

SET DOWN: 15/02/2021

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

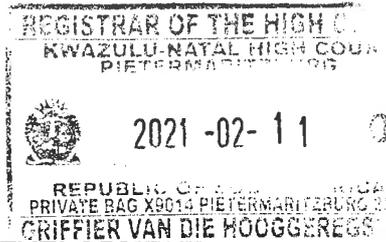
CASE NO: 8407/20P

In the matter between:

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**APPLICANT**

and



**MSUNDUZI MUNICIPALITY**

**FIRST RESPONDENT**

**HOD, DEPT OF ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS, KZN**

**SECOND RESPONDENT**

**MEC FOR ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS, KZN**

**THIRD RESPONDENT**

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**FILING NOTICE**

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TO: THE REGISTRAR OF THE HIGH COURT  
PIETERMARITZBURG

AND TO: NDLOVU DE VILLIERS ATTORNEYS  
**APPLICANT'S ATTORNEYS**  
BLOCK A VICTORIA HOUSE  
VICTORIA COUNTRY CLUB ESTATE  
170 PETER BROWN DRIVE  
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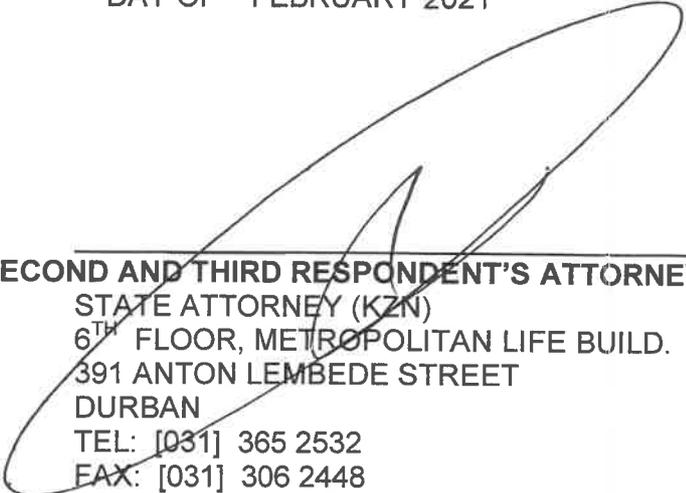
*11/02/21  
Sibonelo Ndlovu  
J.S.*  
**NDLOVU DE VILLIERS ATTORNEYS**  
Environmental Law Specialists  
Block A, Victoria House  
Victoria Country Club Estate, PMB  
Tel: (033) 001 7521 Fax: (086) 272 8791

AND TO: MATTHEW FRANCIS INC  
**FIRST RESPONDENT'S ATTORNEYS**  
SUITE 4, 1<sup>ST</sup> FLOOR, BLOCK A  
21 CASCADES CRESCENT  
MONTROSE, PIETERMARITZBURG  
REF: NY MAHARAJ/SR05M003086

S I R S

**KINDLY TAKE NOTICE** that the Second and third Respondent hereby file their explanatory affidavit.

DATED AT DURBAN THIS 10<sup>th</sup> DAY OF FEBRUARY 2021



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**SECOND AND THIRD RESPONDENT'S ATTORNEYS**

STATE ATTORNEY (KZN)  
6<sup>TH</sup> FLOOR, METROPOLITAN LIFE BUILD.  
391 ANTON LEMBEDE STREET  
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REF: 410/005128/20/S/P38 – Mr. T Ntsele

C/o STATE ATTORNEY KZN- PIETERMARITZBURG.  
2<sup>ND</sup> FLOOR, MAGISTRATE'S COURT  
CNR OTTO AND CHURCH STREET  
PIETERMARITZBURG

**IN THE HIGH COURT OF SOUTH AFRICA**

**KWAZULU-NATAL DIVISION, PIETERMARITZBURG**



Case Number: 8407/20P

In the matter between:

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**Applicant**

and

**MSUNDUZI MUNICIPALITY**

**First Respondent**

**HOD, DEPT OF ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS, KZN**

**Second Respondent**

**MEC FOR ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS, KZN**

**Third Respondent**

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**SECOND AND THIRD RESPONDENTS' EXPLANATORY AFFIDAVIT**

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I, the undersigned, **KIM LEA VAN HEERDEN**, do hereby state under oath:

1. I am the District Manager of the Umgungundlovu District at the KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs. I am also designated as a Grade 1 Environmental Management Inspector ("EMI"), in terms of section 31B of the National Environmental

Management Act 107 of 1998 ("NEMA"). I am based at the KwaZulu-Natal Department of Economic Tourism and Environmental Affairs ("Department") and work from 8 Warwick Road, Oak Park in Pietermaritzburg.

2. The facts deposed to in this affidavit are within my knowledge, except where I state otherwise, arise from documents and personnel under my control and I believe that these facts are true and correct.
3. I am duly authorised to deliver this main explanatory affidavit on behalf of the second and third respondents herein, who nevertheless deliver confirmatory affidavits with my affidavit. In the interests of uniformity, my affidavit addresses the relevant facts of the matter.
4. In my official capacity, I have been involved in the past and present engagements and enforcement measures in regard to the New England Road Landfill Site in Pietermaritzburg ("landfill site"). This landfill site is operated by the first respondent through a Waste Management Licence (as amended) issued by the Department. I am accordingly able to testify to the measures that have been taken by the second and third respondents, and the Department, on the basis of my official involvement in this matter.
5. The second and third respondents have delivered a Notice to Abide the decision of the Court in this matter. This affidavit is delivered as an explanatory affidavit, to set out briefly, the past and present measures that

*[Handwritten signature]*

the second and third respondents have taken with respect to the landfill site. These measures have been taken both in terms of the applicable environmental laws, that is NEMA, and all relevant specific environmental management acts, which have been described by the applicant in the founding affidavit.

6. In approximately May 2019, the Cabinet of the Province of KwaZulu-Natal resolved to intervene in the functioning of the Msunduzi Municipality ("Municipality") and it did so in terms of section 139(1)(b) of the Constitution. To this end, a ministerial appointee was appointed to oversee certain performance and management functions of the Municipality and this included to ensure that the "Municipality implements measures to urgently improve its operations and maintenance programme with particular reference to waste management, roads and electricity maintenance."
  
7. In this context, and within the framework of the applicable environmental laws and the principles of Co-Operative Governance in Chapter 3 of the Constitution, the second and third respondents, and the relevant Departmental officials, including myself and my colleague IAN FELTON have taken every effort to ensure that the situation at the New England Road Landfill Site was brought under control. Those efforts remain ongoing but the landfill site has not yet been remediated to the extent required by the Department and the second and third respondents.

