the realistic action plan timeframes to any outstanding matters.

AD PARAGRAPHS 112 AND 113

136.

I admit the allegations contained herein. I reiterate that there has been full compliance with paragraph 4.1.7, and the remedial action has already been implemented. The implementation of this action occurred in August 2020. The applicant would have been aware of this fact if it conducted investigations and acknowledged what was done in the latter part of 2020 immediately before it instituted this application.

AD PARAGRAPH 114

137.

I admit the allegations herein and submit that there were ongoing inspections and engagements between the Department and the first respondent's officials during 2020, resulting in significant compliance and improvements at the site. The Department acknowledges this fact.

AD PARAGRAPH 115

138.

I deny that the second Respondent received a major fire report at the Landfill site on 2 July 2020. The only major fire incident at the Landfill site since April 2020 occurred on 21 July 2020. I also deny that there was an inspection on or about 2 July 2020 and refer the above Honourable Court to the list of meeting, inspections and engagements provided by the Department attached as annexure "A" to annexure "JBS8". The first site meeting for July 2020 occurred on 8 July 2020. The Department inspected the site twice on 21 July 2020 when it was first discovered. The First Respondent provided a detailed Section 30 incident notification report to the Department on 22 July 2020.

AD PARAGRAPHS 116 AND 117

139.

I admit the allegations contained herein. The applicant has not attached the Section 30 incident report which the first respondent provided to the Department. I attach a copy hereto marked Annexure "MK15" the contents of the report are self-explanatory however I wish to draw the above Honourable Courts' attention to the second bullet point on the second page of the report which indicated that it was suspected that the fire was deliberately started and states that there appeared to have been interference throughout the day. Mr. Mhlongo advises that this interference was caused by



persons who seemed to be Waste Pickers spreading the fire around the Landfill site. I am advised that this contributed to the spread of the fire and point out that it contained as best as possible using the security services and the fire department.

AD PARAGRAPHS 118, 119, 120, 121 AND 122

140.

I note the contents of the presentation and point out that it was for summary purposes. The facts set out hereinabove give a more accurate picture of the actual state of affairs.

AD PARAGRAPHS 123

141.

I have already dealt with the actions required and the findings hereinabove. I have indicated that a detailed and comprehensive action plan has been submitted pursuant to the MEC's decision. I point out that in paragraph 31 of the letter attached as annexure "JBS8", the Department indicates that the first respondent has substantially improved the security and access control to the site, that waste being disposed at the Landfill site is covered and compacted daily, the large volume of waste unlawfully



disposed of outside the working cell has been removed and redispersed of inside the lined waste cell and that the first respondent has achieved substantial milestones in achieving compliance, notwithstanding that there are additional actions which are required to achieve compliance. The applicant was consequently fully aware of the substantial compliance and failed to obtain updated information regarding the first respondent's compliance immediately before instituting the application. The applicant took no steps to establish the estate of affairs after August 2020. It did see fit to elicit updated information from members of the community who it thought may be adversely affected.

AD PARAGRAPH 124

142.

I have indicated above that this action plan was provided in accordance with the MEC's direction and is presently being finalised. Many of the actions contemplated in the action plan attached above as "MK7" have already been set in motion.

AD PARAGRAPHS 125, 126, 127 AND 128

143.

I point out that the criminal case referred to herein is still under investigation. It relates to incidents which occurred up to and including 2019 and I have had no personal involvement in that case and cannot comment any further on its status.

AD PARAGRAPHS 129 AND 130

144.

I deny the allegations contained herein. Insofar as there is admittedly historical non-compliance, I respectfully submit that there has been significant improvement, albeit, since April 2020. The applicant loses sight of the fact that due to the historical difficulties at the Landfill site, redress cannot be achieved without sustained and progressive interventions that the first respondent is already implementing with the full support and guidance of the second and third respondents. The co-operative relationship between the Department and the first respondent has undoubtedly contributed to the progress made over the past ten months at the site.

AD PARAGRAPHS 131, 132, 133 AND 134

145.

I deny that the response letter dated 1 September 2020, constituted a challenge to the applicant's *locus standi*. The applicant is bound by the Constitutional Provisions and the provisions of the South African Human Rights Commission Act no 40 of 2013 (hereinafter referred to as "the Act"). The Act prescribes the applicant's Legislative Powers. It also sets out the applicant's authority and the processes it must adhere to when fulfilling its Legislative obligations or exercising its Legislative Powers. The enquiries posed in the letter intended to obtain clarity on the legal process followed terms of the Act. It was not a direct challenge to the Commissions *locus standi*, and I submit that the applicant ought not to be affronted by the enquiries posed.

AD PARAGRAPH 135

146.

I do not understand how the applicant attributes the first respondent's questions to be a wilful misunderstanding of the roll, function and mandate of the Commission. The applicant does not have unvetted powers, and its processes are Governed by the Constitution, Legislation and Laws of Natural Justice. With respect, I submit that the applicant's confrontational approach to the fact that the first respondent posed these enquiries, flies in the face of its role, function, and mandate.

AD PARAGRAPHS 136, 137, 138, 139, 140, 141, 142 AND 143

147.

The first respondent is fully aware of the role, function and mandate of the applicant. The applicant misconstrues the empowering provisions to which it refers to. I say so because the applicant's submissions in this regard demonstrate a total lack of appreciation for the fact that the applicant notwithstanding its broad powers, as aforesaid, is still required to fulfil those powers in a procedurally fair manner per the Legislative prescripts. Those powers do not entitle the applicant to self-regulate those matters expressly set out in the Act. It also does not detract from the applicant's obligation to act transparently in how it exercises its overriding powers.

AD PARAGRAPH 144

148.

I note the allegations contained herein.



AD PARAGRAPH 145

149.

I deny that the first respondent's current operation of the landfill site flies in the face of its Constitutional duty to protect its citizens. The first respondent accepts its Constitutional obligations in section 151(1) of the Constitution and is committed to its citizens' ongoing protection.

AD PARAGRAPHS 146 AND 147

150.

I admit the allegations contained herein.

AD PARAGRAPH 148

151.

I deny that the legislation that regulates the operators of landfill sites places a much higher obligation on the first respondent as a municipality than on any other categories of persons permitted to operate a landfill site in terms of the self-same legislation.

AD PARAGRAPH 149

152.

I accept what is stated herein. I submit that the extracts contained herein do not imply that it is acceptable for any other person or entity to under the law to act on a lesser standard in terms of their Constitutional compliance.

AD PARAGRAPH 150

153.

I deny that the second respondent could not act decisively and swiftly against the first respondent because of its cooperative governance and inter-Governmental relations. The legislation regulating the principles of cooperative governance and inter-Governmental relations is well-established and based on sound reasoning. It also does not prohibit one Government entity from imposing sanctions or taking more stringent action against another but merely makes it mandatory to attempt to resolve such disputes before resorting to any further form of unnecessary and wasteful litigation. These principles do not restrict a regulating authority from imposing a sanction on another Governmental entity. In any event, the second respondent contends that it exhausted the mechanisms of exercising cooperative governance and the principles of good Inter-Governmental relations which prompted it to open a

criminal case in respect of the non-compliances. The second respondent has also not indicated that its election not to persist with an interdict was premised on these cooperative governance principles. I submit that the applicant is presumptuous in this regard.

AD PARAGRAPH 151

154.

The second respondent does not say that the cooperative governance mechanisms hamstrung it and an obligation to embark on this process before resorting to litigation is not a bar to doing so. The mere fact that the second respondent opened the criminal case and issued the compliance notices is contrary to what the applicant postulates.

AD PARAGRAPH 152

155.

The applicant does not appreciate that the process envisaged by the regulating legislation regarding the operation of landfill sites caters for a process whereby the regulating authority will issue any non-compliance notice and expressly provide the contravening party with an opportunity to remedy same. It is based on a continuous assessment of the various requirements and duties in the licensed party. A purposive

interpretation of the legislation will demonstrate that it is mostly to ensure remedial action that remedies the compliance and not to terminate the general license or permit to continue operating.

AD PARAGRAPH 153

156.

The reference to the applicant not criticizing the second respondent is significant. I have pointed out above why, amongst other things, the relief sought by the applicant is not warranted and incompetent because it seeks to duplicate or substitute the first respondent's powers of oversight in circumstances where it cannot demonstrate that the first respondent is not fulfilling its legislative duties. The applicant has not so much as levelled any complaint against the first respondent whatsoever in how it exercised its duties.

157.

The applicant also does not recognise that it is within the second respondent's discretion to enforce the legislation and regulations regarding any non-compliance by the first respondent. The fact that the second respondent did not take more drastic steps is indicative that the first respondent's efforts and interventions were yielding positive progress towards a common goal of compliance. The election not to proceed to court was, in our view, a rational and reasonable one considering that there was a level of cooperation and adherence by the first respondent to the initial compliance notices, albeit that it may not have been perfect. Had this not been

the case, the second respondent would, in all probability, not resorted to reissuing the compliance notice.

158.

We submit that it would have been premature for the second respondent to institute interdict proceedings without exhausting the regulatory processes stipulated in the legislation in any event.

AD PARAGRAPH 154

159.

I deny that the principles of cooperative governance hamstrung the second respondent. I submit that it is facetious for an institution like the applicant to make light of the legislative principle of cooperative governance and categorically state that the prevailing legislation is overly restrictive. With respect, I submit that the suggestion that the methods and process adopted by the second respondent '*leaves the citizens without confidence that it is capable of protecting its rights*' is inappropriate and incorrect in the circumstances. The regulatory legislation provides mechanisms for enforcement and sanctions which are always available to the second respondent and to which the second respondent has resorted.

AD PARAGRAPHS 155 AND 156

160.

I note the allegations contained herein.

AD PARAGRAPH 157

161.

I accept that the first respondent has had a checked past regarding the landfill site and its operations. However, I submit that the applicant has not demonstrated that the first respondent continuously violated those reasonable legislative measures. I pause to mention that the applicant bases this allegation on limited, sporadic warning letters and other compliance notices over an extended timeframe. An example of this was the four warning letters that the applicant referred to were sent from 2001 to 2009. The mere fact that the landfill site may not have complied at some point in time on the same basis as it had not complied previously is not in itself sufficient to prove that this infringement was continuous during that period.

162.

A landfill site's very nature is that certain contraventions arise more frequently or repeatedly than others sometimes due to no fault of the operator. An example was made hereinabove regarding the gaps that frequently occur in a fence that may be picked up as contraventions from time-to-time but do not necessarily prove that the gap always existed throughout that

period time. Concerning more severe contraventions such as the operation of specialized equipment, one may be handed a warning on several occasions for the plant's breakdown, but it may turn out that the plant worked intermittently. The operator's legislative obligation is to ensure that there is the specified plant onsite and that mechanisms are in place to affect repairs and maintenance when the breakdown occurs. In any event, I submit that the first respondent has now implemented measures.

AD PARAGRAPHS 158, 159, 160, 161, 162, 163, 164, 165 AND 166

163.

I deny the allegations contained herein for reasons mentioned above. I re-iterate that the standard of proof is no lower for the applicant than for any other litigant.

AD PARAGRAPHS 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, AND 183

164.

I have demonstrated why the relief is incompetent and inappropriate and deny the allegations contained herein is so far as they are contrary to what I have stated above.

AD PARAGRAPHS 158, 159, 160, 161, 162, 163, 164, 165 AND 166

165.

I submit that the applicant has not made out a case for urgency. There is simply no urgency to the relief that it seeks. This is fortified by the applicant not seeking any interim relief or requesting that the matter be dealt with any degree of urgency at the first hearing. The applicant is not entitled to a declaration that any proceedings it brings are deemed urgent purely by the nature of its form or the purpose that it fulfils.

AD PARAGRAPH 186

166.

I deny the allegations contained herein.

CONCLUSION

167.

I have demonstrated above that the application is factually and legally unsustainable and that the relief claimed is misconceived.

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168.

I have also shown that the applicant was recalcitrant in bringing this application without due regard to the prevailing circumstances. Moreover, the applicant did not find any fault with the conduct of the second and third respondents. The application is legally and factually flawed, which is fatal to the applicant's case.

169.

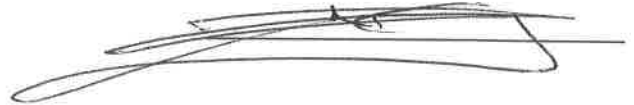
We have afforded the applicant an opportunity to partake in a Rule 41A process and invite the applicant to withdraw its defective application. If the applicant persists with the application and refuses the invitation, an appropriate cost order should be issued. I am advised that further legal argument will be made at the hearing if necessary.

WHEREFORE the first respondent prays that the application be dismissed with the applicant to pay the costs on the attorney and own client scale.



DEPONENT

I hereby certify that the Deponent has acknowledged to me that he has read and that he knows and understands the contents and that it is in compliance with the regulations contained in Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No 1648 dated 19 August 1977, it was signed and sworn to by him before me at Pietermaritzburg on this 14 day February 2021.



COMMISSIONER OF OATHS

FULL NAMES:

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NAGESH MAHARAJ ATTORNEYS
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Enquiries: Ian Felton
Reference: New England Rd Landfill

DATE: 7 AUGUST 2020

MSUNDUZI MUNICIPALITY

Postal Address:
Private Bag X321
PIETERMARITZBURG, 3200

AND

BY EMAIL

MR. MADODA KHATIDE
Municipal Manager: Msunduzi Municipality

Email: madoda.khatide@msunduzi.gov.za

AND

MR. SCELO DUMA
Ministerial Representative: Msunduzi Municipality

Email: scelo.duma@kzncogta.gov.za

Dear Sir/s

VARIATION REQUEST OF REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AS AMENDED: NON-COMPLIANCE WITH THE VARIATION WASTE MANAGEMENT LICENCE (WML) ISSUED IN TERMS SECTION 49 (1) AND 54 (1) OF THE NATIONAL ENVIRONMENTAL WASTE MANAGEMENT ACT (NEM:WA) 59 OF 2008 (REF NO. DC22/WML/0061/2016) FOR THE NEW ENGLAND LANDFILL SITE, PIETERMARITZBURG, MSUNDUZI LOCAL MUNICIPALITY

1. Your correspondence dated 17 June 2020, requesting to vary the Revised Compliance Notice issued to you in terms of section 31L of the National Environmental Management Act 107 of 1998 ("NEMA") on the 18th February 2020, refers.

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Department of Economic Development, Tourism and Environmental Affairs	Variation Request - CN	New England Road Landfill	Initials: <i>MF</i>	Page 1 of 2
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2. Following the receipt of the request to vary the Revised Compliance Notice the Department requested a meeting with the Municipality and respective officials to discuss the request to vary the timeframes provided in the Revised Compliance Notice on the 9 July 2020.
3. It is noted that the request to vary the timeframes provided for within the Revised Compliance Notice has, for the majority of the actions required, been submitted after the timeframes provided for in the Revised Compliance Notice have, in fact, already passed.
4. The Department has obtained legal advice that it is not in a position to extend or vary the timeframes provided in a Compliance Notice, if that request is not submitted prior to the date(s) specified in the Compliance Notice for those specific action/s to have been undertaken.
5. To this extent, the Department is not in a position to consider or approve the request to vary the Revised Compliance Notice as requested, apart from the action specified in paragraph 4.1.17 of the Revised Compliance Notice. This action related to the submission of the Decommissioning and Rehabilitation plan for the landfill site within 6 months of the Compliance Notice (that due date being the 18th August 2020).
6. Based on the interactions between the Department and officials of the Municipality, it was suggested that the soonest that the Decommissioning and Rehabilitation plan for the landfill site could be submitted would be the **31st January 2021**.
7. The Department **requests your urgent response** in respect of whether this action can indeed be completed within the timeframe specified above or preferably a date earlier than that, given the urgency of the matter and the necessity to report on these urgent actions to Cabinet. Upon receipt of your response, the Department will consider and issue a decision in respect of your request to Vary the Revised Compliance Notice in respect of this item only. The other items for which variance is requested will remain in non-compliance with the Revised Compliance Notice as the Department would be acting *ultra vires* if it were to endorse the variations as requested.
8. Should you have any queries please feel free to contact the Department.

Signed on this 07 day of AUGUST 2020 at PIETERMARITZBURG

K. van Heerden

Signed by: Ms. Kim Lea van Heerden

Environmental Management Inspector (Grade 1)

Department of Economic Development, Tourism and Environmental Affairs

Department of Economic Development, Tourism and Environmental Affairs	Variation Request - CN	New England Road Landfill	Initials: <i>KLW</i>	Page 2 of 2
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The Msunduzi Municipality

"MK2"



Private Bag X 321
Pietermaritzburg
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(033) 392 2002

City Hall, Chief Albert Luthuli Street
Pietermaritzburg
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www.msunduzi.gov.za

Enq: S Molefe

Tel. 033 392 2036

E-mail: Sibusiso.Molefe@msunduzi.gov.za

Ms. N Dube-Ncube, MPL
MEC for Economic Development, Tourism
and Environmental Affairs, KwaZulu-Natal Province

25 August 2020

Dear Honourable MEC,

NOTICE OF OBJECTION IN TERMS OF SECTION 31M OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT NO. 107 OF 1998 (THE ACT)

1.

The Municipality is in receipt of a "3rd Variation of Revised Compliance Notice issued in terms of Section 31L" of the Act.

2.

Section 31M of the Act provides that any person who receives a Compliance Notice "in terms of Section 31L may object to the Notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the Notice..."

3.

The 3rd Variation Notice (the Notice) and more especially in paragraph 8 thereof advises that " the Department is therefore not in a position to consider or approve the request to vary the Revised Compliance Notice as requested for the timeframes as specified in paragraph 4.1.3 ; 4.1.7 ; 4.1.8 ;4.1.9 ; 4.1.11; 4.1.12; 4.1.14;4.1.15; and, 4.1.16." The writer of the Notice, the Environmental Management Inspector (the EMI) has further decided that the Municipality has failed to comply with certain actions and associated timeframes and concludes that such failure constitutes an offence in terms of section 49 of the Act. As a result, the EMI has decided to make the MEC for Economic Development, Tourism and Environmental Affairs for KwaZulu Natal aware of this non-compliance in terms of section 31N (2) of the Act.

4.

The issuing of a Compliance Notice is an exercise of power by a state organ exercising a public power in terms of legislation and is therefore, quintessentially an administrative action according to Justice Skweyiya in his judgment handed down on 31 January 2018 in the unreported case of Cecilia Petlane and Another v MEC for Economic, Environment, Agriculture and Rural Development and others.

The EMI's actions when exercising a public power in terms of legislation is subject the provision of the Promotion of administrative Justice Act of No 3 of 2000. Similarly, the decisions of the EMI in refusing the request for the variation of the timeframes and to make a finding of non-compliance to and to then consequently report the non-compliance to the MEC are also Administrative Acts.

5.

Grounds of objection

5.1.

The timeframes imposed by the EMI in the Compliance Notices are unreasonable. The Municipality was not given sufficient time to rectify and comply with each aspect of non-compliance and the EMI in doing so failed to take into account the many constraints faced by the Municipality in attempting to comply. These constraints, inter alia, are set out below:

- A shortage of excavators or front loaders.
- Limited water tankers proved to be a serious challenge.
- Human Resource Challenges and limited capacity of staff to deal with the landfill site.
- The increasing population of waste pickers and other informal waste traders who are not regulated, including foreigners
- Poverty in the city, creating dependency on the site, as more and more people live off this site
- Armed gangs fighting over the access to waste and the control of the site
- The limited life span of the current Landfill site (6 to 10 years)
- Mechanical fleet breakdowns of earth moving plants
- Acts of sabotage such as the section 30 incident on 20 July 2020. It is common cause that the fire at the site interrupted the good progress with regard to compliance as attention and resources were diverted to extinguishing the fire. It is well - nigh impossible to control the criminal conduct of the unauthorised waste pickers who had surreptitiously gained access to the site and committed an act of arson.