*AK 1/4*

8. The applicant, in its founding affidavit, has set out in some detail, the various measures undertaken by the second and third respondents to address the situation at the New England Road Landfill site. To avoid over-burdening these papers, I will not repeat this extensive history. It is sufficient to draw this Court's attention to the letter dated 7 September 2020, sent by the second respondent to the applicant. A copy of this letter is attached marked "A".
  
9. That letter post-dated and referred to two other letters which were sent by myself and my colleague IAN FELTON, in our capacities as Environmental Management Inspectors, for the Umgungundlovu District. Copies of these letters are attached marked "B" and "C".
  
10. These three letters, "A," "B" and "C" set out the extensive history of involvement of the second and third respondents in this matter. I respectfully seek that the contents of these letters be incorporated in this affidavit.
  
11. As is evident from the table at the end of the letter from the second respondent ("A"), sets out a chronological summary of measures undertaken by the second and third respondents to remedy the mismanagement of and to regularise the management and operation of the landfill site by the Municipality.



12. As stated, much of this is described in detail in the applicant's founding affidavit.
  
13. Following on the Department's audit of March 2015 and the Warning Letter of 2 June 2015, the Municipality did take steps to correct matters. Ultimately, the Municipality managed to improve the management and operation of the landfill site.
  
14. However, the situation at the landfill site deteriorated again shortly after the issuing on 3 July 2017 of a Variation Waste Management Licence and this was confirmed on 25 October 2017, through a comprehensive joint compliance audit by the Compliance Monitoring and Enforcement Units and Pollution and Waste Management Units of the Department and the Municipality.
  
15. That audit revealed that the Municipality had failed to comply with a substantial number of conditions in its Waste Management Licence. These have been extensively described in the founding affidavit and I will not repeat them.



16. Thereafter, the Department held a series of meetings, site inspections and other engagements with the Municipality to ensure compliance with the applicable environmental legislation and the conditions in the Waste Management Licence. All of this was conducted in accordance with principles of co-operative governance and in conjunction with the Department's monitoring, oversight and supervision role over municipalities in the Province.
  
17. Following a series of fires which occurred on the landfill site thereafter, with no significant corrective action taken by the Municipality, the Department issued the Municipality with a Notice of Intention to Issue a Compliance Notice, otherwise known as a Pre-Compliance Notice. A copy of this notice dated 22 February 2019 is attached marked "D" and it is self-explanatory.
  
18. Further meetings were held with Municipal officials and representatives but the lack of adequate progress at the landfill site, led to the Department issuing a Compliance Notice in terms of Section 31L of NEMA, which it did on 15 May 2019. A copy of this Compliance Notice is attached marked "E" and it sets out the extent of the Municipality's non-compliance.



19. There was no response from the Municipality to this Compliance Notice. Accordingly, the Department met with municipal officials again on 20 June 2019, to elicit a response to the Compliance Notice. None was forthcoming.
  
20. The Department eventually received the Municipality's response to the Compliance Notice, on 26 July 2019, together with a Draft Action Plan. None of this was effectively implemented by the Municipality, with significant fires breaking out at the landfill site on 8, 24 and 25 August 2019.
  
21. Given the deteriorating situation at the landfill site and the lack of progress by the Municipality, on 27 August 2019 the Department opened a criminal case against the Municipality for non-compliance with the conditions of the Waste Management License. This is another enforcement mechanism applied by the respondents against the Municipality. That matter is still being investigated, and I am informed that the case docket is due to be submitted to the DPP for a decision in the next few weeks.
  
22. Another large fire broke out at the landfill site during 5-9 October 2019. The extent and duration of this fire compromised air quality and resulted, amongst others, in the closure of schools because of the health and safety risk to the surrounding communities.



23. An urgent co-operative governance meeting was convened between the Department, the Department of Cooperative Governance and Traditional Affairs, the Municipality and the uMgungundlovu District Municipality as well as the provincial appointee employed to oversee the Municipality, *inter alia* with regard to waste management. The Compliance Notice was served again on Municipal representatives and the Municipality again undertook to present an Action Plan. The draft Action Plan subsequently received did not address the requirements of the Compliance Notice.
24. Thereafter two further reports of fires at the landfill site were received and the matter was then discussed at Provincial Cabinet. On the basis of legal advice sought and obtained at that time, the option of an interdict against the Municipality was not pursued because of the existing provincial intervention in terms of section 139(1)(b) of the Constitution.
25. Further, given that the situation had continued to deteriorate at the landfill site, and consistent with legal advice received, the Department issued a Revised Pre-Compliance Notice on 7 February 2020 and a Revised Compliance Notice on 18 February 2020. A copy of the Revised Compliance Notice of 18 February 2020, issued in terms of section 31L of NEMA, is attached marked "F".

26. Again, numerous engagements were held with Municipal officials through co-operative governance principles and through the monitoring, supervisory and support role that the Province has over municipalities.
  
27. A warning letter had to be issued in March 2020 because of a lack of remedial action at the landfill site.
  
28. After the warning letter of March 2020, the Municipality made some progress in addressing certain areas of non-compliance identified by the Department, particularly as it pertained to bringing the management of the landfill site under control.
  
29. Thereafter, the Municipality requested variations to the Compliance Notice of 18 February 2020, which resulted in variations to the Compliance Notice being issued on 5 March and 23 March 2020, copies of which are attached marked "G" and "H" respectively.
  
30. However, on 17 June 2020, the Municipality sought a third variation to the Compliance Notice. This request is attached marked "I". The Department



refused this request because the time period set out for remedial action in the Compliance Notice had expired by that time. In other words, the variation was sought after the time given to the Municipality by which to remediate matters at the landfill site.

31. Thereafter, the Municipality lodged an objection against the refusal of the third variation it had sought from the Department. This objection was refused by the third respondent, who re-affirmed the Compliance Notice issued on 18 February 2020, subject to certain extended time periods within which the Municipality had to comply. These amended time frames are attached marked "J" and I respectfully incorporate this self-explanatory material by reference into this affidavit. I direct this Court's attention to the specific time frames contained in "J".
  
32. On 20 July 2020, a further fire broke out at the landfill site. The Municipality claimed that this fire had been deliberately set.
  
33. The Department then issued the Municipality with a Directive on 29 July 2020, in terms of section 30(6) of NEMA. This required the Municipality to submit an Incident Report, with a detailed assessment of the impacts of the fire on the environment and on public health and safety.



34. The Department also commissioned an independent Air Impact Report in terms of the National Environmental: Air Quality Act No. 39 of 2004, to assess the impact of the most recent fire on air quality and related socio-economic and public health and safety impacts.
35. Since then, the Department has continued closely to monitor the Municipality's responses and actions, to ensure that the Revised Compliance Notice is implemented. Departmental Environmental Management Inspectors have conducted more than 22 scheduled and unscheduled inspections, facilitated 16 further meetings with Municipal officials and have issued warning letters where there has been a failure to comply with the Revised Compliance Notice.
36. These continued inspections, administrative enforcement actions and engagements resulted in substantial improvement in the management of the landfill site and the reduction of the negative health and safety risks to the surrounding communities.
37. Then on 26 November 2020, an unscheduled site inspection by Departmental Environmental Management Inspectors revealed that the



situation at the landfill site had deteriorated yet again. This resulted in the Department issuing a Warning Letter to the Municipality, on 11 December 2020, which set out the full extent of non-compliance. A copy of this Warning Letter is attached marked "K" and I respectfully incorporate its contents by reference into this affidavit.

38. In response, the Municipality implemented certain emergency measures and appointed a contractor to repair and upgrade the access ramp and roads and it moved the unlawfully disposed waste into the approved waste cell. By 15 January 2021, most of the waste which had not been dumped within the approved landfill cells, had been moved to approved areas and repair work on the access ramp had begun.
39. However, problems continue to persist with maintaining effective management of the site and securing adequate equipment to move, cover and compact waste disposed of at the site.
40. The full extent of the Municipality's non-compliance with the Revised Compliance Notice is set out in the table below.



Action Required	Finding
<p>Para 4.1.5</p> <p>Ensure that the 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</p>	<p>The access road to the working face was repaired and resurfaced in March and April 2020. This allowed waste disposal vehicle access to the lawful disposal area. Inadequate stormwater management on the access ramp however has resulted in periods of inaccessibility to the working face during rain events and a regression of the compliance requirement.</p>
<p>Para 4.1.6</p> <p>Ensure that all waste brought to be disposed of at the New England Road Landfill site is disposed of within the waste disposal area, approved in terms of the Waste Management Licence dated 3 July 2017 issued to the Msunduzi Municipality for New England Landfill Site (Ref No. DC22/WML/0061/2016)</p>	<p>Periods of inaccessibility to the working face during rain events and a regression of the compliance requirement related to the access roads, has resulted in waste that is brought to the landfill site being deposited outside of the lawful area approved in terms of the Waste Management Licence. While this waste is being removed and relocated into the waste cell, this is a significant concern and will be a recurring non-compliance should the access roads not be constructed and maintained for all weather access.</p>
<p>Para. 4.1.10:</p> <p>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;</p>	<p>Site security and access control has been improved. Access control of waste pickers however remains problematic and breaches of the boundary fence occur frequently. The poor state of the access ramp in wet weather conditions has resulted in occasions of waste disposal outside of the working cell.</p>
<p>Para 4.1.13</p> <p>Identify and demarcate an appropriate</p>	

<p>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>Para 4.1.14:  <b>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</b></p>	<p>No verification has been received that a suitably qualified engineer appointed to assess stormwater and leachate management.</p>
<p>Para 4.1.15  <b>Submit specialist storm water/ leachate report and recommendations and associated timeframes for implementation compiled by the specialist/engineer</b></p>	<p>No verification has been received that a specialist stormwater / leachate management plan has been submitted.</p>

41. The amendments imposed by the third respondent, pursuant to the Municipality's unsuccessful objection to the refusal of the third variation, include those set out in the table below.

Action Required	Finding
<p>The municipality must submit to the office of the Hon. MEC, no later than the 30th November 2020, a proposal setting out dates for compliance with the remaining instructions in the Revised Compliance Notice.</p>	<p>A proposal was submitted to the Department setting out the dates for compliance with the remaining instructions in the Revised Compliance Notice.</p>

<p>The Landfill Monitoring Committee (Para. 5.1) shall be constituted and their first meeting convened no later than 15 December 2020.</p>	<p>The Landfill Monitoring Committee convened on the 14 December 2020.</p>
<p>The Action Plan (Para. 4.1.16) shall be submitted no later than 15 December 2020;                  Para 4.1.16                  Provide a <b>detailed and comprehensive Action Plan</b> that addresses all the other non-compliances noted in the table contained in section 3.1 of the Revised Compliance Notice</p>	<p>A draft Action Plan was submitted on the <b>15th December 2020</b>. This draft Action Plan however was not comprehensive and lacks the detail required. A meeting was held with the Municipality on the 8th January 2021 to outline the Departments requirements and a <b>detailed and comprehensive Action Plan</b> that addresses all the other non-compliances noted in the table contained in section 3.1 of the Revised Compliance Notice is <b>still outstanding</b>.</p>
<p>The Closure Plan (Para. 4.1.17 &amp; 4.1.18) shall be submitted no later than 30 June 2021                   Para 4.1.17 and 4.1.18  <b>Appoint an independent and suitably qualified landfill site specialist</b>, registered with a relevant professional body, to develop and submit a Decommissioning and Rehabilitation plan for the landfill site</p>	<p>A detailed Closure Plan is required to be submitted by the <b>30th June 2021</b>.</p>

42. The third respondent is aware of the extent of the non-compliance and is monitoring the situation. The third respondent has instructed the Municipality to submit its plans and remedial measures within the timelines listed in the table directly above.

43. A draft action plan was submitted by the Municipality on 15 December 2020. This was not a comprehensive plan and lacked any detail and it was not accepted by the Department.
44. Accordingly, a meeting was held with the Municipality on 8 January 2021 to specify, clearly, the Department's requirements for the comprehensive Action Plan required from it, which must address all of the areas of non-compliance that have been identified as set out above, including firm time-lines by which the various measures will be remedied or implemented. Unfortunately, this comprehensive Action Plan remains outstanding and has not been submitted by the Municipality to the Department.
45. I respectfully direct this Court's and the applicant's attention to the Applicant's reference in the founding papers to paragraph 4.1.7 of the Revised Compliance Notice. I confirm that the Municipality has in fact complied with paragraph 4.1.7 of the Revised Compliance Notice. It may be that this is an error, and that the Applicant intends to refer to matters outstanding as set out in paragraph 4.1.16 of the Revised Compliance Notice. This relates to the submission of a detailed comprehensive Action Plan that addresses all the other non-compliances noted in the table contained in section 3.1 of the Revised Compliance Notice and in the tables listed earlier.

A handwritten signature in black ink, appearing to be 'M' or 'mu', located in the bottom right corner of the page.

46. From the foregoing it will be observed that although the Municipality has, from time to time, made some efforts to implement the Revised Compliance Notice, the reality is that its historical mismanagement of the landfill site means that remedial action will take time and that full compliance and effective management of the landfill site will take a considerable period of time and sustained intervention.
47. Finally, it is to be noted that the second and third respondents have been guided in their interactions with the Municipality, over the landfill site, based on the principles of co-operative governance and the provincial role of supervising, monitoring and supporting municipalities. However, all of this has had to be balanced with the foremost need to protect the health and safety of the surrounding communities and the environment.
48. It must be emphasised that both respondents and all relevant departmental officials intend to continue their engagements with the Municipality in accordance with these key objectives.