- The EMI has failed to properly take into consideration the fact that the Municipality is not similar to a "person or juristic person" as defined in the Act, that the Municipality is a vast undertaking that is currently under section 139 intervention and that the municipality is under severe financial constraint.

Had the EMI exercised her powers herein in a reasonable and objective manner and not been influenced in her thinking by placing undue weight on what may have occurred prior to the issuing of the Compliance Notice in February 2020, she would have provided timeframes that would have been achievable and not designed in a manner that made it virtually impossible to comply with.

The EMI has failed to take into account the substantial progress in regularising the operation of the Landfill Site despite the unreasonable timeframes imposed. In this regard, the EMI has ignored the following progress, details of which have been supplied through the reporting process:

COMPLIANCE REPORT 31 JULY 2020					
Para No.	COMPLIANCE NOTICE INSTRUCTIONS: NEW ENGLAND ROAD LANDFILL	Time frame	Date	Complete	Remarks
Immediate			CN: 18 Feb 2020		
4.1.1 & 4.1.2	Assign Senior manager with appropriate experience and skills is based at and is given the mandate and responsibility to oversee and manage the daily functions of the New England Road Landfill site and provide the Department, in writing, the name and contact details of the	Within 3 days	21 Feb 2020	Yes	Done
4.1.3	Within fourteen days of the issuing of the Compliance Notice, ensure that waste disposed at New England Road Landfill site is covered and compacted daily with a minimum of 150mm of soil or other material approved by the licensing authority;	Within 14 days	31 March 2020	Not Achieved	Ongoing The letter to vary the dates have been sent to EDTEA.
4.1.4	Submit written reports to the Department on a weekly basis confirming that waste has been covered and compacted on a daily basis	Weekly	Weekly	Yes	Ongoing
4.1.5	Ensure landfill disposal site service roads are repaired and maintained in a condition which ensures unimpeded access to the site for vehicles transporting waste and are kept free of waste	14 days (amended)	30 September 2020	Yes	50 % of the waste has been removed.
4.1.6	Ensure all waste brought to be disposed of at the New England Road Landfill site is disposed of within the waste disposal area	14 days	31 Mar 2020	Yes	Ongoing

COMPLIANCE REPORT 31 JULY 2020

Para No.	COMPLIANCE NOTICE INSTRUCTIONS: NEW ENGLAND ROAD LANDFILL	Time frame	Date	Complete	Remarks
Immediate			CN: 18 Feb 2020		
4.1.7	Submit Action Plan for the immediate removal of the significant volumes of waste had been disposed of along access roads and open areas outside of the approved and lined waste disposal area, and the disposal of this waste in a lawful manner (varied to 13 March)	7 days (amended)	13 Mar 2020	Yes	Ongoing
4.1.8 & 4.1.9	Ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced and submit a contingency plan to addresses the measures that will implemented to ensure that the appropriate landfill plant for covering and compacting is repaired and/or replaced within a maximum of 48 hours of a failure	7 days	26 Feb 2020	No	We have started covering on daily basis as of the 27 July 2020 (Inclusive of the procurement of an additional compactor for this financial year with a budget allocation of (R 14 000 000) We require an additional (R15 000 000.)
4.1.10	Provide written confirmation of the measures which have been taken to ensure proper on-site security and access to the landfill site and, to prevent uncontrolled access and dumping outside of the workforce	7 days	31 May 2020	Yes	Done but has subsequently been damaged by trespassers on site.
4.1.11	Appoint a suitably qualified landfill site specialist to conduct and finalise a Technical Assessment Report of the New England Road Landfill site, including: <ul style="list-style-type: none"> • reviewing and assessing the current situation. • identifying the most appropriate and technically acceptable measures to be implemented to manage the current waste backlogs and re-establish effective and safe landfill site disposal practices. • identifying appropriate interventions and measures needed to ensure that the site is managed and operated in accordance with the Waste Management Licence conditions; relevant legislation; and 	14 days	4 Mar 2020	Yes	Done.

COMPLIANCE REPORT 31 JULY 2020

Para No.	COMPLIANCE NOTICE INSTRUCTIONS: NEW ENGLAND ROAD LANDFILL	Time frame	Date	Complete	Remarks
Immediate			CN: 18 Feb 2020		
	industry best practice; and, to identify appropriate timeframes to implement the identified actions and measures				
4.1.12	Submit the Technical Assessment Report to the Department	44 days (30days after appt of specialist)	2 Apr 2020	Yes	Done
4.1.13	Identify and demarcate an appropriate designated area , in consultation with DWS and this Department, for the recycling/reclamation of waste to take place.	30 Days	20 Mar 2020	Done	Done, designated area for recycling/reclamation was included in the variation of permit to Licence which was approved by DWA. (R 10 000 000) materials recovery facility, development of infrastructure, bailing of material and the conversion of green waste to compost.
4.1.14	Appoint a suitably qualified specialist/engineer to assess the stormwater management system and provide recommendations to ensure that all leachate emanating from the site including contaminated runoff water treated and disposed lawfully	30 days	31 October 2020	No	
4.1.15	Submit specialist storm water/ leachate report and recommendations and associated timeframes for implementation compiled by the specialist/engineer	60 days	31 January 2021	No	
4.1.16	Provide a detailed and comprehensive Action Plan that addresses all the other non-compliances noted in the table contained in section 3.1 of the Compliance Notice	14 Days	30 September 2020	No	
4.1.17	Appoint an independent and suitably qualified landfill site specialist , registered with a relevant professional body, to develop a Decommissioning and	3 Months	31 October 2020	No	

COMPLIANCE REPORT 31 JULY 2020

Para No.	COMPLIANCE NOTICE INSTRUCTIONS: NEW ENGLAND ROAD LANDFILL	Time frame	Date	Complete	Remarks
Immediate			CN: 18 Feb 2020		
	Rehabilitation plan for the landfill site				
4.1.18	Provide a written submission to the Department outlining the Municipality's plans towards decommissioning and rehabilitating the New England Road Landfill site	6 Months	18 Aug 2020	No	
5.1	Establishment of the Landfill site Monitoring Committee.	3 Months	30 November 2020		Waiting for the variation approval

5.2

There has been an unreasonable delay in taking a decision on the most recent request for variation of the timeframes. The request was received by the EMI on 17 June 2020 and the decision to refuse such request was communicated on 17 August 2020. The inordinate delay in responding to the request caused prejudice to the municipality in allowing it to continue with the timetable in the belief that the lack of a timeous refusal meant acquiescence or a silent acceptance of the request. Had the Municipality received a timeous response it could have attempted to take measures to avoid non compliance. Accordingly, the decision by the EMI to refuse the variation after two months and to communicate such simultaneously with a finding of non compliance is procedurally unfair and is contrary to the spirit of fair and just administration.

6

In the premises, the Municipality requests that the objection be upheld and further seeks the following :

- 1 The decision of the EMI relating to her refusal for of the application for a variation of the timeframes as contained in the request dated 5 June 2020 be set aside;
- 2 That the matter be referred to the EMI to consider afresh the application for a variation by applying her mind to the grounds of objection as is set out above and to decide on the matter in a reasonable, bona fide, fair and just manner .

Sincerely,



M THEBOLLA
MAYOR, MSUNDUZI MUNICIPALITY

[Handwritten mark]
[Handwritten mark]

Vershen Moodley

From: Ian Felton <Ian.Felton@kznedtea.gov.za>
Sent: Wednesday, 16 September 2020 09:56
To: Madoda Khathide; Scelo Duma
Cc: Wilson S. Mhlongo; Mbongeni Mathe; Cyril Naidoo; Marche B. Anthony; Coleen L. Hartley; Kim Van Heerden; Kimera Dhaver
Subject: New England Road Landfill: Compliance meeting

Dear Mr Khathide and Mr Duma

In order to monitor the actions being undertaken by the Municipality and its officials in addressing the outstanding compliance issues related to the Revised Compliance notice issued in respect of the New England Road landfill site, the Department would like to have a meeting with you and relevant officials. We would appreciate it if you can arrange a virtual meeting at a time that suits you on either of the following days 21st / 22nd / 28th / 29th or 30th September 2020.

The following actions have not been addressed within the timeframes specified within the Revised Compliance Notice, and the Department would like responses provided in respect of actions being taken to address these non-compliances with the Revised Compliance Notice.

Action Required	Finding
Ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced <u>and submit a contingency plan</u> to addresses the measures that will implemented to ensure that the appropriate landfill plant for covering and compacting is repaired and/or replaced within a maximum of 48 hours of a failure;	While emergency procurement processes have been initiated to purchase a new landfill plant and equipment and/or repair equipment, a contingency plan has not been submitted and problems still persist with insufficient and defective municipal equipment on site and/or the full time availability of competent operators of the equipment, which is impacting the effective management of the site.
Provide written confirmation of the measures which have been taken to ensure proper on site security and access to the landfill site and, to prevent uncontrolled access and dumping outside of the workforce;	Site security and access control has been improved and disposal outside of the working cell has been prevented. Access control of waste pickers however remains problematic and breaches of the boundary fence occur frequently.
Provide a detailed and comprehensive Action Plan that addresses all the other non-compliances noted in the table contained in section 3.1 of the Compliance Notice	A detailed Action Plan that meets this objective has not been submitted.

<p>Appoint a suitably qualified specialist/engineer to assess the stormwater management system and provide recommendations to ensure that all leachate emanating from the site including contaminated runoff water treated and disposed lawfully</p>	<p>No verification has been received that a suitably qualified engineer appointed to assess stormwater and leachate management.</p>
<p>Submit specialist storm water/ leachate report and recommendations and associated timeframes for implementation compiled by the specialist/engineer</p>	<p>No verification has been received that a specialist stormwater / leachate management plan has been submitted</p>
<p>Identify and demarcate an appropriate designated area, in consultation with DWS and this Department, for the recycling/reclamation of waste to take place</p>	<p>An area for recycling/reclamation has been demarcated and actions are being undertaken to regulate and formalise waste pickers on site. However currently waste recycling and reclamation is being undertaken at the working face and throughout the landfill in an un-controlled manner.</p>
<p>Appoint an independent and suitably qualified landfill site specialist, registered with a relevant professional body, to develop a Decommissioning and Rehabilitation plan for the landfill site</p>	<p>No verification received that a suitably qualified specialist appointed to develop the Decommissioning and Rehabilitation Plan.</p>

Your cooperation and commitment in this regard will be appreciated.

Regards
Ian

Ian Felton
Control Environmental Officer: Environmental Planning
Environmental Management Inspector (Grade 2)

Department Economic Development, Tourism & Environmental Affairs
uMgungundlovu District
Tel. No. : 033 347 1820
Fax. No. : 033 347 1826
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'MK4'

From: Ian Felton <Ian.Felton@kznedtea.gov.za>
Sent: Monday, 21 September 2020 10:41
To: Marche B. Anthony; scelo.duma@kzncogta.gov.za; Madoda Khathide; Madeleine Jackson; Coleen L. Hartley; George Lebelo; Wilson S. Mhlongo; Mbongeni Mathe; Amidah Mnguni; Kimera Dhaver; Cyril Naidoo; Kim Van Heerden
Subject: RE: New England Road Landfill: Compliance meeting

Dear Marche

Thank you for setting up the meeting for later today.

In respect of the agenda for the meeting, the Department has the following items that we wish to obtain feedback and discuss:

1. Progress towards achieving compliance with the outstanding requirements of the Revised Compliance Notice and the establishment of timeframes within which these outstanding issues are to be addressed.
2. Management measures for the on-going management of the landfill site in the short to medium term.
3. The deterioration and management of the Link Road garden refuse site (this is a new item however is becoming increasingly problematic)

Regards
Ian

Ian Felton
Control Environmental Officer: Environmental Planning
Environmental Management Inspector (Grade 2)

Department Economic Development, Tourism & Environmental Affairs
uMgungundlovu District
Tel. No. : 033 347 1820
Fax. No. : 033 347 1826
Cell: 082 461 9101

-----Original Appointment-----

From: Marche B. Anthony [<mailto:Marche.Anthony@msunduzi.gov.za>]
Sent: 16 September 2020 02:14 PM

To: scelo.duma@kzncogta.gov.za; Madoda Khathide; Madeleine Jackson; Coleen L. Hartley; George Lebelo; Wilson S. Mhlongo; Mbongeni Mathe; Amidah Mnguni; Ian Felton; Kimera Dhaver; Cyril Naidoo; Kim Van Heerden
Subject: New England Road Landfill: Compliance meeting
When: 21 September 2020 03:00 PM-04:00 PM (UTC+02:00) Harare, Pretoria.
Where: Microsoft Teams Meeting

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Marche B. Anthony
Personal Assistant- CMO
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Marche.Anthony@msunduzi.gov.za
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<< Message: New England Road Landfill: Compliance meeting >>



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'MK5'



KwaZulu-Natal Ministry of Economic Development, Tourism and Environmental Affairs

DC22/WML/0061/2016

OBJECTION DECISION

In the matter between:

Msunduzi Local Municipality

Objector

and

**KwaZulu-Natal Department of Economic Development,
Tourism and Environmental Affairs**

Respondent

OBJECTION IN TERMS OF SECTION 31M OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT (ACT NO. 107 OF 1998), AS AMENDED, (NEMA), AGAINST THE REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AS AMENDED AND ITS SUBSEQUENT 3RD VARIATION OF REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AS AMENDED: NON COMPLIANCE WITH THE VARIATION WASTE MANAGEMENT LICENSE (WML) ISSUED IN TERMS OF SECTION 49(1) AND 54(1) OF THE NATIONAL ENVIRONMENTAL WASTE MANAGEMENT ACT (NEM:WA) 59 OF 2008 (REF NO. DC22/WML/0061/2016) FOR THE NEW ENGLAND LANDFIL SITE, PIETERMARITZBURG, MSUNDUZI LOCAL MUNICIPALITY

Handwritten marks: a checkmark and a stylized 'D'.

1. Introduction

- 1.1. Before me is an objection lodged in terms of section 31M of the National Environmental Management Act 107 of 1998 ("NEMA"), which relates to an objection to the Revised Compliance Notice dated 18 February 2020, and its subsequent 3rd Variation issued in terms of the same Act.
- 1.2. The objector is Msunduzi Local Municipality, which is aggrieved by the decision of the KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs (EDTEA) ("the Department") to refuse the request for the variation of the timeframes and to make a finding of non-compliance.
- 1.3. In this regard the objector seeks that the objection be upheld and further seeks the following:
 - 1.3.1. The decision of the Environmental Management Inspector (EMI) for refusal to grant variation of the timeframes as contained in the request dated 5 June 2020 be set aside.
 - 1.3.2. That the matter be referred to the EMI for fresh consideration of the request for variation, by applying her mind to the grounds of objection as outlined in the objection letter dated 25 August 2020, and for her to decide the matter in a reasonable, bona fide, fair and just manner.
- 1.4. Below, I set out the relevant background.

2. Background

- 2.1. The documents before me reveal that New England Landfill site managed by Msunduzi Local Municipality has been characterised by a history of pre-compliance and compliance notices issued in respect of non-compliance to the Waste Management License.
- 2.2. At the heart of the current objection is the 3rd Variation Notice of the Revised Compliance Notice issued by the Department against Msunduzi Local Municipality.
- 2.3. The gist of the Notice is that Msunduzi Local Municipality failed to adhere to the provisions of the law in respect of some activities conducted within New England landfill site.
- 2.4. The full details of the noncompliance are contained in the Revised Compliance Notice and its subsequent Variations.
- 2.5. In order to reach this decision, I have considered all relevant information and documentation including:
 - 2.5.1. Notice of Intention to issue a Compliance Notice: Non-Compliance with the Variation Waste Management License issued in terms of section 49(1) and 54(1) of NEM: Waste Management Act, 59 of 2008 dated 22 February 2019.
 - 2.5.2. Compliance Notice: Non-Compliance with the Variation Waste Management License dated 15 May 2019.
 - 2.5.3. Notice of Intention to issue a Revised Compliance Notice: Non-Compliance with the Variation Waste Management License dated 13 February 2020.
 - 2.5.4. Revised Compliance Notice dated 18 February 2020.

- 2.5.5. 2nd Variation of Revised Compliance Notice: Non-compliance with the variation Waste Management License dated 23 March 2020.
- 2.5.6. Variation Request letter from the Department dated 7 August 2020.
- 2.5.7. 3RD Variation of Revised Compliance Notice dated 17 August 2020.
- 2.5.8. Msunduzi Local Municipality's objection letter dated 25 August 2020.
- 2.5.9. The Department's responding Memorandum to the Objection from Msunduzi Local Municipality of September 2020.
- 2.5.10. MEC internal Memorandum relating to non-compliance to the Revised Compliance Notice as dictated by section 31N (2) of the National Management Act (No. 107 of 1998) as amended (undated and unsigned copy).
- 2.5.11. Timeline schedule relating to the history and sequence of events with respect to New England site (undated).
- 2.5.12. Legal opinion re New England Landfill site dated 14 February 2020.
- 2.5.13. Various e-mails exchanged between the Department and Msunduzi Local Municipality regarding the New England Landfill site.
- 2.5.14. National Environmental Management Act, 1998 (NEMA) as amended.
- 2.5.15. National Environmental Management: Waste Act 59 of 2008.
- 2.5.16. Regulations to NEMA relating to qualifications criteria, training, and identification of, and forms to be used by, Environmental Management Inspectors and Environmental Mineral Resources Inspectors dated 31 May 2017.
- 2.5.17. Promotion of Administrative Justice Act 3 of 2000 (PAJA) as amended.
- 2.5.18. National Appeals Regulations, 2014.
- 2.5.19. Constitution of the Republic of South Africa, 1996.
- 2.6. It is against the background set out above that I consider the objection before me.

3. Grounds of objection:

- 3.1. The objection rests on the following points:
- 3.2. The timeframes imposed by the EMI in the Compliance Notices are unreasonable, and the Municipality was not given enough time to address such issues, and the EMI failed to take into account the constraints faced by the Municipality. The said constraints are outlined as follows:

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- 3.2.1. Shortage of excavators or front loaders.
- 3.2.2. Limited water tankers that proved to be a serious challenge.
- 3.2.3. Challenges of human resources and limited capacity to deal with landfill site.
- 3.2.4. Poverty within the municipality, creating dependency on the site, as more people live off the site.
- 3.2.5. Armed gangs fighting over the access to waste and the control of the site.
- 3.2.6. The limited lifespan of New England Landfill site (6 to 10 years).
- 3.2.7. Mechanical breakdowns of earth moving plant.
- 3.2.8. Act of sabotage at the landfill site, which disrupted progress made as resources were diverted.
- 3.2.9. That the Municipality is currently under section 139 Intervention, with severe financial constraints.
- 3.3. There has been unreasonable delay in responding to the most recent request for variation of the timeframes, the said request was received by the EMI on 17 June 2020 and the decision for refusal was communicated on 17 August 2020 – a delay of two months.
- 3.4. Furthermore, this was communicated simultaneously with a finding of non-compliance, which is procedurally unfair and is contrary to the spirit of fair and just administration. The delay was interpreted by Msunduzi to mean silent approval of the variation request.
- 3.5. The Objector attached a Compliance Report dated 31 July 2020 to their Objection. The report details the Compliance Notice Instructions they have managed to complete, those that are ongoing and those that they have yet to complete.
- 3.6. In the Notice of Objection the Municipality concludes by seeking the following relief:
 - 3.6.1. The decision of the EMI relating to their refusal of the application for a variation of timeframes in the request of 5 June 2020 be set aside; and
 - 3.6.2. That the matter be referred to the EMI to consider the application for a variation afresh so that the matter may be decided in a reasonable, *bona fide*, fair and just manner.

4. Objector's submission

- 4.1. In the main the submission of the objector is captured by the grounds of appeal as outlined above. However in summary, the Objector's submission is the following:
- 4.2. The objector contends that the EMI has imposed unreasonable timeframes and placed undue weight on what happened prior to the issuing of the Compliance Notice in February 2020.
- 4.3. The objector contends that the Department failed to take the issue of the shortage of equipment and human resources into account.
- 4.4. The Department is accused of ignoring the fact that the Municipality was placed under administration in terms of Section 139 of the Constitution.