49. As noted, the respondents will abide the decision of this Honourable Court.

*van Heerden*

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he / she knows and understands the contents of this affidavit which was signed and sworn to before me at Pietermaritzburg on the 04<sup>TH</sup> day of FEBRUARY 2021, the requirements of Section 10 of Act 16 of 1963, as read with Regulations published under Government Notice R1258 in Gazette No. 3619 dated the 21st of July 1972, having been fulfilled.

*[Signature]*  
0403730 - 9  
P.K. NAIDOO

COMMISSIONER OF OATHS  
*PREMABEELAN KISTAN NAIDOO*  
SAP TOWNHILL  
05 MONTGOMERY DRIVE  
ADHWA  
PMBURG.





**KWAZULU-NATAL PROVINCE**  
**ECONOMIC DEVELOPMENT, TOURISM**  
**AND ENVIRONMENTAL AFFAIRS**  
REPUBLIC OF SOUTH AFRICA

"A"

**OFFICE OF THE HEAD OF DEPARTMENT**

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Enquiries: Ms. L Govender  
Reference : New England Road

**The South African Human Rights Commission**  
**P O Box 1456**  
**DURBAN**  
**4000**

**Attention: Provincial Manager: Adv. L Lotz**

Dear Adv. Lotz,

**REQUEST FOR A RESPONSE: ALLEGED NEGLECT, DETERIORATION AND POOR MANAGEMENT OF THE NEW ENGLAND ROAD LANDFILL SITE IN PIETERMARTIZBURG; YOUR REFERENCE: KZ/1920/0363/PP**

The letters received from the South African Human Rights Commission, dated 14 July 2020 and the subsequent letter dated 2 September 2020, in addition to the letters addressed to Ms. K van Heerden (Grade 1 Environmental Management Inspector) and Mr. I Felton (Grade 2 Environmental Management Inspector) dated 2 September 2020, in respect of the above-mentioned matter refer.

At the outset, I wish to extend my sincerest apology for the delay in providing this detailed response, which is due to a variety of reasons, including my unavailability for the whole of July 2020, and the massive volume of documents that had to be sourced and scanned in support of this response. Due to the volume of the Annexures and supporting documents, which exceed 6 Lever Arch files, the said Annexures will be delivered separately on a USB Memory Stick.

Department of Economic Development, Tourism and Environmental Affairs	New England Road Landfill response SAHRC		Page 1 of 13
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## CONTEXT

1.(1) To provide the South African Human Rights Commission (SAHRC) with relevant information as contained in the letter of request addressed to the Acting Head of the Department for Economic Development, Tourism and Environmental Affairs ("the Department") dated 14 July 2020 and, in respect of the requirements outlined in the subsequent letters addressed individually to officials of the Department Ms K van Heerden and Mr I Felton dated 2 September 2020.

(2) The information contained herein, and the reports and documents attached hereto, or provided electronically, are provided for the period Mid-June 2015, when the Department first initiated corrective action and enforcement measures in respect of the New England Road Landfill Site ("NERLS"), to the current situation in respect of the NERLS. The Department has been actively involved with the monitoring of the NERLS for a considerable period of time, and while there is other documentation and records available for the preceding period, it is the Department's view that this is not relevant to the current request and circumstance. These records however can be made available if required.

(3) A summary of the Department interventions and engagements with the Msunduzi Municipality is contained in this submission. A detailed timeline of interactions, investigations and events, including dates of *inter alia*: site inspections; meetings; correspondence; fire incidents; and, responses to this matter by the Municipality are attached at Annexure A to assist in respect of the electronic records provided.

(4) Given the voluminous nature of the supporting documentation, electronic copies of the documents on the USB Memory Stick have been arranged into separate folders under the following headings:

- (a) Permit - Waste licence;
- (b) Administrative Enforcement notices and responses thereto;
- (c) Communication and interaction with Msunduzi Municipality;
- (d) Compliance monitoring audits;
- (e) External audit reports;
- (f) Investigation reports including site visit reports and investigations;

KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs	New England Road Landfill SAHRC		Page 2 of 13
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- (g) Municipal responsibilities; and
- (h) Msunduzi Municipality Reports in respect of the Revised Compliance Notice.

**HISTORY OF THE MATTER**

2.(1) Following a comprehensive audit undertaken by the Department on 10 March 2015 it had become evident to the Department that the management and operation of the landfill site was not meeting several of the requirements of the landfill permit dated 22 April 1998 issued in terms of the Environmental Conservation Act in 1998, Reference No. 16/2/7/U203/D3/Z1.

(2) Accordingly, the Department issued the Msunduzi Municipality (the Municipality) and relevant municipal officials a warning letter, dated 2 June 2015, documenting the areas of non-compliance and requesting that urgent actions be undertaken to address these non-compliance issues.

(3) Following the issuing of the warning letter the Municipality took active steps to address most of the identified non-compliance. These actions included, the removal of waste pickers and recyclers that were living on the working face; improving security and access; installing concrete palisade fencing around the site; revising and establishing stormwater controls; upgrading and repairing the leachate system; undertaking annual external audits; and, increasing the external berm and ensuring that waste was covered and compacted.

(4) As part of these steps to improve management at the landfill site, the Municipality appointed a service provider to make an application to revise and vary the waste Permit issued in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989). Through this process a Variation Waste Management Licence ("WML") was issued by the Department on the 3rd July 2017, which substituted the former landfill site permit with a WML in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) ("the Waste Act").

KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs	New England Road Landfill SAHRC		Page 3 of 13
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(5) These corrective actions substantively improved the management and operation of the landfill site, although the site still required continued financial and human resource capital investment by the Municipality to move towards and achieve compliance with its WML.

(6) On 25 October 2017, a comprehensive joint compliance audit by the Compliance Monitoring and Enforcement Units and Pollution and Waste Management Units of the Department, together with officials from the Municipality, was undertaken at the NERLS in order to monitor compliance with applicable environmental legislation and with the requirements and the conditions of the WML issued in terms of such.

(7) The audit revealed that the Msunduzi Municipality failed to comply with a substantial number of conditions contained in the WML issued for the operation and management of the NERLS. The areas of concern identified were that waste disposal and recycling activities continued to be undertaken in an uncontrolled manner in unauthorized areas; leachate from the workface had entered the receiving environment; there were holes in the fences facilitating unauthorised access; the workface was not adequately covered or compacted and remained as a fire hazard; there was limited control of access on the workface; and, there was mixing of domestic and garden waste.

(8) The Department initiated a series of meetings; issued instructions; and, held engagements and site inspections with the Municipality and the various Municipal officials responsible for the NERLS. The aim of these interactions was to promote and enforce compliance with the relevant legislation and the WML in the manner prescribed by the relevant legislation governing inter-governmental relations.

(9) Following the poor response in respect of lack of corrective measures and in the light of a series of significant fires at the landfill site, the Department was of the view that it had exhausted all cooperative governance mechanisms and had no option but to issue the Municipality and individuals responsible for waste management at the NERLS with a Notice of intention to issue a Compliance Notice (Pre-Compliance Notice) on 22 February 2019.

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(10) In accordance with co-operative governance prescripts a meeting was held on the 06 March 2019 together with senior representatives from Msunduzi Municipality (Ms. Boniwe Zulu and Mr. Cyril Naidoo) and senior management of EDTEA (Ms. Siphumelele Nowele (Chief Director), Mr. Sabelo Ngcobo (Director) and Ms. Kim van Heerden, EMI) to outline the Pre-Compliance Notice and the consequences of non-compliance, including potential criminal prosecution.

(11) During March of that year, the municipal waste collection trucks and waste collection companies deposited significant amount of waste outside of the landfill site blocking the entrance and the New England Road. The Department was informed that once again machinery had been broken and that non-payment of fees for out-sourced waste collection trucks had resulted in waste being deposited outside the site. Machinery was hired and the site was accepting waste by the 28 March 2019.

(12) The Municipality and the officials cited in the Pre-Compliance Notice, failed to submit appropriate representation or respond to the Pre-Compliance Notice, despite the Department requesting that a response be provided on more than one occasion. In the premises the Department had no option but to issue the Administrator, Mr. Sibusiso Sithole, the Former Acting Municipal Manager: Ms. Nelisiwe Ngcobo, the General Manager: Community Services, Ms. Boniwe Zulu, the Former Manager Waste Management: Mr. Cyril Naidoo, the Landfill Foreman: Mr. Innocent Mhlongo and the then current Landfill Site Manager: Mr. Mandla Zuma with a Compliance Notice ("the Compliance Notice") in terms of section 31L of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") on 15 May 2019.

(13) There was no response from the Municipality or from the officials to the issuing of the Compliance Notice. The Department then requested, in accordance with co-operative governance best practice, to meet with the newly appointed Administrator and municipal officials on 20 June 2019 in order to request a response to the Compliance Notice. Mr. Sibusiso Sithole stated that capacity and financial constraints were a challenge, however, committed to supplying the response to the Compliance Notice to the Department by 28 June 2019. This response did not materialise.

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(14) Mr. Siphon Dubazana was then appointed as the Acting Manager for Waste Management at Msunduzi Municipality and a response was received from Mr. Dubazana on 26 July 2019, together with a draft Action Plan detailing how the Municipality planned to address the current operational and management challenges at NERLS. The draft Action Plan was however not effectively implemented by the municipality and significant fires occurred at the landfill site on the 8<sup>th</sup> and 24 and 25<sup>th</sup> of August 2019.

(15) Notwithstanding the issuing of the Compliance Notice and the proposed interventions as outlined in the Action Plan provided on 26 July 2019, the Department did not see any improvement at the landfill site, in fact the situation had deteriorated to a point where the site was inaccessible at times with no management in place at all.

(16) Given the continued failure to comply with the requirements of the Compliance Notice; the continued deterioration of the landfill; repeat events of fires; and the lack of improvement in the daily operations and management of the site; the Department was left with no other alternative but to open a criminal case in respect of the Municipality's apparent disregard of the requirements of the Waste Management License and the non-compliance with the Compliance Notice. On the 27<sup>th</sup> August 2019 a criminal case was opened at the Alexandra Road police station, under reference number CAS 58/09/2019 Alexandra Road, PMB, in respect of the alleged non-compliance with the WML conditions; the Compliance Notice; the requirements of the Waste Act; and the requirements of NEMA.

(17) During 5-9 October 2019 a further significant fire occurred at the landfill site, which compromised air quality in the city, and which resulted in the closure of schools and which posed a health and safety risk to surrounding communities. An urgent co-operative governance meeting was convened between this Department; COGTA; Msunduzi Municipality; the uMgungundlovu District Municipality and the then Administrator. Municipal officials responsible for waste management, including those parties referenced above, were again, served with a copy of the Compliance Notice.

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(18) The Department again requested a report and action plan to address the repeat occurrences of fires and for the Municipality and to address the non-compliances at the landfill site. Whilst a draft Action Plan was received by the Department following these interactions, this Action Plan did not address the requirements of the Compliance Notice or meet the Department's requirements. Two further reports of fires at the NERLS were received and the Department consequently issued a Warning letter to the Municipality and relevant officials responsible for waste management on the 31st January 2020.

(19) The non-compliance with the WML and Compliance Notice was then raised at the Provincial Executive Council for intervention, and the potential to apply for a court Interdict was considered. Engagements with Senior Counsel and the State Attorney and the National Department of Environmental Affairs, Forestry and Fisheries ensued.

(20) On the advice of Senior Counsel, the pursuit of an Interdict was abandoned due to the Municipality being under administration in terms of section 139(1)b of the Constitution of the Republic of South Africa, 1996. Furthermore, it was advised that based on the fact that the situation at the NERLS had substantially deteriorated and that additional urgent actions were required, that the Compliance Notice be revised and re-issued.

(21) The Department issued the Municipality and relevant officials a Revised Notice of intention to issue a Compliance Notice (Revised Pre-Compliance Notice) on 7 February 2020. This Revised Pre-Compliance Notice was subsequently varied on 13 February 2020, on request, to allow the Municipality additional time in which to make representation, which it duly did.

(22) The Department subsequently issued the Municipality and relevant officials in the Municipality with a Revised Compliance Notice in terms of section 31L of NEMA (Revised Compliance Notice) on 18 February 2020.

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(23) The Department has been monitoring compliance against this Revised Compliance Notice with the purpose of ensuring that the landfill site is managed appropriately. The Municipality has requested three variations in respect of the Compliance Notice which has resulted in Variations to the Revised Compliance Notice being issued on 5 March 2020; 23 March 2020; and, 17 August 2020. Most of the requests to vary the Compliance Notice have been in respect of the inability of the Municipality to meet the timeframes for various actions contained therein, predominantly due to limitations being experienced emanating from the Covid-19 lockdown.