4.5. The Department has failed to consider that the landfill site is a source of livelihoods due to the poverty within the Municipality.

4.6. The Department has failed to take into consideration progress made in complying despite the unreasonable timeframes.

5. Department's response to the objection

5.1. The Department contends that the New England Landfill site has a history of poor management, with significant landfill site fires that have impacted on human health and wellbeing and on the environment.

5.2. The Department maintains that the New England Landfill site has not been managed in line with the Waste Management License, which has led to the issuing of Compliance Notices instructing certain actions to be undertaken within specified times.

5.3. The Department contends that in all instances the Municipality was given ample time to submit representations, and in most instances, this was not forthcoming.

5.4. The Department contends that it has issued several written warnings to the Municipality.

5.5. The Department avers that it closely monitored the responses and interventions and on request varied the timeframes due to constraints faced by the Municipality, and in the context of Covid 19.

5.6. The Department contends that several meetings have been held with the Municipality in a cooperative manner, with the intention of assisting where possible.

5.7. The Department avers that the request for variation submitted by the Municipality dated 17 June 2020 was the third one for variation of the timeframes. Some actions were required to have been completed already.

5.8. The Department contends that regarding the variation at issue, it requested a meeting to deal with some disparities on 30 June 2020 and this request was not responded to. Another reminder was sent until the meeting eventually took place on 9 July 2020.

5.9. The Department submits that another reminder was sent to Msunduzi Local Municipality on 7 August 2020 requesting the Municipality, among other things, to submit a response regarding variation with the revised Compliance Notice, where the legal opinion received was also highlighted, and no response was received in this regard.

- 5.10. The Department further submits that another urgent request was sent on 17 August 2020 to the municipality and the response received only referred to two actions as acceptable in terms of timeframes extended to 31 January 2021, namely site closure and rehabilitation plan.
- 5.11. The Department avers that it was prepared to consider those items that had not expired for variation to 31 January 2021 when the request to vary the Revised Compliance Notice was submitted, citing those that were indeed varied to 31 Jan 2021.
- 5.12. The Department contends that it has made every effort to consult and get inputs from the Municipality prior to issuing a decision on the third request, in a just and fair manner within what is permissible in law.
- 5.13. The Department avers that it has issued more than three variations of the Revised Compliance Notice to accommodate the Municipality and to try and get them to comply.
- 5.14. The Department acknowledges that there has been partial compliance, but the overall assessment is that there has been a failure to comply.
- 5.15. The Department maintains that it is unable to vary – 4.1.3; 4.1.7; 4.1.8; 4.1.9; 4.1.11; 4.1.12; 4.1.14; 4.1.15; and 4.1.16; however, the Department is able to consider the action specified in paragraph 4.1.17 and 4.1.18 of the Revised Compliance Notice.
- 5.16. The Department avers that the reporting to the MEC has been done as a legal requirement in accordance with section 31N (2) of NEMA.

6. Legal considerations

- 6.1. The powers to issue a Compliance Notice by the Department are derived from section 31 L of NEMA, which applies if there are reasonable grounds to believe that a person has not complied with the Act, in this instance the non-compliance to conditions of Waste Management License.
- 6.2. Section 31 M further provides that any person who receives a Compliance Notice in terms of section 31L may object to the Notice by making representations, in writing, to the Minister or MEC, as relevant, within 30 days of receipt of the Notice.
- 6.3. In this regard, the Minister or MEC may revoke or vary the relevant permit or take any necessary steps as may be appropriate.
- 6.4. The Objector in this instance has correctly exercised its rights to object as per the provision of 31M, that a person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the notice, or within such longer period as the Minister or MEC may determine.
- 6.5. Section 31L (3) of the NEMA states that an EMI may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice. Section 31L(4) places an obligation on a person who receives a compliance notice to comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance and non-compliance with a compliance notice and the actions and associated timeframes included therein is a criminal offence in terms of section 49(A)(1)(k).

- 6.6. Accordingly, the Department has effected several variations as empowered by section 31L (3).
- 6.7. It is further noted that the Department obtained a legal opinion, which stated that it is irregular to grant a request after the expiration of a timeframe in the context of the criminality on non-compliance with the issued Compliance Notice in terms of NEMA.
- 6.8. It is a fact that the Department has legislative duties that need to be implemented, and these cannot be avoided. Section 31N (2) of NEMA, for example, compels the reporting of non-compliance to the Minister or MEC as the case may be.
- 6.9. All spheres of government are bound by the principles of co-operative governance and intergovernmental relations as dictated by Chapter 3 of the Constitution. In this instance, section 41 (1)(h) will be relevant in that organs of state must co-operate with one another in mutual trust and good faith by among other things, assisting and supporting one another.
- 6.10. Furthermore, Chapter 3 of NEMA also impress upon issues of co-operative governance.
- 6.11. Therefore, the need for both the Department and Msunduzi Local Municipality to co-operate with each other is a clear requirement of various pieces of legislation.

7. Consideration of the grounds of appeal

- 7.1. In order to avoid burdening this decision with repetitions, the grounds of appeal will be grouped so as to allow consideration where the response may be similar.
- 7.2. The first and main issue raised by Msunduzi Local Municipality appears to be the unreasonableness of the timeframes imposed by the EMI, and the alleged failure of the Department to take into consideration several factors as outlined.
- 7.3. The second group of issues can be summarised as sabotage, shortage of resources, poverty within the Municipality, armed gangs fighting over access, limited lifespan of New England Landfill site and the breakdown of equipment.
- 7.4. The last group will be the issue of delay, the Municipality's administration under section 139, progress made in meeting the conditions and whether there is any need for the decision to be sent back for a fresh consideration.
- 7.5. The Municipality is undoubtedly within its right to lodge an objection and seek a remedy, if it holds the view that the administrative action is defective or unfair. As such I proceed to consider each group of grounds of objection in turn.
- 7.6. Firstly, the timeframes imposed in the Compliance Notice are perceived by the Municipality to be unrealistic and unachievable as they currently stand.

- 7.6.1. In this regard I note that in all instances, the Department has first issued the Notice of Intention to issue a Compliance Notice as evidenced by the document dated 13 February 2020, despite the fact that it has an option to bypass the intention stage, and proceed directly to issue the Compliance Notice if it is convinced that the activities conducted are posing an immediate threat to the environment.
- 7.6.2. In my view, the issuing of a Pre-Compliance Notice presented a perfect opportunity for the Municipality to raise all issues it was not happy about or issues that were perceived not to be achievable within the set timeframes (as clearly highlighted under paragraph 4 of the said intention).
- 7.6.3. I also note that the Department went further to issue a Revised Compliance Notice dated 18 February 2020, which also afforded the municipality (under paragraph 5.1) an opportunity for variation and extension.
- 7.6.4. I further note that the Department has indeed issued several variations, three to be exact, and that in itself must be considered to be more than a reasonable opportunity for compliance.
- 7.6.5. In my view, the opportunity to vary can among other things serve as an opportunity to deal with what is perceived to be unachievable within the set timeframes in this context.
- 7.6.6. The documents at my disposal also reveal that there were several meetings held between the Municipality and the Department, which presented a platform to raise whatever issues the Municipality may have been unhappy about.
- 7.6.7. It is evident from the correspondence on file that after receiving the third request for variation on 17 June 2020 the Department took it upon itself to request a meeting with the Municipality providing 7 or 8 or 9 July 2020 as possible dates.
- 7.6.8. When a response was not received by the Department, a fresh request was made until the meeting eventually took place on 9 July 2020, where the Municipality was expected to revert to the Department with an amended request to vary.
- 7.6.9. This in itself is a clear demonstration, in my view, of the extent the Department went to in trying to have this matter resolved in line with the principles of cooperative governance. It is noted however that the Municipality has not been as cooperative as one may have expected.
- 7.6.10. The provisions of section 31L (4) are significant in that it places an obligation on a person who receives a compliance notice to comply with that notice within the stipulated timeframes. Even after the meeting of 9 July 2020, the Municipality did not honour the agreement, as the period between the 9th and 20th July was reasonable enough for the Municipality to revert back to the Department with proposed amendments to vary given the urgency of the matter. This was some time before the unfortunate fire incident on 20 July 2020 which the Municipality claim to have been a distraction to their timeous compliance and cooperation.
- 7.6.11. It would appear that the unreasonableness only became apparent to the Municipality when a refusal to vary was presented as communicated by the letters dated 7 August 2020 and 17 August 2020.
- 7.6.12. It is noted that the refusal was not presented without reasons, the Department clearly stated its dilemma in the context of the legal opinion obtained which

clearly stated that it will be irregular to vary conditions where timeframes had since lapsed.

- 7.6.13. Even under these circumstances, the Department still showed goodwill by varying those conditions that had not expired and remained valid to 31 January 2021.
- 7.6.14. In my view the ground of objection relating to unreasonable timeframes is therefore without foundation in the context of what has been discussed *supra*, and accordingly falls to be dismissed.
- 7.7. The second group of issues, summarised as sabotage, shortage of resources, poverty within the Municipality, armed gangs fighting over access, limited lifespan of New England Landfill site and breakdown of equipment are indeed a reality and therefore issues of grave concern.
- 7.7.1. Most of these are social issues, whilst others require financial resources to resolve.
- 7.7.2. What is concerning is that these issues do not appear to be new to the municipality. The documentation on file points to the fact that the Municipality has been aware of these issues for some time and therefore to raise them after the conditions have lapsed amounts to distracting from the main issue at hand, namely to resolve the New England Landfill site issues and compliance with the Waste Management License.
- 7.7.3. It must also be pointed out that despite their complexity, the Municipality still has a constitutional mandate to confront these issues and to uphold the rule of law.
- 7.7.4. The main difficulty is in the context and circumstances under which these issues are raised. They have been raised after the timeframes have lapsed, and this poses a legal conundrum.
- 7.7.5. Despite the fact that most of these issues were never raised in time, the fact of the matter is they require resolution despite the challenges that they may pose. They are not new issues but are issues that the Municipality has been aware of for some time. Should the deadlines for their resolution continue to be extended, they may never be resolved.
- 7.7.6. It can only be concluded that the Municipality's argument is misplaced given that they have known about these matters for some time and failed to address them and therefore their objection on this basis falls to be dismissed.
- 7.8. The Municipality has also raised the issue of delay under the grounds of objection, in terms of the most recent request for variation of the timeframes, arguing that the request was received by EMI on 17 June 2020 and the decision for refusal was communicated on 17 August 2020, with a time lapse of 2 months.
- 7.8.1. This assertion seems to be both inaccurate and baseless if tested against the available facts. This is based on the fact that an e-mail of acknowledgement dated 18 June 2020 was sent to Msunduzi Municipality, and again the Department sent an email to the Municipality on 30 June 2020 requesting a meeting to discuss the very same issue of variation, stating that this was important prior to considering the request.
- 7.8.2. The Department went further to suggest specific dates, namely 7 or 8 or 9 July 2020 for the meeting, with the proposed agenda among other things showing item 2 as "Variation request for amending the Revised Compliance Notice".

- 7.8.3. The documentary evidence on file shows that the meeting resolved that the Municipality submit an amended 'request to vary', which never happened within reasonable timelines.
- 7.8.4. A request to vary can either be accepted or declined, and in this instance it was declined with reasons provided.
- 7.8.5. The assertion that the Department delayed unreasonably is not based on accurate facts and is therefore without merit and accordingly dismissed.
- 7.9. On the issue of the Municipality being under section 139 intervention, there are several documents indicating that the Department was not oblivious to the situation that the Municipality was operating under.
- 7.9.1. The Department has acknowledged that the Municipality was under section 139 intervention. This is evident under paragraph 2.16 and 2.17 of the Revised Notice dated 18 February 2020 as an example.
- 7.9.2. The section 139 intervention should not be used as an excuse for non-compliance. The Municipality was placed under intervention in terms of section 139(1) b of the Constitution which effectively means that the functions that they are obliged to perform which include those related to financial management and service delivery are undertaken with hands-on support of the provincial government. To this end, the intervention should not be seen as an impediment to service delivery but as an opportunity to rectify areas where there has been poor service delivery. The New England Road Landfill site is one such area.
- 7.9.3. This ground of appeal therefore has no merit, and is accordingly dismissed.
- 7.10. The Municipality then raises the point that they have made progress in complying.
- 7.10.1. The Department has also acknowledged the fact that there was progress made in complying but this was not to the satisfaction of the Department and not in compliance with the Revised Compliance Notice.
- 7.10.2. Having scrutinized the Municipality's compliance against the set conditions, and responses from both parties, it is noted that the Municipality has tried to address some of the conditions, although not to an extent of making a visible difference in terms of the overall management of the landfill site.
- 7.11. Lastly, the Municipality has also raised the issue of the decision of the EMI in the context of administrative justice and in the context of reasonableness, *bona fides*, fairness and justice.
- 7.11.1. In regard to the decision of the EMI, it is indeed an administrative decision, which ought to be reasonable, *bona fide*, fair and just.
- 7.11.2. It is correct that in exercising his or her powers the EMI performs an administrative action and is compelled to adhere to the principles of just administrative action, and is bound by the provisions of the Constitution and the Promotion of Administrative Justice Act.
- 7.11.3. However it is my view that the decision taken in this regard, is a valid administrative decision, in that it is lawful, reasonable and procedurally fair. This is concluded on the basis that:

- 7.11.3.1. the decision was taken in terms of a valid legal provision;
 - 7.11.3.2. the Municipality was served with a Pre-Compliance Notice and an opportunity to respond prior to receiving the Compliance Notice;
 - 7.11.3.3. various opportunities were provided by the Department for the Municipality to make representations in writing and in meetings. Evidence of these is the resultant Revised Compliance Notices in response to certain requests by the Municipality;
 - 7.11.3.4. at all times, written reasons were provided for the decisions that have been taken including the refusal for a further variation or revision.
- 7.12 I am not swayed that the matter needs to be sent back to the EMI for fresh consideration, there is nothing convincing me that the EMI did not apply her mind in dealing with the issue at hand and a fresh consideration of the entire matter will
- 7.13 On the basis of the foregoing, these grounds of objection fall to be dismissed.
- 7.14 Notwithstanding the finding herein, the contents of the Compliance Report attached to the Municipality's S31 Objection and dated 31 July 2020 is noted. The progress made in completing a number of the actions stipulated in the 'Revised Compliance Notice' dated 18 February 2020 is noted.
- 7.15 In the final analysis, it is clear that the matter has been considered by the EMI and the Department in a reasonable manner and their rejection of the request for a further variation is as a result of the fact that the non-compliance with the running of the landfill site has been ongoing for some years and has now resulted in a serious and urgent environmental crisis for the residents and environment of the city of Pietermaritzburg.
- 7.16 However, it is also apparent that many of the timeframes in the Compliance Notice Instructions have since lapsed and there is yet to be compliance with some of those instructions. Confirming those Instructions without stipulating an extension of timeframes in which to fulfill them will also render this decision meaningless.

8. Decision

Therefore having considered all the facts before me, the objection is hereby dismissed, and the Revised Compliance Notice issued on 18 February 2020 is confirmed, provided that it is amended as follows:

- 8.1 The municipality will submit to my office by, no later than 30 November 2020, a proposal setting out dates for compliance with the remaining instructions in the Revised Compliance Notice.
- 8.2 When developing the proposal, given the importance of compliance with the actions set out below, I require that there is adherence to the following dates which must also be recorded in the proposal:
 - 8.2.1 The Action Plan (Para 4.1.16) shall be submitted no later than 15 December 2020;
 - 8.2.2 The Closure Plan (Para 4.1.18) shall be submitted no later than 30 June 2021;
 - 8.2.3 The Landfill Monitoring Committee (Para 5.1) shall be constituted and their first meeting convened by no later than 15 December 2020.

SIGNED AND DATED AT DURBAN ON THIS 29 DAY OF OCTOBER 2020.


 MS NOMUSA DUBE-NCUBE, MPL
 MEC FOR ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS,
 KWAZULU-NATAL.

The abovementioned revised compliance notice dated 18th of February 2020 has reference.

PARAGRAPH 4.1.4

Paragraph 4.1.11 states that "Provide written reports to the Department on a weekly basis confirming that waste has been covered and compacted daily, or if this has not been possible provide written reasons why this has not occurred. The weekly reporting requirement must continue until such time as varied or agreed to in writing by the Department."

The following is a weekly report in line PARAGRAPH 4.1.4 for Week Ending Sunday 15/11/2020:

Date	Waste Deposited on lined cell.	Waste Covered	Waste Compacted	Fires on Site	Challenges	Plant from Council	Leachate Pumping Station	Remarks
09/11/20	Yes	Partially and on going, cover material is imported daily from the stockpile and external sources.	Yes- daily and previously un-compacted areas are being compacted. Re-shaping of waste body is in progress	YES Minor — managed internally.	No Bull-dozer No Excavator	1 x Landfill Compactor 1 x Municipal Pay-loader 1 x Municipal Tipper	Not working — Control box stolen Cas number : 379/9/2020	h up with compaction and cover operations. Two additional trucks and a TLB have been hired in to assist with importing cover material.
10 /11/20	Yes	Partially and on an going basis	yes daily all waste is being compacted	No	No Bull-dozer No Excavator	1 x Compactor 1 x F.E.L 1 X Tip-Truck	Not working — Control box stolen Cas No 379/9/202	Two Operators are working an extra 2 hours per day Access roads are being refurbished.

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11/11/20	Yes	Partially and on an going basis cover material is Imported daily	Yes daily & previously un-compacted areas are being compacted	No	Compactor — Cat has a diesel leak it is being attended to by workshops	1 x Landfill Compactor 1 x Tip Truck 1 x Pay-loader	Not working — Control box stolen Cas number : 379/9/202	Two Operators work with a Landfill Compactor Pay-loader and Tip Truck to catch up with compaction and cover o rations.
12/11/20	Yes	Partially and on an going basis cover material is imported daily	yes daily and previously un-compacted areas are being compacted	No	Lack of Excavator to reshape slopes No Bull-dozer for special projects Compactor — Cat has a diesel leak it is being attended to by workshops	1 x Municipal Compactor 1 x Municipal Pay-loader 1x Municipal Tipper	Not working — Control box stolen Cas number : 379/9/202	Heavy rains make it difficult to complete compacting and covering waste . This process will continue as the weather improves .
13/11/20	Yes	Partially and on an going basis cover material is imported	Yes, daily and previously un-compacted areas	No	No Excavator and Bull-dozer	2 x Municipal Compactors 1 x Municipal Tipper 1 x Pay-loader	Not working — Control box stolen Cas number , 379/9/202	Heavy rains make it difficult to complete compacting and covering waste . This process will continue as the weather improves .
14/11/20	Yes	Partially and on an going basis	Partially, daily		No Excavator and Bull-dozer	1 x Municipal Compactors 1 x Pay-loader 1 x Tip Truck	Not working — Control box stolen Cas number . 379/9/202	Heavy rains make it difficult to complete compacting and covering waste . This process will continue as the weather improves .