(24) During the period from when the Revised Compliance Notice was issued, to date, there have been extensive meetings; engagements and a number of site inspections and investigations undertaken by the Department to ensure that the Municipality meets its obligations in terms of the Revised Compliance Notice and adheres to the Waste Management License for the NERLS.

(25) During the course of monitoring compliance with the Revised Compliance Notice, the Department has held a number of engagements with municipal officials to inform them of the non-compliance issues identified in respect of the Revised Compliance Notice and issued a warning letter on 10 March 2020, to the Municipality and relevant officials, where demonstrable evidence was not available to show that the Municipality had taken the necessary steps provided in the Revised Compliance Notice.

(26) Since issuing the Revised Compliance Notice in February 2020 (and particularly the warning letter issued in March 2020) significant progress has been made by the Msunduzi Municipality in addressing the non-compliance issues identified by the Department. The Municipality has instituted interventions aimed at rectifying the poor management and non-compliance with the WML, as well as measures to comply with the actions specified in the Revised Compliance Notice. The Department is closely monitoring these responses and interventions, although it must be noted that full compliance and effective management of the landfill site will take a considerable period of time and extensive intervention due to the poor state of the landfill site.

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(27) Since the issuing of Revised Compliance Notice, Environmental Management Inspectors of the Department have conducted more than 15 (fifteen) unannounced and announced site inspections at the landfill site and compiled 3 (three) comprehensive compliance reports to monitor compliance with the Notice.

(28) Further to this, more than a dozen meetings have been held with the Municipality and its representatives in order to enforce, monitor and promote compliance in a cooperative manner. The Environmental Management Inspectors have also issued the Municipality and its officials with written warnings informing them of aspects where there has been failure to comply with the Revised Compliance Notice and the required actions.

(29) The Department has continued to receive weekly updated reports from the Municipality to track progress. Please note however that these have not been included in the attached electronic submission. These may be made available if required.

(30) Monitoring of the current progress towards achieving compliance with the Revised Compliance Notice for the New England Road Landfill site, is documented in the Compliance Audit Reports, the latest dated 2 September 2020.

(31) It must be acknowledged that considerable effort has been made by the Municipality and its officials to meet key actions identified in the Revised Compliance Notice. These key actions are that security and access control at the site has been substantially improved; waste being disposed of at the landfill site being covered and compacted on a daily basis; and, the large volume of waste unlawfully disposed of outside of the working cell has been removed and re-disposed of inside the lined waste cell. These are substantive milestones in achieving compliance, however numerous additional actions are required to achieve compliance.

(32) The following actions have currently not been met by the Municipality and/or its officials, and constitute non-compliance with the Revised Compliance Notice:

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Action Required	Finding
<p>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;</p>	<p>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.</p>
<p>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;</p>	<p>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.</p>
<p>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</p>	<p>A detailed Action Plan that meets this objective has not been submitted.</p>
<p>Appoint a suitably qualified specialist/engineer to assess the stormwater management system and provide recommendations to ensure that all leachate emanating from the</p>	<p>No verification has been received that a suitably qualified engineer appointed to assess stormwater and leachate management.</p>

site including contaminated runoff water treated and disposed lawfully	
Submit specialist storm water/ leachate report and recommendations and associated timeframes for implementation compiled by the specialist/engineer	No verification has been received that a specialist stormwater / leachate management plan has been submitted
Identify and demarcate an appropriate designated area, in consultation with DWS and this Department, for the recycling/reclamation of waste to take place	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.
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	No verification received that a suitably qualified specialist was appointed to develop the Decommissioning and Rehabilitation Plan.

(33) In respect of the criminal case, the docket was being carried by an Environmental Management Inspector, Grade 2, Mr. I Felton, of the uMgungundlovu District office. During the period from the opening of the criminal case and 6 February 2020, Mr. Felton conducted investigations and has gathered evidence and statements in respect of the alleged offences occurring at the NERLS and non-compliance with relevant legislation and authorisations.

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(34) In February 2020, Mr. Felton was requested to take over the administrative enforcement related to the NERLS. Given Mr. Felton's involvement in the administrative enforcement process and due to a perceived conflict of interest, the criminal docket will be transferred to another Investigating Officer within the Province to complete the investigation.

(35) It is also recorded that the matter has been elevated to the Provincial Executive Council for attention at the highest level and an intervention team comprising various MEC's, led by Honourable MEC for Finance, Mr. R Pillay and the Honourable MEC For EDTEA, Ms. N Dube-Ncube, together with senior officials, have been actively engaging on the matter towards finding a sustainable and long-term solution to the matter. This has also included engagements with the directly affected Sobantu Community and, engagements with attorneys representing the rights and interests of a group of schools and businesses who have been directly affected by air quality and health risks associated with each fire at the landfill.

(36) Following the most recent fire of 21 July 2020, the Department issued the Msunduzi Municipality with a Directive on 29 July 2020, in terms of section 30(6) of the NEMA, to submit a section 30 Incident Report, with a more detailed assessment of the impacts and/or effects of the incident on the environment and on public health and safety. This Incident Report must be submitted to the Department within 60 (sixty) days of receipt of this Directive.

(37) Further to the above Incident Report, my Department has initiated an independent Air Impact Report in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) to assess the impact of the last significant fire on air quality and the associated socio-economic and human health and well-being impacts.

(38) My Department is committed to ensuring that the landfill site is effectively managed and operated in a manner that does not compromise the health and safety of the citizens of Msunduzi Municipality, until such time as the lifespan of the landfill site is reached.

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In compliance with the letters addressed to Mrs. Kim van Heerden and Mr. Ian Felton on 2 September 2020, their responses are attached hereto respectively as Annexure B and C.

I trust that you will find the above in order, and undertake to provide whatever additional information you may require.

Yours sincerely,

Signed by: Siphesihle Ceswell Mkhize  
Signed at: 2020-09-07 13:30:28 +02:00  
Reason: I approve this document



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**MR SIHLE MKHIZE**  
**ACTING HEAD OF DEPARTMENT**  
**DEPARTMENT OF ECONOMIC DEVELOPMENT,**  
**TOURISM AND ENVIRONMENTAL AFFAIRS**

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"A"