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15/11/20	Yes	Partially and on an going basis cover material is imported daily	partially	yes	No Excavator and Bull-dozer	1 x Landfill Compactors 1 x Pay-Loader 1 x Tip- Truck	Not working — Control box stolen Cas number . 379/9/202	Heavy rains make it difficult to:complete compacting and covering waste . This process will continue as the weather improves
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4.1.1 & 4.1.2	Assign Senior manager with appropriate experience and skills is based at and is given the mandate and responsibility to oversee and manage the daily functions of the New England Road Landfill site and provide the Department, in writing, the name and contact details of the Manager.	Within 3 days	21 Feb 2020	Yes	Done
4.1.3	Within fourteen days of the issuing of the Compliance Notice, ensure that waste disposed at New England Road Landfill site is covered and compacted daily with a minimum of 150mm of soil or other material approved by the licensing authority:	Within 14 days	31 July 2020	Yes	Ongoing. Waste received on daily basis compacted, covered. The second landfill compactor is working. Cover material from the stockpile is exported to Site and waste is being covered. Additional cover material is being sourced from Council/other Projects. Two additional trucks have been In-sourced to assist with delivery of cover material. Soil from Mkondeni, Campsdrift and private Builders
4.1.4	Submit written reports to the Department on a weekly basis confirming that waste has been covered and compacted on a daily basis.	Weekly	Weekly	Yes	Ongoing

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4.15	Ensure landfill disposal site service roads are repaired and maintained in a condition which ensures unimpeded access to the site for vehicles transporting waste and are kept free of waste.	14 days (amended)	30 September 2020	Yes	100% of waste was removed. Road repairs are in progress, as well as some landscaping done where possible.
4.1.6	Ensure all waste brought to be disposed of at the New England Road Landfill site is disposed of within the waste disposal area	14 days	31 Mar 2020	Yes	Ongoing- Filling plans are adhered to. Work cells are reduced to 60 m2 and compacted and covered daily except for rainy days
4.1.7	Submit Action Plan for the immediate removal of the significant volumes of waste had been disposed of along access roads and open areas outside of the approved and lined waste disposal area, and the disposal of this waste in a lawful manner (varied to 13 March)	7 days (amended)	13 Mar 2020	Yes	The waste has been removed, levelling and grassing in progress.

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COMPLIANCE REPORT 17 November 2020

Para No.	COMPLIANCE NOTICE INSTRUCTIONS: NEW ENGLAND ROAD LANDFILL	Time frame	Date	Complete	Remarks
Immediate			CN: 18 Feb 2020		
4.1.8 & 4.1.9	Ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced and submit a contingency plan to address the measures that will be implemented to ensure that the appropriate landfill plant for covering and compacting is repaired and/or replaced within a maximum of 48 hours of a failure	7 days	26 Feb 2020	Yes – 1 Landfill Compactor has a faulty Water Pump and this is being attended to by Workshops. 2 Tippers and a TLB have been hired in to assist with cover operations.	The second Landfill Compactor is not working. The procurement of an additional landfill Compactor, Excavator and D7 Dozer for the 2020/2021 financial year which has a current budget allocation of R14,000,000.00. An additional R15,000,000 is required to cover all Capital Requirements) The MIG application for funding has been approved and the Procurement Process has begun.
4.1.10	Provide written confirmation of the measures which have been taken to ensure proper on-site security and access to the landfill site and to prevent uncontrolled access and dumping outside of the workface.	7 days	31 May 2020	Yes – Municipal Security and SAPS are planning Blitz exercises with undisclosed dates.	Done but subsequently damaged by trespassers on site S.A. Police raided the nearby informal area on the 7 th of August 2020. Municipality to repair the damaged fence, (I) SAPS, SANDF, Msunduzi Security and Department of Home Affairs to randomly implement joint operations on an on-going basis.

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4.1.11	<p>Appoint a suitably qualified landfill site specialist to conduct and finalise a Technical Assessment Report of the New England Road Landfill site, including:</p> <ul style="list-style-type: none"> • reviewing and assessing the current situation. 	14 days	4 Mar 2020	Yes	Done
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COMPLIANCE REPORT 17 November 2020

Para No.	COMPLIANCE NOTICE INSTRUCTIONS: NEW ENGLAND ROAD LANDFILL	Time frame	Date	Complete	Remarks
	Immediate		CN: 18 Feb 2020		
	<ul style="list-style-type: none"> • Identifying the most appropriate and technically acceptable measures to be implemented to manage the current waste backlogs and re-establish effective and safe landfill site disposal practices. • Identifying appropriate interventions and measures needed to ensure that the site is managed and operated in accordance with the Waste Management Licence conditions; relevant legislation; and industry best practice; and, to identify appropriate timeframes to implement the identified actions and measures 				Done

Done

4.1.15	Submit a suitably qualified specialist /engineer to assess the storm-water management system and provide recommendations to ensure that all Leachate emanating from the site including contaminated run-off water is treated and disposed of lawfully.	60 days	30 June 2021	No	An extension of time was requested from Edtea
4.1.16	Provide a detailed and comprehensive plan that addresses all the other non-compliances noted in the table contained in section 3.1. of the Compliance Notice	14 days	15 December 2020	No	An extension of time was requested from Edtea
4.1.17	Appoint an independent and suitably qualified Landfill Site specialist, registered with a relevant professional body, to develop a Decommissioning and rehabilitation plan for the Landfill site.	6 Months	30 June 2021	No	An extension of time was requested from Edtea
4.1.18	Provide a written submission to the Department outlining the Municipality's plans towards decommissioning and rehabilitating the New England landfill Site.	6 months	30 June 2021	No	An extension of time was requested from Edtea. A supply chain process has begun to invite suitably qualified specialists to develop the Plan.
5.1	Establishment of the Landfill Site Monitoring committee	3 Months	30 November 2020	Yes	34 Applications have been received and are being screened the first meeting will be held in early December 2020

Yours faithfully,

PP 
MP Khathide
City Manager

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THE MSUNDUZI MUNICIPALITY

SCM 7-R OF 20/21

**APPOINTMENT OF PROFESSIONAL ENVIRONMENTAL MANAGEMENT CONSULTANTS
COMPANIES SPECIALIZING IN LANDFILL MANAGEMENT AND RESTORATION FOR A
PERIOD OF 3 YEARS**

TENDER NOTICE

The Msunduzi Municipality hereby invites proposals from suitably qualified Professional Environmental Management Consultant specializing in Landfill Management and Restoration services for a period of three (3) years.

Tender documents will be made available to tenderers from **12h00 on Thursday, 28 January 2021**. Tender documents can be downloaded and printed at the tenderer's cost from the National Treasury eTender Publication Portal on www.etenders.gov.za

Printed copies of the tender documents shall also be available from the Supply Chain Management Unit Offices, 5th Floor, A S Chetty Centre, 333 Church Street, Pietermaritzburg, as from the abovementioned date and time, at a non-refundable tender deposit fee of **R905.05 (including VAT)** for each document drawn. Only cash, bank guaranteed cheques or EFT payments will be accepted.

For any technical related enquiries, please contact Mr. W Mhlongo (Waste Management) on Telephone No. 078 6836 427 or e-mail address: wilson.mhlongo@msunduzi.gov.za.

For any procurement, related enquiries please contact Vuyani Msimang (Supply Chain Management Unit) on direct Telephone No. 033 – 392 2807 or e-mail address vuyani.msimang@msunduzi.gov.za.

Tenders must be submitted both in hard copy and on CD/USB Flash Drive contained in sealed envelopes and marked with "Contract No. SCM 7-R of 20/21" and the Contract Description must be placed in the Tender Box located in the Foyer, Ground Floor, City Hall, 169 Chief Albert Luthuli Street (formerly Commercial Road), Pietermaritzburg, 3201, not later than 12h00 on Monday, 01 March 2021, when they will be publicly opened. Only tenders placed in the Tender Box shall be accepted. *Please Note that it is compulsory to submit both the hard copy document and the CD/USB Flash Drive. Failure to comply with this condition shall result in the tender being disqualified*

Tender Validity Period: Four (4) months commencing from the closing date of tender.

Tender Adjudication/Evaluation Criteria: The tender shall be evaluated on a Two Stage Evaluation System – Stage One: Functionality and Stage Two: 80/20 Preference Point System in accordance with the Preferential Procurement Regulations 2017, issued in terms of section 5 of the Preferential Procurement Policy Framework Act, Act No. 5 of 2000. The Functionality for Stage One shall be evaluated on the following criteria:

STAGE 1: FUNCTIONALITY SECTION 1		Maximum Points
1	Number of Landfill Rehabilitation projects completed by environmental company	20 Points
2	Prof Civil Engineer/Technologist (Experience of Professional Landfill engineer within permanent employ of the company)	20 Points
3	Permanent qualified technical staff. Company structure/organogram must be submitted.	25 Points
4	Lead Environmental Scientist Specializing in landfill Management Degree in Environmental Management	20 Points
Total Functionality Points		85 Points
Threshold to Qualify for Stage Two		80 % (68 Points)

The Msunduzi Municipality does not bind itself to accept the lowest or any tender and reserves the right to accept the whole or any part of a tender. Each tenderer will be informed of the tender result.

The Msunduzi Municipality expects businesses within the Pietermaritzburg and Midlands Region to support its contract and BEE/SMME initiatives.

M.P KHATHIDE: CITY MANAGER

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**REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 311 OF THE NATIONAL ENVIRONMENTAL
MANAGEMENT ACT, 1998 (Act No. 107 OF 1998)**

MSUNDUZI MUNICIPALITY

Postal Address:

Bag X321

PIETERMARITZBURG, 3200

**REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 311 OF THE NATIONAL ENVIRONMENTAL
MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AS AMENDED: NON-COMPLIANCE WITH THE
VARIATION WASTE MANAGEMENT LICENCE (WML) ISSUED IN TERMS SECTION 49 (1) AND 54 (1)
OF THE NATIONAL ENVIRONMENTAL WASTE MANAGEMENT ACT (NEM: WA) 59 OF 2008 (REF NO.
DC22, WML/006112016) FOR THE NEW ENGLAND LANDFILL SITE. PIETERMARITZBURG. MSUNDUZI
LOCAL MUNICIPALITY**

3. DETAILS OF NON-COMPLIANCE

3.1 The details of the Specific failures to comply with the provisions of the Waste Management Licence are given below in tabular form:

Regulation Number	Legal provision and condition	Proposed Action by licence Holder.	Time frame	Date	Status Complete/Not Complete	Remarks
IMMEDIATE						
51.5	The licence holder must notify every registered interested and affected party (including State departments identified during the application) in Writing and within 14 (fourteen) days of the date that this licence was issued.	The municipality will notify in writing the every registered interested and affected party (including State departments identified during the application)	Three (3) Months	30 March 2021	NO	

5.16	<p>The notification referred to in 5.1.5 must—</p> <ul style="list-style-type: none"> • indicate the decision of the Department. • Specify the date on which the licence was issued. • Advise the interested and affected party that a copy of the licence, including reasons for the decision, Will be provided on request, • Inform the public where the decision Can be accessed; and • Advise the interested and affected party that the prescribed appeal forms can be obtained from the Department, the licence holder, or the Environmental Assessment Practitioner. 	<p>The municipality will notify in writing the every registered interested and affected party (including State departments identified during the application) as per the notification guidelines listed in 5.16</p>				
5.17	<p>The licence holder must publish a notice, within 14 (fourteen) days of the date that this licence was issued. in the newspaper's which were used for the placing Of notices as part of the public participation process.</p>	<p>The municipality will publish a notice in the newspaper's which were used for the placing Of notices as part of the public participation process.</p>	Four Months (4)	30 April 2021	NO	
5.3.7	<p>Waste disposed of at the site may be reclaimed. The sorting may take place at a designated area allocated by Landfill Site Management and must not interfere with the daily operation of the</p>	<p>The action to address this regulation will entail the enhancement of site security in order to address and control waste</p>	Ongoing	30 May 2021	NO	

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	site. in this regard the licence holder must take measures to ensure that an appropriate area for reclamation is identified and implemented within one (1) year of the date of this licence,	reclaiming. The demarcation of the waste reclaiming area will be undertaken.				
539	Waste disposed of must be compacted and covered at the end of each Working day with a minimum of 150mm Of soil or Other material approved by the licensing authority	The cover material will be transported and stockpiled on site for the purpose of ensuring daily soil cover of waste as per the regulation.	Ongoing	Ongoing	NO	
5312	The license holder may only accept waste on the active working area of the site between 07h00 and 16h00 during weekdays and between 07h00 and 15h00 on Saturdays	The waste is only accepted as per the regulation , this is also ensured in terms of access control on site.	Ongoing	Ongoing	YES	The site accepts waste as the Regulation
53.14	The license holder must ensure that the site is fully fenced with an installed lockable gate, legible Notice board written in at least two (2) appropriate languages and must include operation hours; contact and emergency details; types of wastes allowed, and tariffs. Appropriate warning signs must be displayed at the entrance on the notice board,	The site is fully fenced and the municipality will ensure that the Gaps identified in between the fence line are closed in terms of maintenance and the avoidance of trespassing on site. This will include notice with appropriate signage is displayed at the entrance	Ongoing	30 April 2021	YES	The site is fully fenced with lockable gates; two languages are including on the operational hours. Types of waste allowed and tariff of charges are also included and lastly appropriate warning signs are displayed at the entrance of the site.
5315	Notices prohibiting unauthorized persons		Three(3) Months	30 April 2021	NO	

	from entering the site, as well as an internationally accepted sign indicating the risks involved in unauthorized entry must be displayed at 100 meter intervals along the boundary of the site,	The municipality will install the Notices and signage as per the regulation				
5.317	The licence holder must take all reasonable steps to ensure that the site is operated in such a manner that nuisance conditions or health hazards or the creation of nuisance conditions or health hazards including vermin and odour are prevented.	The municipality will ensure that the reasonable steps are taken to ensure that nuisance conditions or health hazards including vermin and odour are prevented through daily covering of the active cell and also maintaining a clean precinct on the non-active part of the Landfill lined areas through litter control and litter picking where necessary use machinery to clean the precinct.	Ongoing	Ongoing	NO	
5.3.18	No smoking, burning of waste or naked flames are allowed on the site.	As part of security control and management signage will be installed and also prevention measures will	Ongoing	Ongoing	NO	

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		be implement for the purpose of preventing naked flames and smoking on site.				
5.319	Litter scattered by wind must be collected on a daily basis and the licence holder must use movable fences to control wind-blown waste where practicable.	The municipality will look into the installation of movable fence line as barrier to avoid waste being scattered by wind where practicable.	5 Months	30 May 2021	NO	
5.321	Indigenous trees must be established on the screening berm around the site to effectively screen the site from nearby roads and residential areas.	The municipality will plant indigenous trees which will be evergreen trees that will assist in screening off the site from roads and residential areas.	Two (2) Months	30 February 2021	NO	
5322	During the operative life Of the site, the licence holder must take all reasonable steps, such as suitable zoning, written agreements with adjacent landowners, buying out land and/or obtaining a servitude to prevent the development Of further residential and or light industrial areas closer to the Site than —165 metres to the north-west, 180 metres to the North, and 800 metres	The municipal will engage the neighbours in terms of agreements with adjacent landowners in terms of obtaining servitudes to prevent development of further residential or light industries closer to the site.	8 Months	30 August 2021	NO	

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		be implement for the purpose of preventing naked flames and smoking on site.				
5.319	Litter scattered by wind must be collected on a daily basis and the licence holder must use movable fences to control wind-blown waste where practicable.	The municipality will look into the installation of movable fence line as barrier to avoid waste being scattered by wind where practicable.	5 Months	30 May 2021	NO	
5.321	Indigenous trees must be established on the screening berm around the site to effectively screen the site from nearby roads and residential areas.	The municipality will plant indigenous trees which will be evergreen trees that will assist in screening off the site from roads and residential areas.	Two (2) Months	30 February 2021	NO	
5322	During the operative life Of the site, the licence holder must take all reasonable steps, such as suitable zoning, written agreements with adjacent landowners, buying out land and/or obtaining a servitude to prevent the development Of further residential and or light industrial areas closer to the Site than —165 metres to the north-west, 100 metres to the North, and 800 metres	The municipal will engage the neighbours in terms of agreements with adjacent landowners in terms of obtaining servitudes to prevent development of further residential or light industries closer to the site.	8 Months	30 August 2021	NO	

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		be implement for the purpose of preventing naked flames and smoking on site.				
5.319	Litter scattered by wind must be collected on a daily basis and the licence holder must use movable fences to control wind-blown waste where practicable.	The municipality will look into the installation of movable fence line as barrier to avoid waste being scattered by wind where practicable.	5 Months	30 May 2021	NO	
5.321	Indigenous trees must be established on the screening berm around the site to effectively screen the site from nearby roads and residential areas.	The municipality will plant indigenous trees which will be evergreen trees that will assist in screening off the site from roads and residential areas.	Two (2) Months	30 February 2021	NO	
5322	During the operative life Of the site, the licence holder must take all reasonable steps, such as suitable zoning, written agreements with adjacent landowners, buying out land and/or obtaining a servitude to prevent the development Of further residential and or light industrial areas closer to the Site than —165 metres to the north-west, 180 metres to the North, and 800 metres	The municipal will engage the neighbours in terms of agreements with adjacent landowners in terms of obtaining servitudes to prevent development of further residential or light industries closer to the site.	8 Months	30 August 2021	NO	

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	to the east, south and west.					
5.326	Runoff water must comply with quality requirements of the General and Special Standard prescribed by the Department Of Water and Sanitation, as amended from time to time.	The municipality is to design and implement a surface drainage system that will comply with the general and special standards prescribed by Department of water and sanitation.	6 Months	30 June 2020	NO	
5.33	All leachate emanating from the site including contaminated runoff Water shall be treated to comply With the aforementioned Standard and discharged in a legal manner, be evaporated in a lined dam and or; be discharged into a sewer if accepted by the authority in control Of that sewer	The municipality will ensure that the leachate emanating from the site is handled and managed as per the regulation.	11 Months	30 November 2021	NO	
5.337	Monitoring of the ground and surface water quality network must be conducted at the locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein	The municipality will ensure the monitoring of the ground and surface water locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein by	4 Months	30 April 2020	NO	

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	to the east, south and west.					
5.326	Runoff water must comply with quality requirements of the General and Special Standard prescribed by the Department Of Water and Sanitation, as amended from time to time.	The municipality is to design and implement a surface drainage system that will comply with the general and special standards prescribed by Department of water and sanitation.	6 Months	30 June 2020	NO	
5.33	All leachate emanating from the site including contaminated runoff Water shall be treated to comply With the aforementioned Standard and discharged in a legal manner, be evaporated in a lined dam and or; be discharged into a sewer if accepted by the authority in control Of that sewer	The municipality will ensure that the leachate emanating from the site is handled and managed as per the regulation.	11 Months	30 November 2021	NO	
5.337	Monitoring of the ground and surface water quality network must be conducted at the locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein	The municipality will ensure the monitoring of the ground and surface water locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein by	4 Months	30 April 2020	NO	

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	to the east, south and west.					
5.326	Runoff water must comply with quality requirements of the General and Special Standard prescribed by the Department Of Water and Sanitation, as amended from time to time.	The municipality is to design and implement a surface drainage system that will comply with the general and special standards prescribed by Department of water and sanitation.	6 Months	30 June 2020	NO	
5.33	All leachate emanating from the site including contaminated runoff Water shall be treated to comply With the aforementioned Standard and discharged in a legal manner, be evaporated in a lined dam and or; be discharged into a sewer if accepted by the authority in control Of that sewer	The municipality will ensure that the leachate emanating from the site is handled and managed as per the regulation.	11 Months	30 November 2021	NO	
5.337	Monitoring of the ground and surface water quality network must be conducted at the locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein	The municipality will ensure the monitoring of the ground and surface water locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein by	4 Months	30 April 2020	NO	

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		appointing a specialist to perform those studies				
50.38	If, in the opinion of this Department, the water quality variables referred to 5.337 and listed in Annexure VI shows an increasing trend, the licence holder shall initiate a monthly monitoring programme	Subject to the report in 5.337 will this regulation be determined.	N/A	N/A	NO	
5.342	The atmospheric levels in the atmosphere Of (a) carbon dioxide must not exceed 05%; and (b) methane must not exceed 1%, by volume in air at the monitoring locations.	The municipality will conduct air monitoring reports	5 Months	May 2021	NO	
5.343	Should the atmospheric levels of flammable gas be between 0, and a higher frequency of monitoring must be instituted. Should levels above 1% be detected in buildings on the site, the buildings must be evacuated and the contingency plan implemented	The municipality will conduct atmospheric levels of flammable gas analysis and respond as per the regulation 5.342	3 Months	30 March 2021	NO	
5344	Should measurements of the gas monitoring network at any time exceed the limits specified, the licence holder must report this as an incident.	The municipality will report any Section 30 incidents as they arise			NO	
53.46	The licence holder must within 60 (Sixty days) from the date of issue of this licence, submit a proposal for a comprehensive air quality, gas and dust monitoring programme for approval by the licensing authority.	The municipality ensure and facilitate the proposal and implementation of the monitoring programme	2 Months	28 February 2021	NO	