**NEW ENGLAND ROAD LANDFILL: TIMELINE**

	Audit	Enforcement	Inspection	Meeting	Fire
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DATE	ACTION	RESPONSE/REPORT
22/4/1998		Permit issued by DWAF for New England Landfill (Permit No. 16/2/7/U203/D3/21/P64)
2010-2015		Numerous interactions with Msundzui / UMDM re: New England Road landfill including: development of an MRF; Gas to energy project; landfill monitoring committee's; internal and external audit reports; air space evaluation; site closure cost determination; landfill site upgrade reports; site inspections etc)
10/3/2015	Audit	Comprehensive audit undertaken by EDTEA and DEA of landfill site against Permit
April 2015		Received and reviewed external audit report: Water Quality and Leachate Monitoring
2/6/2015	Enforce	Warning Letter issued to Msunduzi Municipality: Non-compliance's of landfill site against Permit requirements. Requested detailed action plan be submitted within 21 days. Meeting with MM Mr. M. Nkosi to discuss non-compliance issues needing to be addressed
9/6/2015		Detailed action plan submitted.
June 2015 - Oct 2017		Msunduzi Municipality implemented action plan including upgrade of leachate system; fencing of the site; establishment of berm; removal of people living on the site; recycling moved off working face; storm water system upgrade.
Sept 2015		Received and reviewed external audit report: Gas Monitoring
4/10/2015	Inspect	Site inspection undertaken by EDTEA
19/10/2015		Received confirmation that NERLFS is uploading data to SAWIS
2/12/2015	Inspect	Site inspection to leachate system
4/12/2015	Inspect	On site meeting: Process requirements to amend and vary Permit. Independent consultant - Envitech- appointed to undertake review process
2/2/2016		Request to amend Permit submitted by Msunduzi Municipality
9-10/3/2016	Audit	Audit of Landfill site undertaken by EDTEA
6/6/2016		Received application, motivation and report for the amendment of the Permit to a WML
8/8/2016		Received report of a fire at the landfill site
8/9/2016		Informed the Ramu Raghunandan no longer responsible for the Landfill site
29/9/2016		EDTEA provided guidance on WML review process and amendment consultation with I&AP's
Oct 2016		Service provider - Emzanzi engineers - appointed to upgrade leachate and storm water systems
14/10/2016	Inspect	Site inspection by EDTEA and DWS with Municipality and Emzanzi regarding upgrades to storm water and leachate systems
4/11/2016		Received and reviewed Conformance Upgrade Report and engineering drawings for storm water and leachate upgrade works
19/11/2016		Received report of a fire at the landfill site
April 2017		Received and reviewed External Audit Report: Water Quality, Leachate and gas monitoring

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3/7/2017		Revised and Varied Waste Management Licence [WML] issued by EDTEA
10 - 13/8/2017		Received report of a major fire at the landfill site
16/8/2017	Inspect	Site inspection undertaken by EDTEA
25/10/2017	Audit	Comprehensive audit undertaken by EDTEA of landfill site against WML
12/2/2018	Inspect	Site inspection undertaken by EDTEA
9/3/2018	Meeting	Meeting with Riaz Jogiat (Acting Senior Manager: Waste - seconded to Msunduzi )
28-29/7/2018		Report of fire at landfill site
14/8/2018	Inspect	Inspection and meeting with Municipality re: compliance
30/8/2018	Inspect	Inspection and meeting with Municipality re: compliance
13/12/2018	Inspect	Inspection and meeting with Municipality re: compliance
13 - 18/1/2019		Report of fire at the landfill site
15/1/2019	Inspect	Inspection and meeting with Municipality
18/1/2019	Inspect	Inspection and meeting with Municipality
8/2/2019	Meeting	Meeting with municipality regarding life span of the landfill and finding alternatives
22/2/2019	Enforce	Pre-Compliance Notice issued to Municipality and officials responsible
12/3/2019		Representation on Pre-Compliance notice received only from Cyril Naidoo (Landfill manager)
6/4/2019	Meeting	Cooperative governance meeting between senior managers EDTEA and senior managers Msunduzi to request submission of representation by Msunduzi and officials
8/4/2019		Sent a request for representation to be submitted to the Department
27/4/2019	Inspect	Site inspection and on site meeting confirmed waste being disposed of outside of landfill and blocking road.
15/5/2019	Enforce	Compliance Notice issued to Msunduzi and relevant officials
22/5/2019		Sent request to Msunduzi and relevant officials to respond to Compliance Notice
20/6/2019	Meeting	Cooperative governance meeting with Administrator, Acting MM, relevant municipal officials and EDTEA regarding non-compliance and non response to Compliance Notice
2/7/2019		Sent request to Msunduzi and relevant officials to respond to Compliance Notice
19/7/2019		Informed that Mandla Zuma replaced by Siphon Dubizane as acting senior manager waste
24/7/2019	Inspect	Site inspection and meeting with Msunduzi officials regarding non-compliance to Compliance Notice. Informed response to be received by 26/7/2019
30/7/2019		Draft Action Plan submitted to EDTEA to address non-compliance
8/8/2019		Report of a fire at the Landfill site
24-26/8/2019		Report of major fire at Landfill site
26/8/2019	Inspect	Site inspection and meeting with Msunduzi officials
27/8/2019	Enforce	Criminal case opened in respect of non-compliance with Compliance Notice and WML
5-9/10/2019		Report of a major fire at the Landfill site
7/10/2019	Meeting	Urgent cooperative governance meeting between EDTEA, CoGTA, Msunduzi, UMDM and Administrator
8/10/2019	Inspect	Hon. MEC inspection of Landfill site

9/10/2019		Cabinet memo submitted
9/10/2019	Enforce	Copy of Compliance Notice resubmitted to Municipality and relevant officials
11/10/2019		Received s30 Incident Report from Msunduzi
17/10/2019		Report of fire at the Landfill site
17/10/2019	Inspect	Site inspection at Landfill site
18/10/2019		Requested report and action plan to address fires and non-compliance
22/10/2019		Received an operational plan that did not address non-compliance issues
28/10/2019		Report of minor fire at Landfill site
23/12/2019		Report of fire at Landfill site
23/1/2020	Enforce	Warning Letter issued to municipality and Acting MM, Administrator and officials
31/1/2020		Cabinet resolution for EDTEA to pursue an Interdict; Executive intervention; and, Cabinet to instruct Municipality
1/2/2020		Report of fire at Landfill site and major failures of the landfill site resulting in waste being disposed of outside the landfill area
3/2/2020	Inspect	Site inspection at Landfill site with DEFF
4/2/2020	Inspect	Site inspection at Landfill site with DEFF
5/2/2020		Msunduzi submitted report to Premier regarding fire and landfill site turnaround
6/2/2020	Meeting	Meeting with Senior Council, DEFF and State Attorney regarding obtaining an interdict
7/2/2020	Enforce	Revised Pre-Compliance Notice issued to Municipality and relevant officials
10/2/2020	Meeting	Cooperative governance meeting convened by MEC Pillay with EDTEA, CoGTA, Msunduzi, UMDM
10/2/2020	Inspect	Site inspection with Senior Council
11/2/2020	Inspect	Site inspection with DEFF
11/2/2020		Request made to hand criminal docket to DEFF due to perceived conflict of interest with municipality placed in administration
12/2/2020		Received representation on Pre-Compliance Notice and request for variance on time to respond
13/2/2020	Inspect	Site inspection with specialists to collect water quality samples
13/2/2020	Enforce	Varied Pre-Compliance Notice issued to allow additional time for submission of representation to the 14th February 2020
14/2/2020		Received urgent Senior Council opinion that an Interdict is not suitable in the current circumstances in that Msundui is under administration and that DEFF be requested to assist with enforcement/technical input
14/2/2020		Received representation from Msunduzi regarding Revised Pre-Compliance Notice
14/2/2020		Hon. MEC updated on issues
18/2/2020	Enforce	Revised Compliance Notice issued to Msunduzi and relevant officials
19/2/2020		Notification received that the SAHRC is investigating the New England Road landfill
28/2/2020		Received request to vary Revised Compliance Notice
4/3/2020	Inspect	Site inspection and meeting with Municipality to discuss variation request
4/3/2020		Received amended request to Vary Revised Compliance Notice
5/3/2020	Enforce	Issued Varied Revised Compliance Notice based on motivation