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	Once approved the licence holder must implement this monitoring programme,					
5.348	The licence holder must submit quarterly environmental audit reports, prepared by the licence holder, to this Department, unless Otherwise agreed to in writing by this Department	The municipality will submit any performance reports required.	4 Months	30 April 2021	NO	
5.350	The licence holder must establish a landfill Monitoring Committee that will meet twice a year and not later than 30 days after the external audit report specified in condition 5.3.53 has been submitted. The monitoring committee must include interested and affected parties this Department, the licence holder and Department Water and Sanitation.	On-going	Monthly meetings	30 February 2021	YES	The first Landfill Monitoring Committee Meeting took place on the 14 December 2020.
5.351	The licence holder must ensure that minutes of the Monitoring Committee meetings are kept and must ensure that these minutes are distributed to all members of the Monitoring Committee Within 14 days after a meeting	The municipality will ensure that the secretariat office is present at all times in the Monitoring Committee meetings	Monthly Meetings	30 February 2021	NO	Meeting minutes to be provided. Still within the 14 days.
5352	The licence holder must appoint an independent, suitably qualified external auditor to audit the site annually,	The municipality will ensure that the right correct procedures are followed and the right external	5 months	30 May 2021	NO	

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		auditor is appointed				
5.353	The external audit report referred to in 5.352 must include- An evaluation of the compliance with the conditions of this licence for the reporting period: Actions taken to rectify the non-compliances identified.	The external audit report will include an evaluation of the compliance from the municipality with an action plan to deal with any non-compliances.	5 months	30 May 2021	NO	
5.354	The external audit report referred to in 5.352 must be submitted to the Department within 90 (ninety) days of the audit being conducted.	The report will be submitted the specified period.	3 months	30 March 2021	NO	
53.55	The licence holder must, within 24 hours notify this Department Of occurrence or detection of any incident on the site which has the potential to cause environmental impact or water pollution	The municipality will report any Section 30 incidents with 24 hours	Ongoing	30 February 2021	YES	The municipality does report all section-30 incidents with the specified timeline which is 24 hours.
53.56	The licence holder must, within 14 days or shorter time if specified by this Department from the occurrence Or detection of any incident referred to condition 5.3,55. submit to this Department an -action plan which must include a detailed time schedule of measures taken to: 5356.1 correct the impact resulting from the incident; 5.3.56.2 prevent the incident from causing any further impacts;	The municipality will submit a Section 30 Assessment Plan within 14 days of any incident.	Ongoing	30 February 2021	NO	

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	and prevent the recurrence Of a similar incident.					
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'MK9'

Vershen Moodley

From: Ian Felton <Ian.Felton@kznedtea.gov.za>
Sent: Tuesday, 05 January 2021 15:54
To: Wilson S. Mhlongo; Cyril Naidoo
Cc: Scelo Duma; Mbongeni Mathe; Madoda Khathide; Kimera Pillay; Kim Van Heerden
Subject: RE: SECTION 3.1 OF THE REVISED COMPLAINE NOTICE ACTION PLAN WITH TIMELINES.

Dear Wilson and Cyril

The Action Plan submitted on the 15th December 2020 by Msunduzi Municipality in terms of the requirements of paragraph 4.16 of the Revised Compliance Notice, refers.

The Department would like to conduct a site inspection at the New England Road Landfill and have a brief meeting with yourselves, to discuss aspects of the plan and associated timeframes related to the Action Plan that has been submitted.

Please let me know if you will be available this **Friday 8th January 2021 at 10am**, to undertake an on-site meeting and thereafter a site inspection **at the New England Road Landfill site**.

Regards
Ian

Ian Felton
Control Environmental Officer: Environmental Planning
Environmental Management Inspector (Grade 2)

Department Economic Development, Tourism & Environmental Affairs
uMgungundlovu District
Tel. No. : 033 347 1820
Fax. No. : 033 347 1826
Cell: 082 461 9101

From: Wilson S. Mhlongo [mailto:Wilson.Mhlongo@msunduzi.gov.za]
Sent: 15 December 2020 01:45 PM
To: Ian Felton; Hareh Inderlall
Cc: Scelo Duma; Mbongeni Mathe; Madoda Khathide; Cyril Naidoo
Subject: SECTION 3.1 OF THE REVISED COMPLAINE NOTICE ACTION PLAN WITH TIMELINES.

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Dear Mr Ian Felton.

As per the M.E.C'S indication kindly receive attached section 3.1 of the revised compliance notice with estimate date and action to be taken to address this non-compliances.

Thank you.

Wilson S. Mhlongo
Senior Manager: Waste
City Engineers

Doull Road
PMB
3200
078 6836 427

Wilson.Mhlongo@msunduzi.gov.za
Msunduzi Municipality
www.msunduzi.gov.za



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MK10

REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 311 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (Act No. 107 OF 1998)

Regulation Number	Legal provision and condition	Proposed Action by licence holder	Time Frame	Due Date	Completed/Not Completed	Remarks	Current Status/ Plans	Estimated Cost associated with Action	Responsible department
IMMEDIATE									
5.1.5	The licence holder must notify every registered interested and affected party (including State departments identified during the application) in writing and within 14 (fourteen) days of the date that this licence was issued.	The municipality will notify in writing the every registered interested and affected party (including State departments identified during the application)	Three (3) months	30-Mar-21	NO			R15 000	Waste Management Landfill Management
5.1.6	The notification referred to in 5.1.5 must— <ul style="list-style-type: none"> • Indicate the decision of the Department • Specify the date on which the licence was issued • Advise the interested and affected party that a copy of the licence, including reasons for the decision, will be provided on request, • Inform the public where the decision can be accessed; and • Advise the interested and affected party that the prescribed appeal forms can be obtained from the Department, the licence holder, or the Environmental Assessment Practitioner. 	The municipality will notify in writing the every registered interested and affected party (including State departments identified during the application) as per the notification guidelines listed in 5.1.6		NO			The municipality will notify in writing the every registered interested and affected party (including State departments identified during the application) as per the notification guidelines listed in 5.1.6	R15 000	Waste Management Landfill Management
5.1.7	The licence holder must publish a notice, within 14 (fourteen) days of the date that this licence was issued, in the newspaper's which were used for the placing of notices as part of the public participation process.	The municipality will publish a notice in the newspaper's which were used for the placing of notices as part of the public participation process.	Four Months (4)	30-Apr-21	NO			R 15 000.00	Waste Management Landfill Management
5.1.7	Waste disposed of at the site may be reclaimed. The sorting may take place at a designated area allocated by Landfill Site Management and must not interfere with the daily operation of the site. In this regard the licence holder must take measures to ensure that an appropriate area for reclamation is identified and implemented within one (1) year of the date of this licence,	The action to address this regulation will entail the enhancement of site security in order to address and control waste reclaiming. The demarcation of the waste reclaiming area will be undertaken. The area for this process has been identified on site. The security on site has already been enhanced in order to control and address waste reclaiming.	Ongoing	30-May-21	Partially Met			R 100 000.00	Waste Management Landfill Management
539	Waste disposed of must be compacted and covered at the end of each Working day with a minimum of 150mm of soil or Other material approved by the licensing authority	The cover material will be transported and stockpiled on site for the purpose of ensuring daily soil cover of waste as per the regulation.	Ongoing	Ongoing	Partially Met			R 500 000.00 per month if we consider procuring	Waste Management Landfill Management
5312	The licence holder may only accept waste on the active working area of the site between 07h00 and 16h00 during weekdays and between 07h00 and 15h00 on Saturdays	The waste is only accepted as per the regulation, this is also ensured in terms of access control on site.	Ongoing	Ongoing	YES				Waste Management Landfill Management

5.3.14	The licence holder must ensure that the site is fully fenced with an installed lockable gate, legible notices and must include operation hours, contact and emergency details; types of wastes allowed, and tariffs. Appropriate warning signs must be displayed at the entrance on the notice board.	The site is fully fenced and the municipality will ensure that the Gaps identified in between the fence line are closed in terms of maintenance and the avoidance of trespassing on site. This will include notice with appropriate signage is displayed at the entrance	Ongoing	30-Apr-21	YES	The site is fully fenced with lockable gates; two languages are included on the operational hours. Types of waste allowed and tariff of charges are also included and lastly appropriate warning signs are displayed at the entrance of the site.	R1 500 000.00	Waste Management Landfill Management
5.3.15	Notices prohibiting unauthorized persons from entering the site, as well as an internationally accepted sign indicating the risks involved in unauthorized entry must be displayed at 100 meter intervals along the boundary of the site	The municipality will install the notices and signage as per the regulation. Additional notice and signage	Three(3) Months	30-Apr-21	Partially Met	Signs are existing	R50 000	Waste Management Landfill Management
5.3.17	The licence holder must take all reasonable steps to ensure that the site is operated in such a manner that nuisance conditions or health hazards or the creation of nuisance conditions or health hazards including vermin and odour are prevented.	The municipality will ensure that the reasonable steps are taken to ensure that nuisance conditions or health hazards including vermin and odour are prevented through daily covering of the active cell and also maintaining a clean precinct on the non-active part of the Landfill lined areas through litter control and litter picking where necessary use machinery to clean the precinct.	Ongoing	Ongoing	Partially Met	Waste is being levelled, compacted and will be covered	R 500 000.00 per month	Waste Management Landfill Management
5.3.18	No smoking, burning of waste or naked flames are allowed on the site.	As part of security control and management signage will be installed and also prevention measures will be implemented for the purpose of preventing naked flames and smoking on site.	Ongoing	Ongoing	Partially Met	Signs and security measures are existing	R100 000.00	Waste Management Landfill Management
5.3.19	Litter scattered by wind must be collected on a daily basis and the licence holder must use movable fences to control wind-blown waste where practicable.	The municipality will source the materials for movable fences. There after installation of movable fence line as barrier to avoid waste being scattered by wind where practicable.	5 Months	30-May-21	Partially Met	Daily litter control is ongoing through the use of Extended Public works Programme beneficiaries.	R 200 000.00	Waste Management Landfill Management
5.3.21	Indigenous trees must be established on the screening berm around the site to effectively screen the site from nearby roads and residential areas.	The municipality will plant additional indigenous trees which will be evergreen trees that will assist in screening off the site from roads and residential areas.	Two (2) Months	30 February 2021	NO	There are existing trees present but insufficient screening requirement of additional trees.	R 200 000.00	Waste Management Landfill Management
5.3.22	During the operative life of the site, the licence holder must take all reasonable steps, such as suitable zoning, written agreements with adjacent landowners, buying out land and/or obtaining servitudes to prevent the development of further residential and or light industrial areas closer to the site than —165 metres to the north-west, 180 metres to the North, and 800 metres to the east, south and west.	The municipal will engage the neighbours in terms of agreements with adjacent landowners in terms of obtaining servitudes to prevent development of further residential or light industries closer to the site	8 Months	30-Aug-21	NO	The municipal will engage the neighbours in terms of agreements with adjacent landowners in terms of obtaining servitudes to prevent development of further residential or light industries closer to the site.	R 1 500 000.00	Economic Development Planning and Waste management Landfill Management

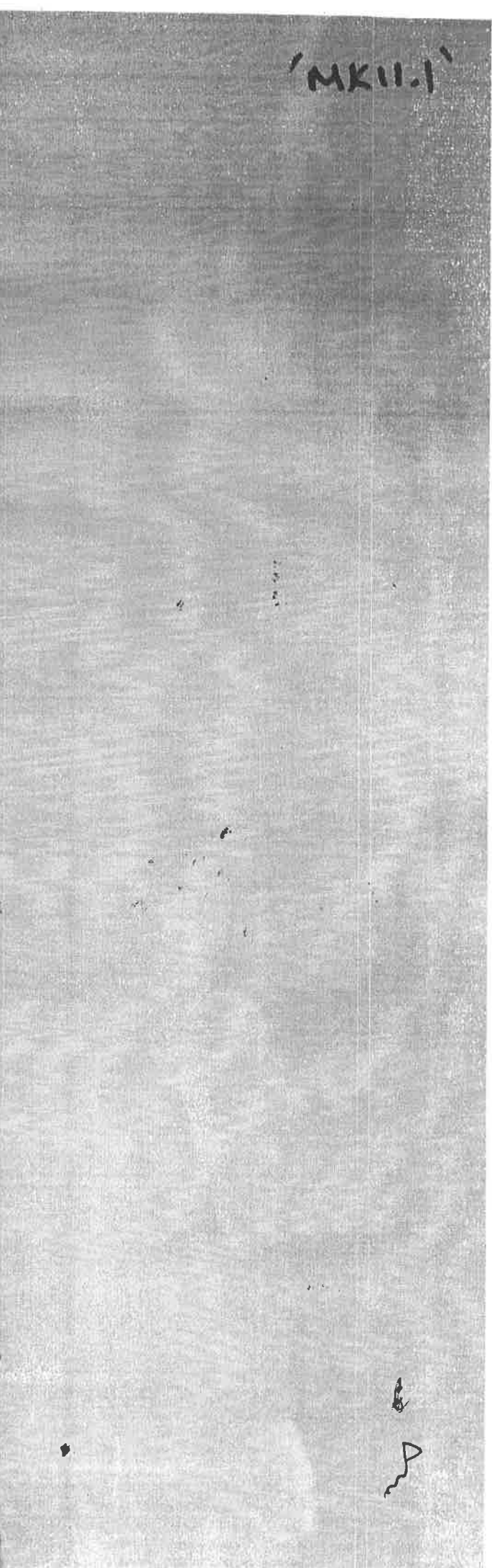
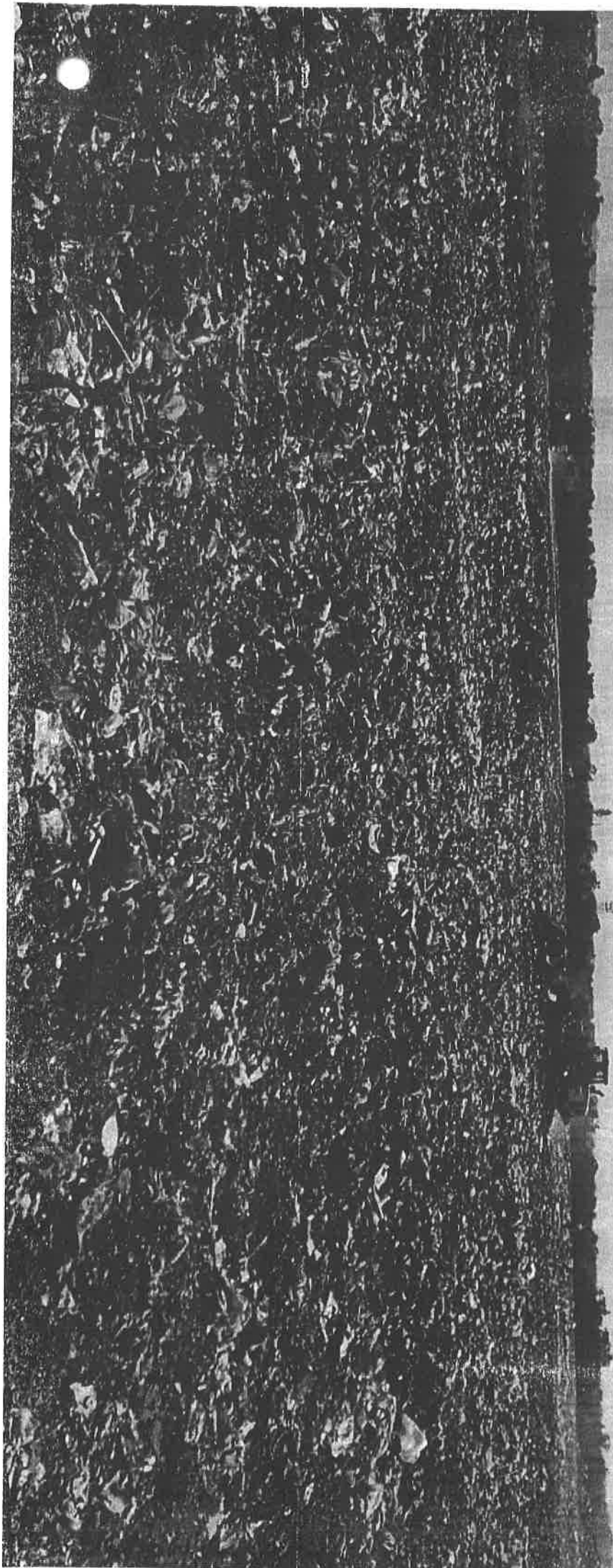
5.326	<p>Runoff water must comply with quality requirements of the General and Special Standard prescribed by the Department of Water and Sanitation, as amended from time to time.</p>	<p>The municipality is to design and implement a surface drainage system that will comply with the general and special standards prescribed by Department of water and sanitation.</p>	6 Months	30-Jun-20	NO	<p>The municipality has started the process of upgrading the access roads including surface drains that will channel surface water to causes and also prevent the runoff water from escaping the the active cells and contaminate water as an interim measure while the permanent solution is being resolved.</p>	<p>The municipality is to design and implement a surface drainage system that will comply with the general and special standards prescribed by Department of water and sanitation.</p>	<p>The desing will determine the cost of the Action</p>	<p>Infrastructure Department Water and Sanitation</p>
5.33	<p>All leachate emanating from the site including contaminated runoff water shall be treated to comply with the aforementioned Standard and discharged in a legal manner, be evaporated in a lined dam and or; be discharged into a sewer if accepted by the authority in control Of that sewer</p>	<p>The municipality will ensure that the leachate emanating from the site is handled and managed as per the regulation.</p>	11 Months	30-Nov-21	NO	<p>We are currently relying on the use of a water tanker to reduce leachate from spilling out of the stump at the leachate station. We have engaged the electrical section to repair the circuit board that was stolen at the leachate station.</p>	<p>The municipality will ensure that the leachate emanating from the site is handled and managed as per the regulation. This will be done as part of the upgrade</p>	<p>R 1 000 000.00</p>	<p>Waste Management Landfill Management</p>
5.337	<p>Monitoring of the ground and surface water quality network must be conducted at the locations identified in the Water Quality Monitoring Plan and must monitor the variables listed in Annexure VI at the frequencies reflected therein</p>	<p>The municipality will ensure the monitoring of the ground and surface water locations identified in the Water Quality Monitoring Plan and will monitor the variables listed in Annexure VI at the frequencies reflected therein by appointing a specialist to perform those studies. The municipality will procure the relevant specialist services to conduct external monitoring.</p>	4 Months	30-Apr-20	NO	<p>We will engage internal environmental control to assist with adhoc monitoring until the specialist services are procured.</p>	<p>A specialist will be appointed to conduct External Monitoring</p>	<p>R 300 000.00</p>	<p>Waste Management Landfill Management</p>
50.33	<p>If, in the opinion of this Department, the water quality variables referred to 5.337 and listed in Annexure VI shows an increasing trend, the licence holder shall initiate a monthly monitoring programme</p>	<p>Subject to the report in 5.337 will this regulation be determined.</p>	N/A	N/A	NO	<p>The results of the internal and external monitoring referred to in 5.337, will determine frequency of monitoring.</p>	<p>The results of the internal and external monitoring referred to in 5.337, will determine frequency of monitoring.</p>	<p>R 50 000.00 per month</p>	<p>Waste Management Landfill Management</p>

5.342	The atmospheric levels in the atmosphere of (a) carbon dioxide must not exceed 05%; and (b) methane must not exceed 2%, by volume in air at the monitoring locations.	The municipality will conduct air monitoring reports	5 Months	May-21	Partially Met	We have conducted an air quality monitoring exercise to cater for the interim period until a specialist is appointed	R 300 000.00	Environmental Control Unit
5.343	Should the atmospheric levels of flammable gas be between 0, and a higher frequency of monitoring must be instituted. Should levels above 1% be detected in buildings on the site, the buildings must be evacuated and this contingency plan implemented	The municipality will conduct atmospheric levels of flammable gas analysis and respond as per the regulation 5.342	3 Months	30-Mar-21	NO		R 300 000.00	Environmental Control Unit
5.344	Should measurements of the gas monitoring network at any time exceed the limits specified, the licence holder must report this as an incident.	The municipality will report any Section 30 incidents as they arise	Ongoing				N/A	Waste Management Landfill Management
5.345	The licence holder must within 60 (sixty days) from the date of issue of this licence, submit a proposal for a comprehensive air quality gas and dust monitoring programme for approval by the licensing authority. Once approved the licence holder must implement this monitoring programme.	The municipality ensure and facilitate the proposal and implementation of the monitoring programme	8 Months	01-Oct-21	NO		R1 000 000	Environmental Control Unit.
5.348	The licence holder must submit quarterly environmental audit reports, prepared by the licence holder, to this Department, unless otherwise agreed to in writing by this Department	The municipality will submit quarterly environmental reports as per requirement and this will be achieved through the procurement of external specialist services	4 Months	30-Apr-21	NO		N/A	Environmental Control Unit and Waste Management Landfill management.
5.350	The licence holder must establish a Landfill Monitoring Committee that will meet twice a year and not later than 30 days after the external audit report specified in conditions 5.353 has been submitted. The monitoring committee must include interested and affected parties this Department, the licence holder and Department Water and Sanitation.	Ongoing	Monthly meetings	Commenced	YES	The first Landfill Monitoring Committee Meeting took place on the 14 December 2020.	N/A	Waste Management Landfill Management
5.351	The licence holder must ensure that minutes of the Monitoring Committee meetings are kept and must ensure that these minutes are distributed to all members of the Monitoring Committee within 14 days after a meeting	The municipality will ensure that the secretary office is present at all times in the Monitoring Committee meetings	Monthly Meetings	Commenced	YES		N/A	Waste Management Landfill Management
5.352	The licence holder must appoint an independent, suitably qualified external auditor to audit the site annually.	The municipality will ensure that the right correct procedures are followed and the right external auditor is appointed	7 months (in the New Financial Year	30-Jul-21	NO		R 300 000.00	Waste Management Landfill Management
5.353	The external audit report referred to in 5.352 must include- An evaluation of the compliance with the conditions of this licence for the reporting period. Actions taken to rectify the non-compliances identified.	The external audit report will include an evaluation of the compliance from this municipality with an action plan to deal with any non-compliances.	7 months	30-Jul-21	NO		N/A	Waste Management Landfill Management
5.354	The external audit report referred to in 5.352 must be submitted to the Department within 90 (ninety) days of the audit being conducted.	The report will be submitted as per (the specified period.	11 months	30-Nov-21	NO		N/A	Waste Management Landfill Management

55.55	<p>The licence holder must, within 24 hours notify this Department of occurrence or detection of any incident on the site which has the potential to cause environmental impact or water pollution</p>	<p>The municipality will report any Section 30 incidents with 24 hours</p>	Ongoing	Commenced	YES	<p>The municipality does report all section-30 incidents with the specified timeline which is 24 hours.</p>	<p>All incidents will be reported within 24 hours</p>	N/A	Waste Management Landfill Management
55.56	<p>The licence holder must, within 14 days or shorter time if specified by this Department from the occurrence or detection of any incident registered in condition 5.3.55; submit to this Department an action plan which must include a detailed time schedule of measures taken to: 5356.1 correct the impact resulting from the incident; 5.3.56.2 prevent the incident from causing any further impacts; and prevent the recurrence of a similar incident.</p>	<p>The municipality will submit a Section 30 Assessment Plan within 14 days of any incident.</p>	Ongoing	Commenced	YES	<p>The municipality has already started complying with this Action</p>	<p>The municipality will submit a Section 30 Assessment Plan within 14 days of any incident.</p>	N/A	Waste Management Landfill Management

53.55	<p>The license holder must, within 24 hours notify this Department of occurrence or detection of any incident on the site which has the potential to cause environmental impact or water pollution</p>	<p>The municipality will report any Section 30 incidents with 24 hours</p>	<p>Ongoing</p>	<p>Commenced</p>	<p>YES</p>	<p>The municipality does report all section-30 incidents with the specified timeline which is 24 hours.</p>	<p>All incidents will be reported within 24 hours</p>	<p>N/A</p>	<p>Waste Management Landfill Management</p>
53.56	<p>The license holder must, within 14 days or shorter time if specified by this Department from the occurrence or detection of any incident referred in condition 5.3.5.5, submit to this Department an action plan which must include a detailed time schedule of measures taken to:</p> <p>5356.1 correct the impact resulting from the incident;</p> <p>5.3 56 2 prevent the incident from causing any further impacts; and prevent the recurrence of a similar incident.</p>	<p>The municipality will submit a Section 30 Assessment Plan within 14 days of any incident.</p>	<p>Ongoing</p>	<p>Commenced</p>	<p>YES</p>	<p>The municipality has already started complying with this Action</p>	<p>The municipality will submit a Section 30 Assessment Plan within 14 days of any incident.</p>	<p>N/A</p>	<p>Waste Management Landfill Management</p>

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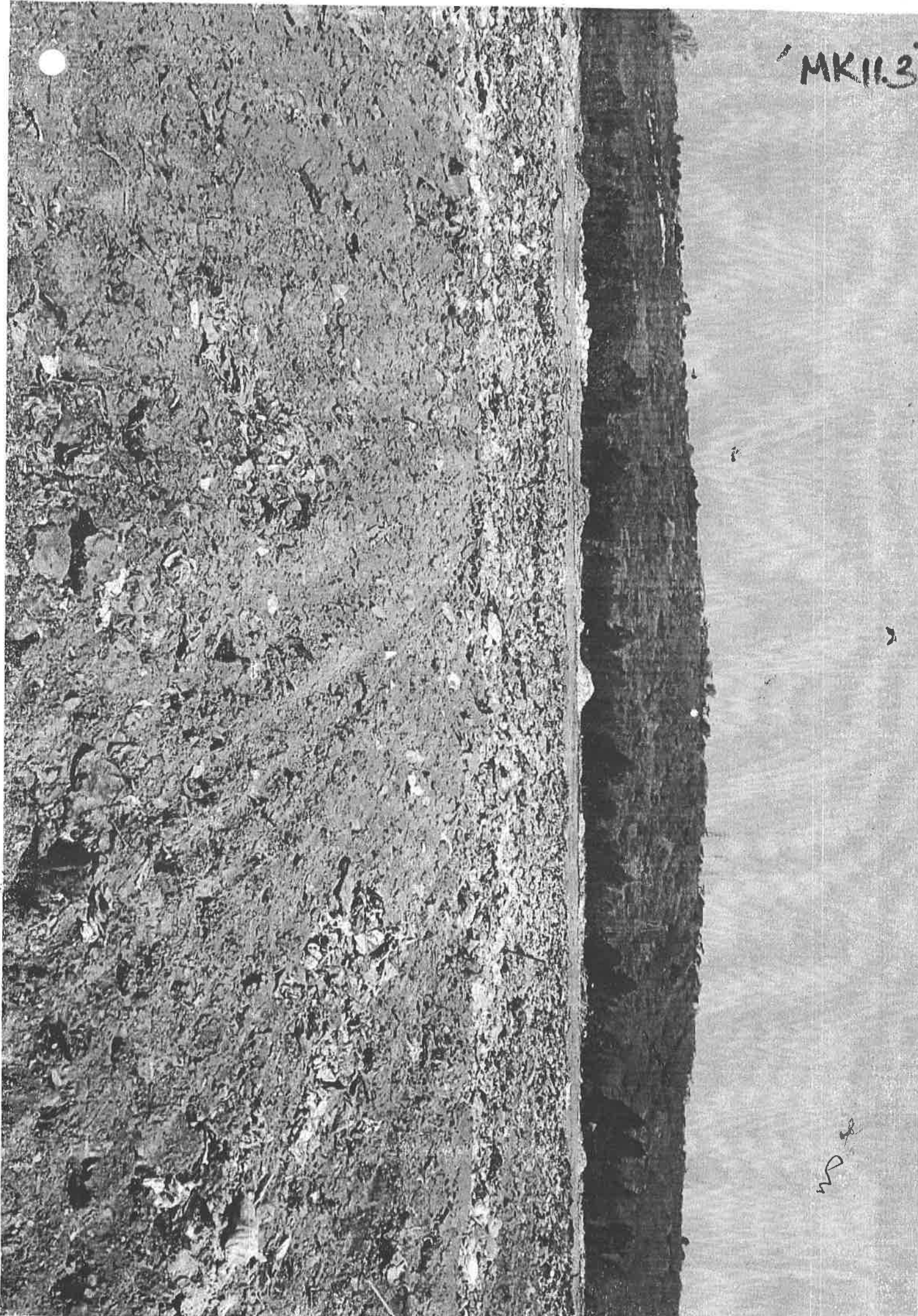


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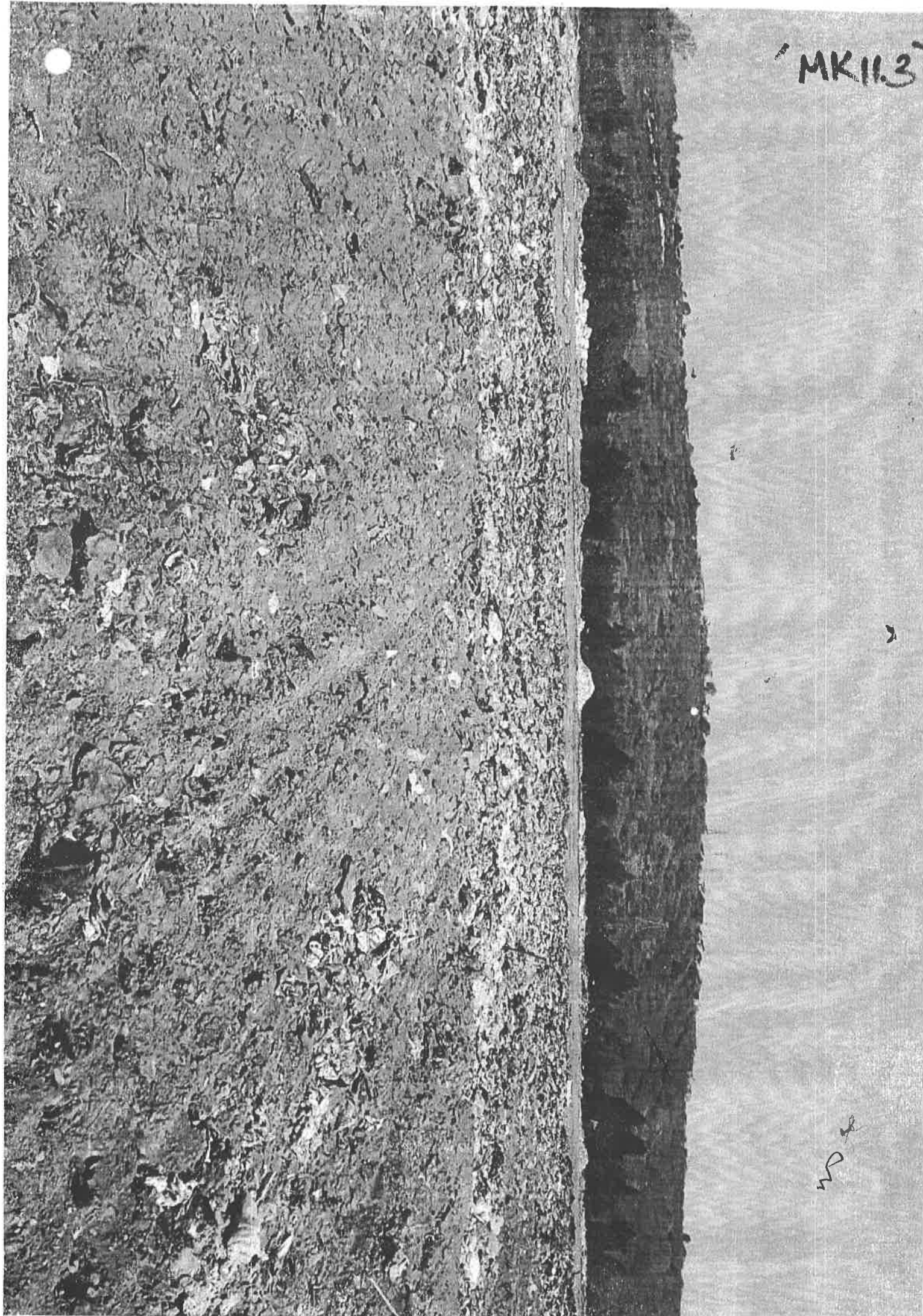
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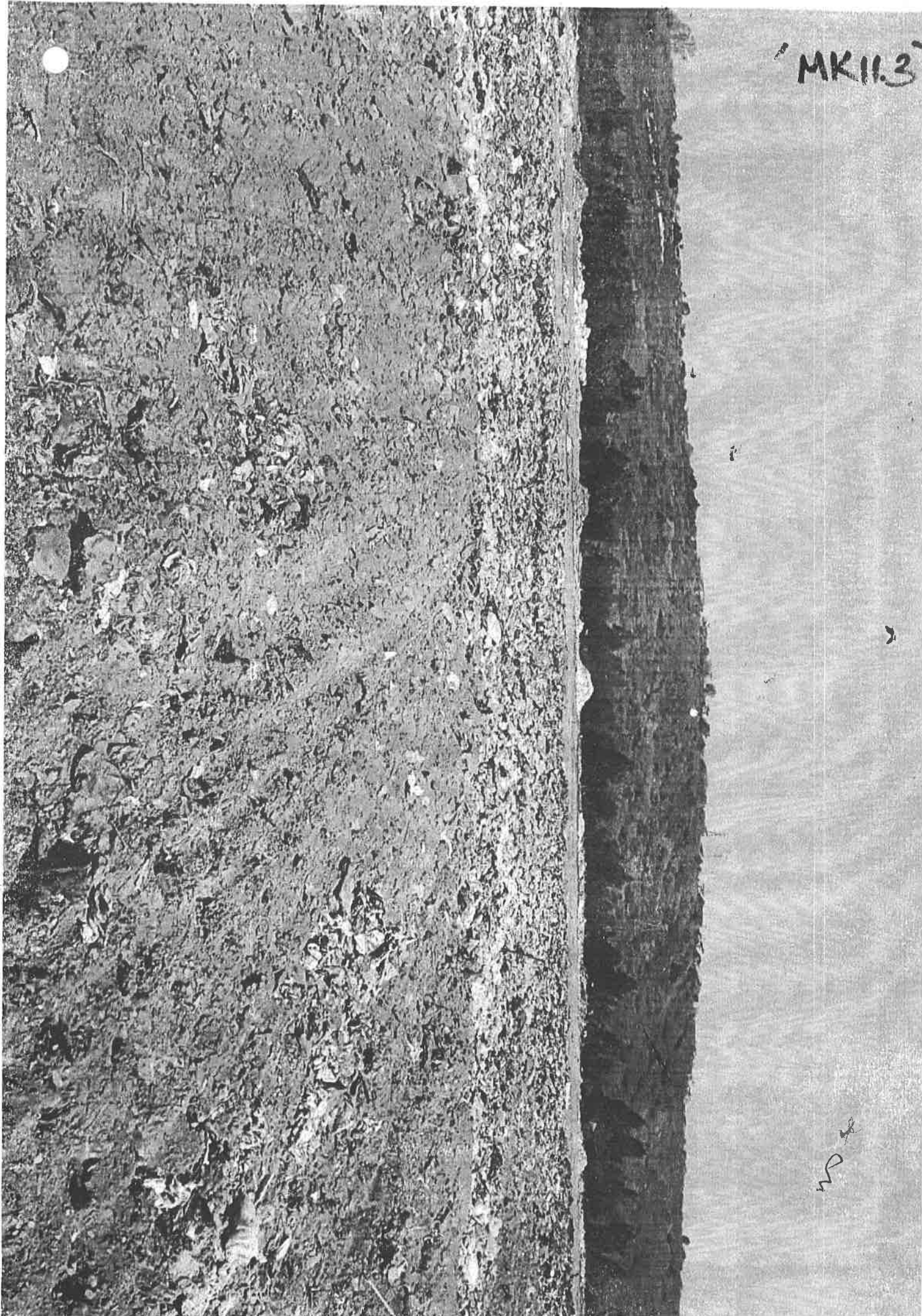
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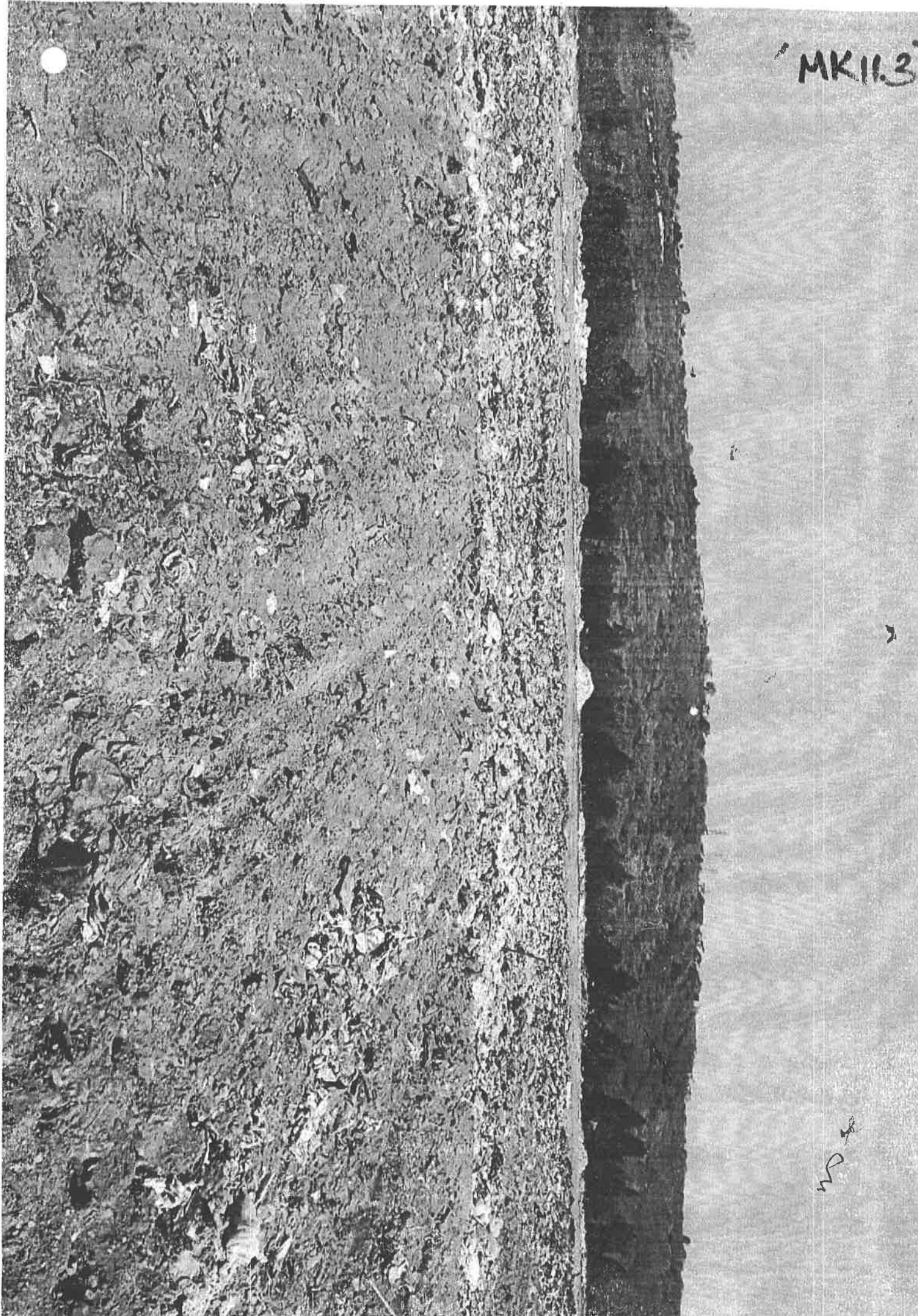
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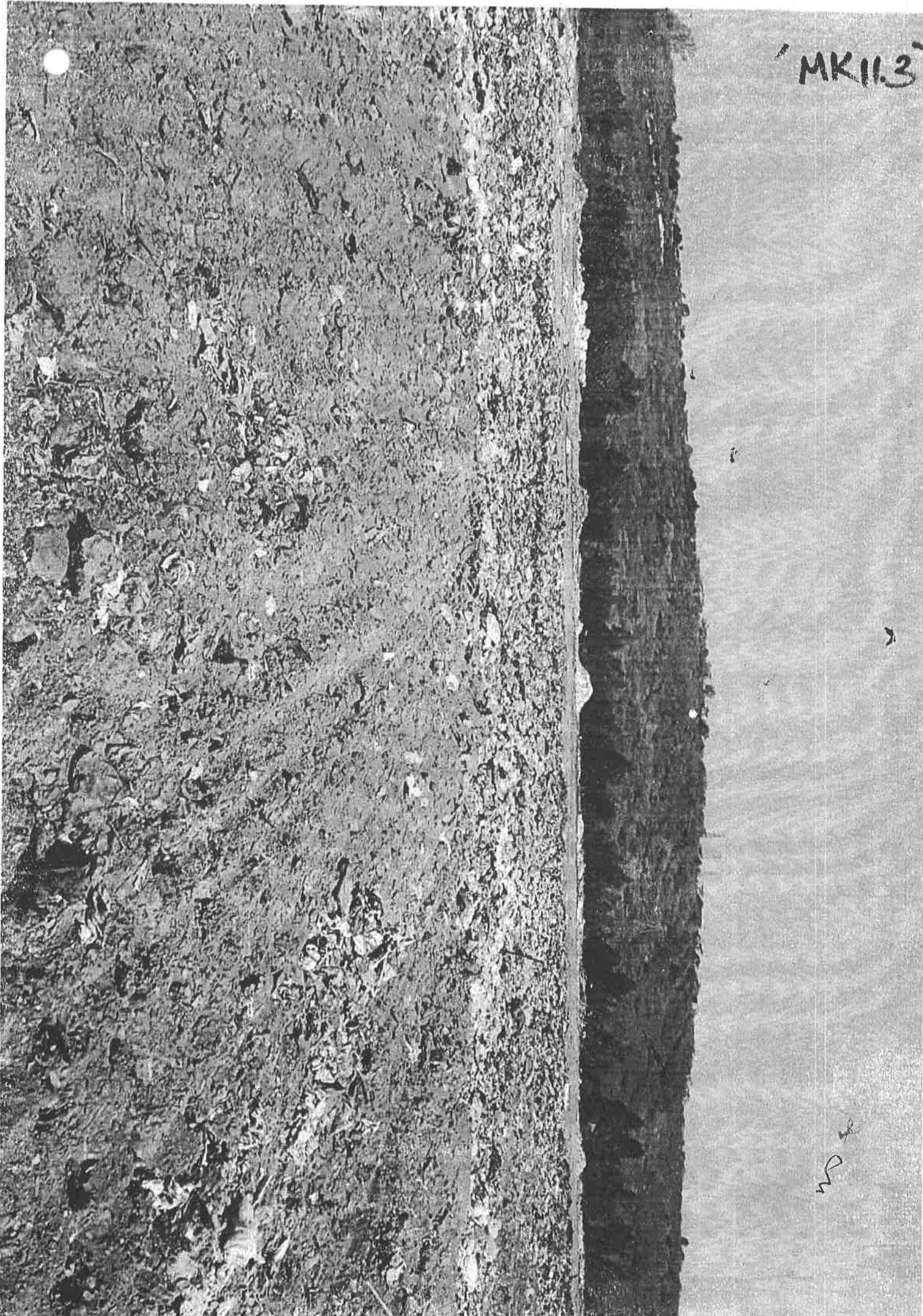
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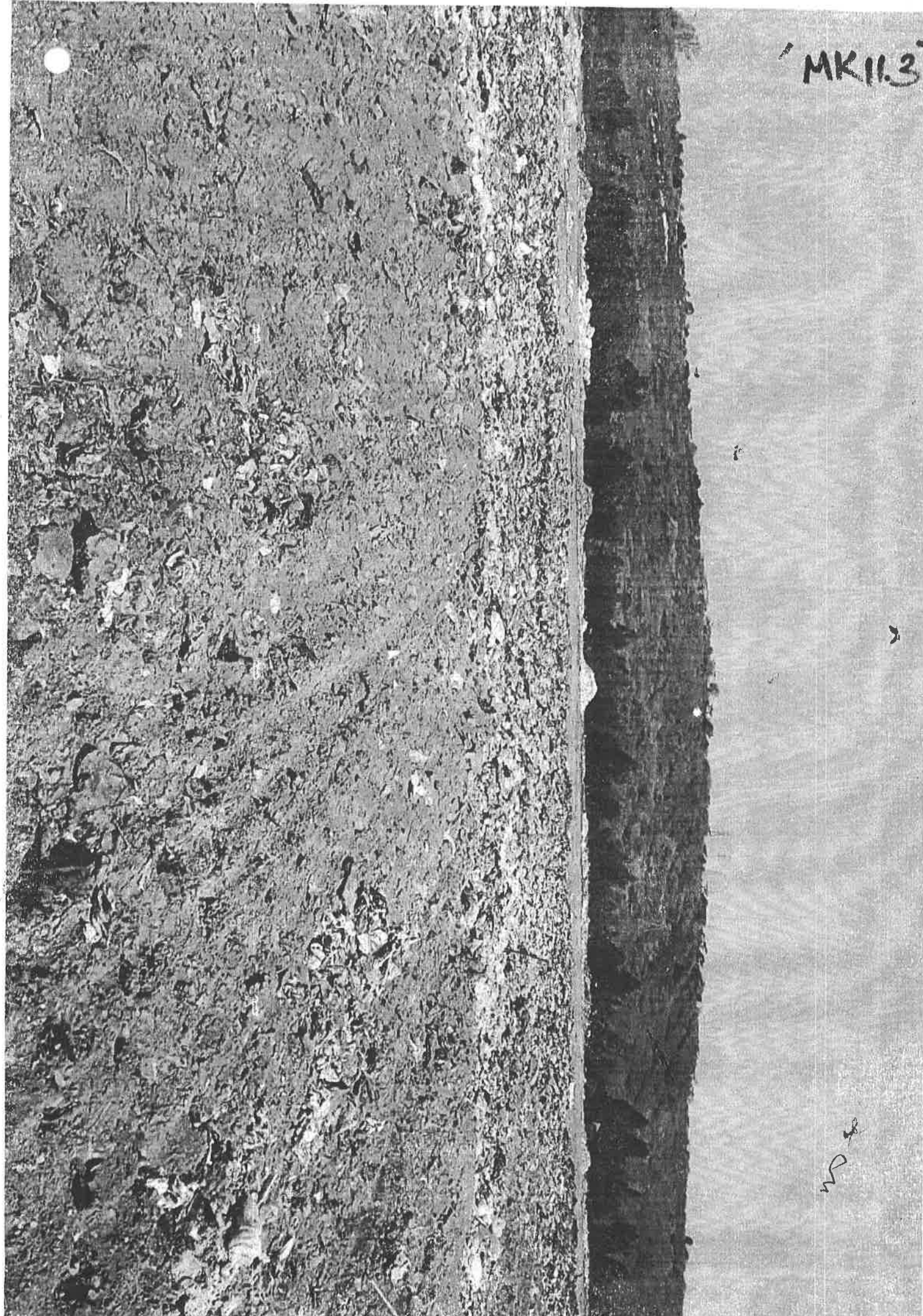
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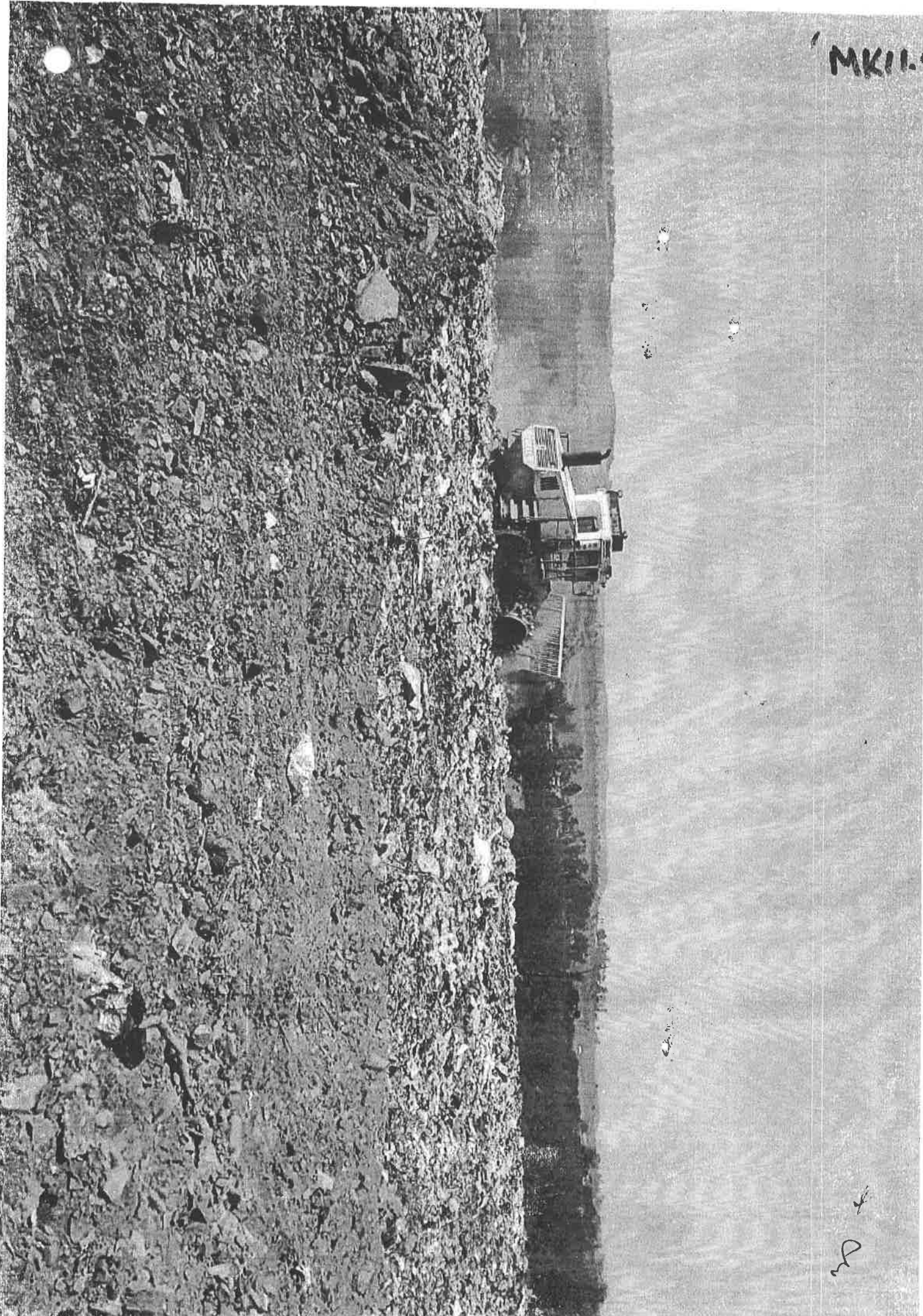


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Dr

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PHOTO 1 : Access road refurbished – photograph taken by Cyril Naidoo in Jan 2021



Dr

PHOTO 2 : Waste cleared - photograph taken by Cyril Naidoo in Jan 2021



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PHOTO 3 : Transfer station cleared - photograph taken by Cyril Naidoo in Jan 2021



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PHOTO 4: Area cleared - photograph taken by Cyril Naidoo in Jan 2021

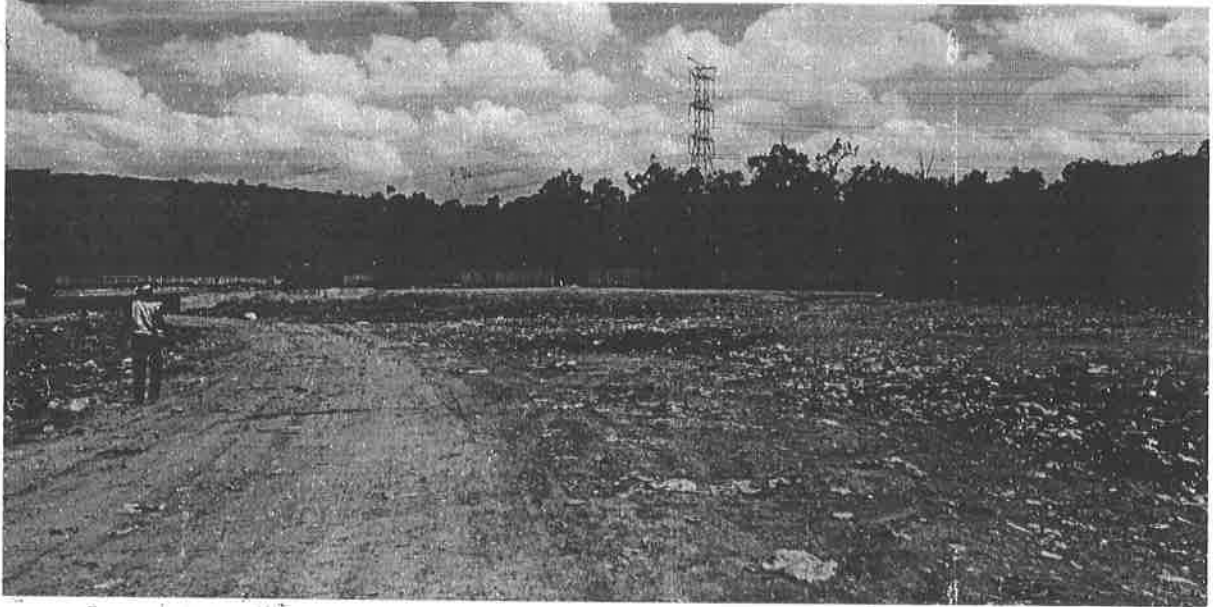
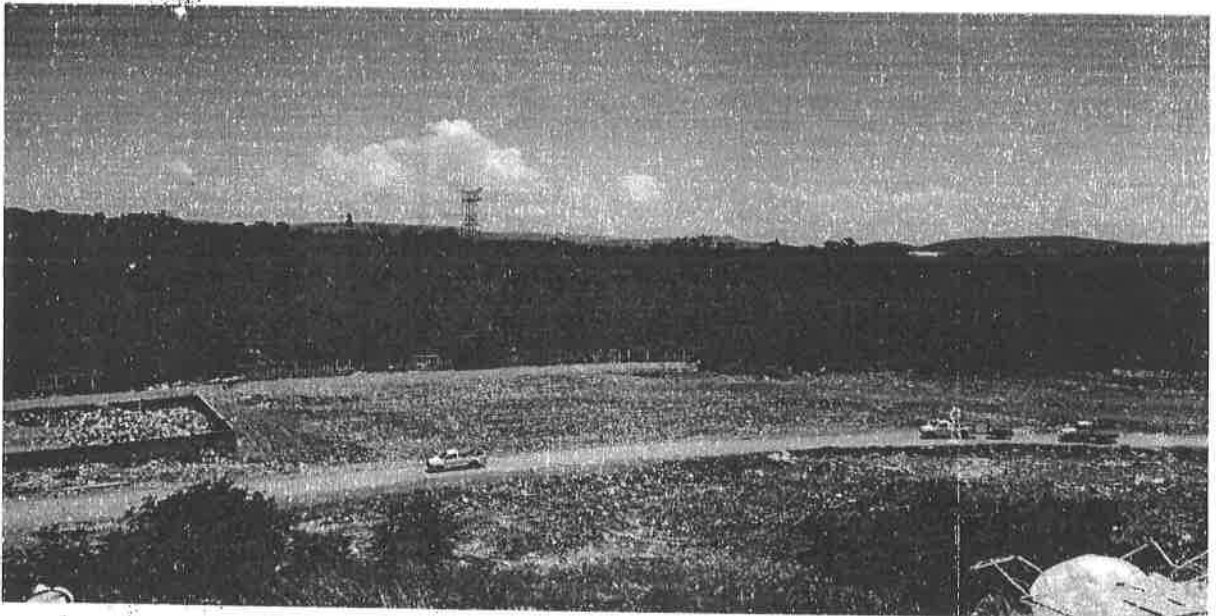
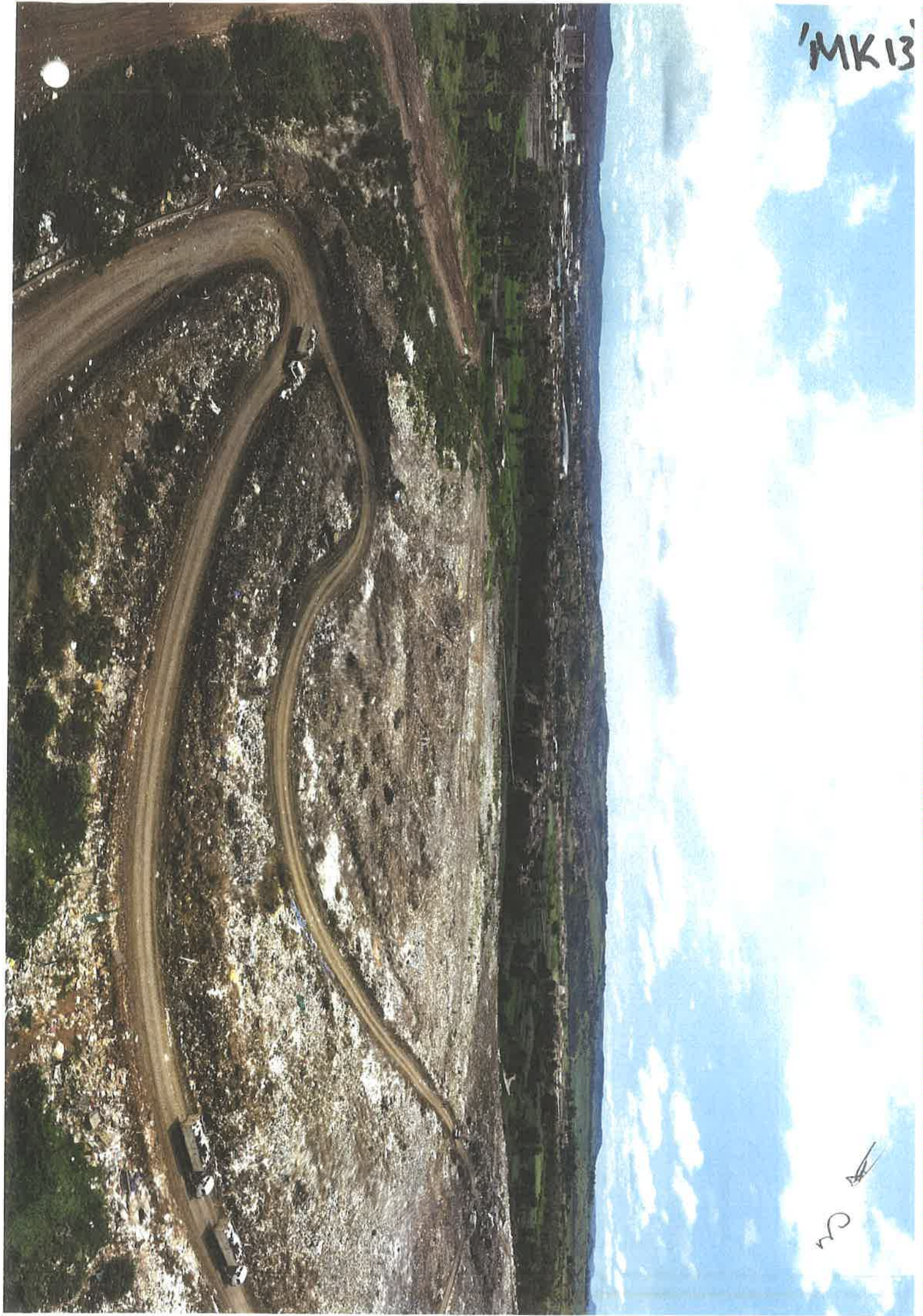


PHOTO 5: Area cleared - photograph taken by Cyril Naidoo in Jan 2021



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24

7	<p>GM: Infrastructure Services SM: Water & Sanitation</p> <p>GM: Infrastructure Services SM: Water & Sanitation</p> <p>GM: Community Services SM: Public Safety, Emergency Services</p>	<p>Unavailability of the existing infrastructure</p> <p>Design and implementation of the fire hydrant extinguishing infrastructure network</p>	<p>(i) Possible high-level electrified fencing around the site, and other technology monitoring systems linked to the SACS</p> <p>(ii) Design of the hydrant infrastructure network</p> <p>(iii) Procurement of the required materials, equipment and services</p> <p>(iv) Commissioning of the infrastructure</p>	<p>(i) 06/08/2020</p> <p>(ii) 06/08/2020</p> <p>(iii) 19/10/2020</p> <p>(iv) 03/03/2021</p>	<p>(i) 30/06/2021</p> <p>(ii) 19/02/2021</p> <p>(iii) 05/05/2021</p>	<p>Three hydrants have been retrofitted in terms of an existing network of fire water hydrants. An additional installation of four hydrants is being undertaken internal by resident landfill manager. Testing for pressure is being commissioned through the fire section.</p>	<p>N/A</p> <p>Pressure testing has been completed. The contract for purchase of the hydrants could not be awarded due to no valid bids received. A seven day quote will now be invited.</p>	<p>NOT APPLICABLE</p> <p>3 (100% - 125%)</p>	<p>N/A</p> <p>N/A</p> <p>No valid bids received for hydrants</p> <p>N/A</p>	<p>N/A</p> <p>N/A</p> <p>Use seven day quotation to purchase hydrants</p> <p>N/A</p> <p>1 month</p> <p>N/A</p> <p>N/A</p>	<p>N/A</p> <p>Pressure Logging profiles</p> <p>BAC Minutes</p> <p>N/A</p>	
LONGTERM INTERVENTIONS												
8	<p>GM: Sustainable Development & City Enriches SM: Town Planning & Environmental Management</p> <p>GM: Sustainable Development & City Enriches SM: Town Planning & Environmental Management</p> <p>GM: Community Services SM: Waste Management</p>	<p>Limited lifespan of the current New England Landfill</p> <p>Identification, commissioning and purchase of the new landfill site.</p>	<p>(i) Identification of a new landfill site</p> <p>(ii) Commissioning of feasibility study</p> <p>(iii) Purchase of the new landfill site</p>	<p>(i) 06/08/2020</p> <p>(ii) 12/12/2020</p> <p>(iii) 02/2021</p>	<p>(i) 30/11/2020</p> <p>(ii) 01/2021</p> <p>(iii) 06/2021</p>	<p>Funding applications for the proposed new landfill site has been final in terms of proposals into the application for funding. The municipality is currently awaiting funding results.</p>	<p>Identification of the landfill site will be done as a part of the SDF Review. The 'Synthesis Report' has been submitted, the Draft SDF is being prepared</p> <p>This will be done as a part of the reviewing of the SDF, which is being reviewed.</p>	<p>3 (100% - 125%)</p> <p>3 (100% - 125%)</p>	<p>N/A</p> <p>N/A</p>	<p>N/A</p> <p>N/A</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>	<p>The Synthesis Report</p> <p>The Synthesis Report of the reviewed SDF</p>

MKIS

NBI Please ensure that all the information provided in brackets are removed before submitting this report to the all the Authorities.

This form provides a template for the emergency incident report required in terms of section 30(5) of the National Environmental

 <p>environmental affairs Department: Environmental Affairs REPUBLIC OF SOUTH AFRICA</p>	Document Type:	Emergency Incident Report	
	Title for the incident:	NEW ENGLAND LANDFILL SITE - FIRE	
	Date of the incident :	20 JULY 2020	
Reference:		Initial Submission Date:	21 JULY 2020
Revision No.:		Compiled by:	Cyril Naidoo

Management Act (Act No. 107 of 1998) (hereinafter "NEMA") in which the responsible person or, where the incident occurred in the course of that person's employment, his or her employer, must, within 14 days of the incident, report to the Director General, provincial head of department and municipality such information as is available to enable an initial evaluation of the incident, including: (a) the nature of the incident; (b) the substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects; (c) initial measures taken to minimise impacts; (d) causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure; and (e) measures taken and to be taken to avoid a recurrence of such incident.

In terms of section 30(1)(a) of NEMA, an "incident" means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed.

In line with section 24 of the Constitution of the Republic of South Africa (Act No. 108 of 1996), "serious" is taken to be a measure of the impact of an incident where such an incident has had, could have had, is having, or will have a negative impact on human health or well-being.

1. RESPONSIBLE PERSON

In terms of section 30(1)(b) of NEMA, the "responsible person" includes any person who: (i) is responsible for the incident; (ii) owns any hazardous substance involved in the incident; or (iii) was in control of any hazardous substance involved in the incident at the time of the incident

1.1 Name: Cyril Naidoo	1.2 Designation: Manager – Landfill & Recycling
1.3 Postal Address: 333 Church Street	1.4 Physical Address: 333 Church Street
1.5 Telephone (B/H): 033 3922620	1.6 Telephone (A/H): 083 577 9220
1.7 Fax:	
1.8 E-mail: Cyril.naidoo@msunduzi.gov.za	
1.9 Nature of Business: Local Government	





2. EMERGENCY INCIDENT SUMMARY INFORMATION

Mark the appropriate boxes

2.1 Fire:	<input checked="" type="checkbox"/>	2.2 Spill:	<input type="checkbox"/>	2.3 Explosion:	<input type="checkbox"/>	2.4 Gaseous Emission:	<input type="checkbox"/>
2.5 Injuries	<input type="checkbox"/>	2.6 Reportable injuries:	<input type="checkbox"/>	2.7 Hospitalisation:	<input type="checkbox"/>	2.8 Fatalities:	<input type="checkbox"/>
2.9 Open water impacts:	<input type="checkbox"/>	2.10 Ground water impacts:	<input type="checkbox"/>	2.11 Atmospheric impacts:	<input type="checkbox"/>	2.12 Soil impacts:	<input type="checkbox"/>
2.13 Own emergency response involved	<input type="checkbox"/>	2.14 Fire prevention services involved	<input type="checkbox"/>	2.15 Government hazardous materials emergency response involved	<input type="checkbox"/>	2.16 More than 1 governmental emergency response service involved	<input type="checkbox"/>
2.17 Emission of non-toxic substances at low concentrations	<input type="checkbox"/>	2.18 Emission of non-toxic substances at high concentrations	<input type="checkbox"/>	2.19 Emission of toxic substances at low concentrations	<input type="checkbox"/>	2.20 Emission of toxic substances at high concentrations	<input type="checkbox"/>
2.21 No evacuation required	<input type="checkbox"/>	2.22 Immediate area evacuated	<input type="checkbox"/>	2.23 Immediate surrounds evacuated	<input type="checkbox"/>	2.24 Evacuation of the general public	<input type="checkbox"/>
2.25 Others	<input type="checkbox"/>						

3. INITIAL EMERGENCY INCIDENT REPORT

In terms of section 30(3) of NEMA, the responsible person or, where the incident occurred in the course of that person's employment, his or her employer must forthwith after knowledge of the incident, report through the most effective means reasonably available: (a) the nature of the incident; (b) any risks posed by the incident to public health, safety and property; (c) the toxicity of substances or by-products released by the incident; and (d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health and the environment to: (i) the Director General; (ii) the South African Police Services and the relevant fire prevention service; (iii) the relevant provincial head of department or municipality; and (iv) all persons whose health may be affected by the incident.

3.1 Description	3.2 Date:	3.3 Time:	3.4 Medium:	3.5 Name and contact details:
Msunduzi Fire & Rescue Department	20/07/2020	23H27	Cell phone	Fire Control Room
LOCAL : Senior Manager – Waste	20/07/2020	23H30	(TEL) 078 683 6427 Wilson.mhlongo@msunduzi.gov.za	Msunduzi Municipality Senior Manager – Waste
PROVINCIAL: DAEA Kimera Dhayer	21/07/2020	10H00	Cell phone	Kimera Dhayer 033 347 3994
DIRECTOR GENERAL: (Department of Environmental				Miss Nosipho Ngcaba Director General of Department of Environmental Affairs

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2. EMERGENCY INCIDENT SUMMARY INFORMATION

Mark the appropriate boxes

Affairs)				
Any other Director General of National Department, E.g. Department of Water Affairs			031 336 2700 SibangoL@dws.gov.za ndout@dws.gov.za moonsamyc@dwa.gov.za	DWA: Colleen Moonsamy

4. INCIDENT DETAILS

In terms of NEMA section 30(5)(a) and (d), the responsible person must report on the nature of the incident as well as the causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure

4.1 Location, of the incident	New England Landfill Site		
4.2 Incident start date and time: 20/07/2020 23h47	4.3 Incident duration: 3 days		
4.4 Duration of exposure: 3 days			
4.5 Incident description: Fire on Landfill Site - General Waste was alight.			
<u>Background of the incident: Waste that was on the Work-face caught alight at around 23h47 , the fire spread rapidly through various points on site and was finally extinguished 3 days later..</u>			
<u>Operation: Landfill- Active Work-face</u>			
<u>Incident type: Fire</u>			
<u>Root Cause of the incident: Unknown</u>			
<u>Contributory Factors to the incident: Not specific to the incident – waste on the active work-face caught alight..</u>			
<u>Conclusion: The Fire Department , Landfill teams and external teams responded efficiently and the fire was brought under control and finally extinguished in 3 days.</u>			
4.6 The Weather was good with no strong wind.	4.7 Ambient air temperature 23 degrees		
4.8 Weather conditions were normal	4.9 Other relevant meteorological conditions		

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5. POLLUTANTS RELEASED DURING INCIDENT

In terms of NEMA section 30(5)(b), the responsible person must report on the substances involved and an estimation of the quantity.

List all the pollutants directly released during the incident (i.e. exclude those pollutants that resulted from mitigation measures, e.g. flaring, treatment, dilution etc.)

5.1. Substance or mixture of substances	5.2. Reference Number	5.3. Phase eg solid, liquid or gas	5.4. Total Quantity emitted/released	5.5. Units eg Kg, L etc	5.6. Nature of emission/release
General Waste	N/A	Solid	External Air Quality tests conducted by specialist.	As per report	As per report

6. SECONDARY POLLUTANTS RESULTING FROM INCIDENT

In terms of NEMA section 30(5)(b), the responsible person must report on the substances involved and an estimation of the quantity released.

List all the pollutants that resulted from mitigation measures. e.g. flaring, treatment, dilution etc.

6.1. Substance or mixture of substances	6.2. Reference Number	6.3. Phase	6.4. Total Quantity emitted/released	6.5. Unit	6.6. Nature of emission
General Waste	As per report	As per report	As per report	As per report	As per report

7. POLLUTANT CONCENTRATIONS

In terms of NEMA section 30(5)(b), the responsible person must report on the substances involved and an estimation of the quantity released.

List all the pollutants detailed in previous section:

7.1. Substance or mixture of substances	7.2. Reference Number	7.3. Estimated pollutant concentration on different radius			
		7.3.1. 10m	7.3.2. 100m	7.3.3. 500m	7.3.4. >2000m
General Waste	As per report	As per report	As per report	As per report	As per report

¹ Concentration at the plume

² Concentration that was falling on the ground

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8. INCIDENT IMPACT

In terms of NEMA section 30(5)(b), the responsible person must report on possible acute effects on persons and the environment and the responsible must provide data needed to assess these effects;

8.1. Minor injuries	Nil
8.2. Reportable injuries	Nil
8.3. Hospitalisation	Nil
8.4. Fatalities	Nil
8.5. Biological impacts	Nil
8.6. Impact area	Smoke across the City
8.7. Data	N/A

9. EXISTING PREVENTION PROCEDURES AND/OR SYSTEMS

9.1. Foresight	Improved monitoring methods are being introduced.
9.2. Procedures and/or systems	A first response plan to fire will include , a local water tanker and an assigned mini Fire Engine .
9.3. Procedure and/or systems failures	All waste will be compacted and covered.
9.4. Technical measures	Discussions on Digital monitoring and developing a first response plan.
9.5. Technical failure	The specialized Landfill Compactors and Dozer were not functional for a while resulting in poor compaction and less cover.

10. INITIAL INCIDENT MANAGEMENT

In terms of NEMA section 30(5)(c), the responsible person must report on initial measures taken to minimise impacts.

10.1. Evacuation	The impact was minimal and there was no need for Evacuation.
10.2. Technical measures	2 Fire Engines, 4 Water Tankers , 2 Pay-loaders, Bulldozers, Excavators , were used to extinguish the Fire by exposing the flame and dousing .
10.3. Mitigation measures	A second Fire Engine and Water Tanker was brought in to expedite the management of the fire.
10.4. Emergency Services	The in-house competent Fire Department

11. CLEANUP AND/OR DECONTAMINATION

In terms of NEMA section 30(5)(c), the responsible person must report on initial measures taken to minimise impacts.

11.1. Cleanup and/or decontamination	The burnt waste will be left at the Workface for 24 hours , for further monitoring and then for compaction and cover.		
11.2. Permissions and instructions	Provide details of any permission and/or instructions received from any organ of state during initial incident management, cleanup and/or decontamination		
11.3. Type	11.4. Statute	11.5. Issued By	11.6. Name and contact details
EDTEA	Section 30 notice in place	033 3473994	Ian Felton
Waste is being compacted and			Weekly progress reports are submitted ,

11. CLEANUP AND/OR DECONTAMINATION

In terms of NEMA section 30(5)(c), the responsible person must report on initial measures taken to minimise impacts.

covered:		site visits are also conducted.
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12. MITIGATION MEASURES

In terms of NEMA section 30(5)(e), the responsible person must report on measures taken and to be taken to avoid a recurrence of such an incident.

12.1. Measure	12.2. Objective	12.3. Cost	12.4. Timing
Compact and cover waste on a daily basis.	Reduce odour, prevent fire	Approximately R 1 Million rands per month	6 months and on-going
Monitor/screen Waste Streams	Screen for potentially hazardous/flammable waste	R 300 000	4 months and on-going

13. AUTHORISATIONS

Provide details on all authorisations (including permits, licenses, certificates, etc.) in respect of the activity to which this incident relates.

13.1. Type	13.2. Statute	13.3. Issued By	13.4. Issue & Expiry Date
Landfill Licence DC22/WML/0061/2016	Section 5.3.9 of the National Environmental Management Act (Act No. 107 of 1989). "Waste disposed of must be compacted and covered at the end of each working day with 150mm .	Department of Economic Development , Tourism and Environmental Affairs	03 July 2017 Issue date 03 July 2027 Expiry date

14. HISTORY

Provide details of all similar incidents involving the responsible person in the past (i.e. from 1998). Similar incidents include those that: (i) involved similar circumstances; (ii) involved similar emissions; (iii) involved similar personnel; and/or (iv) involved similar impacts.

14.1. Incident title	14.2. Report reference	14.3. Date of incident	14.4. Summary of event

Signed by, or as a mandated signatory for, the responsible person:		Date:	
--------------------------------------------------------------------	--	-------	--

List of affected people as a result of the incident

NAME	ADDRESS	PHONE	E-MAIL	REMARKS
N/A	N/A	N/A	N/A	N/A

APPENDIX 2

Layout map of the area likely to be affected or affected as a result of the incident

Disclaimer

Any other information not covered in the reporting template must be included.

CAUTION

In terms of section 30 (11) of NEMA as amended, it is an offence not to report an incident and liable on conviction to a fine not exceeding R 1-million or imprisonment for a period not exceeding 1 year, or to both such a fine and such imprisonment.

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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 8407 / 2020P

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

APPLICANT

and

MSUNDUZI LOCAL MUNICIPALITY

FIRST RESPONDENT

**HEAD OF THE DEPARTMENT OF ECONOMIC
DEVELOPMENT, TOURISM AND
ENVIRONMENTAL AFFAIRS**

KWAZULU – NATAL PROVINCIAL GOVERNMENT

SECOND RESPONDENT

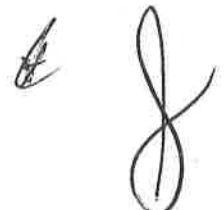
**MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC DEVELOPMENT, TOURISM AND
ENVIRONMENTAL AFFAIRS, KWAZULU – NATAL
PROVINCIAL GOVERNMENT**

THIRD RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned,

STHEMBISO WILSON MHLONGO



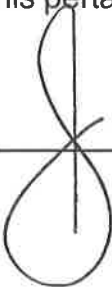
do hereby make oath and state as follows:

1.


I am an adult male employed by the First Respondent in the position of Senior Manager Waste Management.

2.

I have read the founding affidavit that has been deposed to in this matter by **MADODA PHUMULA KHATHIDE** and confirm the content insofar as this pertains to me.


DEPONENT

SIGNED AND SWORN to, before me, at PIETERMARITZBURG on this the 14th day of **FEBRUARY 2021**, by the deponent who has acknowledged that she understands the contents of this affidavit, has declared that she has no objection to taking the oath, that she regards the oath as binding on her conscience and that she uttered the following words: "I swear that the contents of this affidavit are true, so help me God."



COMMISSIONER OF OATHS

FULL NAME
BUSINESS ADDRESS
CAPACITY
AREA

:
:
:
:

NAGESH MAHARAJ
NAGESH MAHARAJ ATTORNEYS
PRACTISING ATTORNEY
225 HOOSEN HAFJEJEE STREET
PIETERMARITZBURG
COMMISSIONER OF OATHS
REPUBLIC OF SOUTH AFRICA
TEL: 087 150 1320

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 8407 / 2020P

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

APPLICANT

and

MSUNDUZI LOCAL MUNICIPALITY

FIRST RESPONDENT

HEAD OF THE DEPARTMENT OF ECONOMIC

DEVELOPMENT, TOURISM AND

ENVIRONMENTAL AFFAIRS

KWAZULU – NATAL PROVINCIAL GOVERNMENT

SECOND RESPONDENT

MEMBER OF THE EXECUTIVE COUNCIL

FOR ECONOMIC DEVELOPMENT, TOURISM AND

ENVIRONMENTAL AFFAIRS, KWAZULU – NATAL

PROVINCIAL GOVERNMENT

THIRD RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned,

GANASEN DHAVAKRISHNA NAIDOO

do hereby make oath and state as follows:

1.

I am an adult male employed by the First Respondent in the position of **Manager** Landfill and Recycling.

2.

I have read the founding affidavit that has been deposed to in this matter by **MADODA PHUMULA KHATHIDE** and confirm the content, insofar as this pertains to

me. *MP* 14/02/2021



DEPONENT

SIGNED AND SWORN to, before me, at PIETERMARITZBURG on this the day of **FEBRUARY 2021**, by the deponent who has acknowledged that she understands the contents of this affidavit, has declared that she has no objection to taking the oath, that she regards the oath as binding on her conscience and that she uttered the following words: "I swear that the contents of this affidavit are true, so help me God."



COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
DETECTIVES
2021 -02- 14
MOUNTAIN RISE
KWAZULU-NATAL

FULL NAME
BUSINESS ADDRESS

: KAVANORAN WATSON
: 17 ROYSTON ROAD
MOUNTAIN RISE

CAPACITY
AREA

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