		submitted
7/3/2020		Report of small fire at landfill site
9/3/2020	Inspect	Site inspection to Landfill site
10/3/2020	Enforce	Warning Letter issued to Municipality and relevant officials to comply with Revised Compliance Notice
13/3/2020	Meeting	Meeting held with service providers of Msunduzi - Surg Sut - regarding the landfill site management
16/3/2020		Received response from Msunduzi to warning letter, and another request to vary the Revised Compliance Notice
16/3/2020	Meeting	Meeting held with service providers of Msunduzi - Surg Sut - regarding the landfill site plans
23/3/2020	Enforce	2nd Variation to Revised Compliance Notice issued based on motivations submitted
25/3/2020	Inspect	Site inspection undertaken at Landfill site
26/3/2020		Raised issued of non-compliance with Municipality and relevant officials, especially regarding cover material and equipment
8/4/2020	Inspect	Site inspection undertaken at Landfill site
21/4/2020		Requested urgent response to issued raised previously with Municipality and relevant officials
24/4/2020		Requested meeting with MM and MR for Msunduzi to discuss non-compliance issued
29/4/2020	Meeting	Meeting with MM, MR and municipal officials to raise issued of a lack of cover material, equipment on site and outstanding requirements of Compliance Notice
29/4/2020		Provided a breakdown of outstanding compliance issues to MM and MR
30/4/2020		Received report that delays being experienced with procurement of cover material and that there will be a delay in providing a report on obtaining plant for the site
13/5/2020	Inspect	Site inspection undertaken at Landfill site
19/5/2020		Msunduzi officials informed of new Covid Directions issued by Minister that allows waste pickers back on site under specific conditions
26/5/2020	Inspect	Site inspection undertaken at Landfill site
2/6/2020		Received airspace evaluation plan, bulk waste excavation plan, and action plan to remove waste disposed of outside of the waste cell
17/6/2020	Meeting	Meeting held with MR for Msunduzi regarding outstanding non-compliance issues; conflicting contracts awarded to service providers and the potential to obtain cover material from Camps Drift
17/6/2020		Received 3rd request to Vary the Revised Compliance Notice
30/6/2020		Requested a meeting with Municipality and relevant officials to discuss request to vary and the outstanding compliance issues
8/7/2020	Inspect	Site inspection undertaken at Landfill site
9/7/2020	Meeting	Virtual meeting held with Municipality and relevant officials to discuss request to vary and the outstanding compliance issues
21/7/2020		Report of major fire at Landfill
21/7/2020	Inspect	Inspection of fire undertaken at 9h00. Fire contained within an area and cut off from spreading.
21/7/2020	Inspect	Inspection of fire undertaken at 15h00. Fire had been spread outside of contained area.
22/7/2020		Received s30 incident notification report

22/7/2020	Inspect	Site inspection undertaken by senior management (no record)
23/7/2020	Inspect	Inspection of fire undertaken at 8h00. Fire had been spread to additional areas suggesting purposeful acts of arson.
23/7/2020	Meeting	Meeting of Joint Operations Committee: New England Landfill site
24/7/2020	Inspect	Site inspection undertaken at 9h00. Visibility on site to less than 2m and N3 closed. Fire fighters unable to work in dangerous situation
24/7/2020	Meeting	Environmental portfolio committee meeting on site.
25/7/2020	Meeting	Environmental portfolio committee meeting with Sobantu community.
27/7/2020	Inspect	Site inspection undertaken.
29/7/2020	Enforce	S30 directive issued to Msunduzi for incident report
4/8/2020	Inspect	Site inspection undertaken.
6/8/2020	Meeting	Internal meeting to discuss enforcement and criminal case, and waste recycling formalisation.
13/8/2020		Compliance audit report
14/8/2020	Meeting	MEC meeting with stakeholders
14/8/2020		Fire incident reported. Alleged that Willowton waste had ignited. Fire contained.
17/8/2020	Enforce	3rd Variation of Revised Compliance Notice issued
19/8/2020	Inspect	Compliance inspection undertaken by EDTEA
24/8/2020	Meeting	Meeting with municipal representatives to update compliance report to Cabinet

Interventions (2015 - present)	Number
Inspections	37
Comprehensive Audits	3
Meetings	18
Enforcement Actions	15
Fires	14

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**KWAZULU-NATAL PROVINCE**  
ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA

**"B"**

**ENVIRONMENTAL SERVICES : UMGUNGUNDLOVU DISTRICT OFFICE**

Tel (033) 3471820, Fax (033) 3471826  
Postal Address: Private, X07, PIETERMARITZBURG, 3202  
www.kznded.gov.za

Enquiries: K van Heerden  
Reference: New England Road

**Your Ref: KZ/1920/0363/PP**

**DATE:** *4-September 2020*

**The South African Human Rights Commission  
P O Box 1456  
DURBAN  
4000**

**Attention. Provincial Manager : Adv. Lotz**

Dear Sir

**REQUEST FOR A RESPONSE : ALLEGED NEGLECT, DETERIORATION AND POOR MANAGEMENT OF THE NEW ENGLAND ROAD LANDFILL SITE ("THE LANDFILL SITE") IN PIETERMARTIZBURG.**

The letter received from the South African Human Rights Commission dated 2 September 2020 addressed to me in my capacity as Grade I Environmental Management Inspector in respect of the above-mentioned matter refers.

I advise that I concur with the content of the matter as set out in the letter signed by the Acting Head of Department, attached. The timeline attached as Annexure A to that letter provides the level of detail in respect of the various interventions made by the Department in accordance with the powers granted to Environmental Management Inspectors. This information has been provided in electronic format given its voluminous nature.

Department of Economic Development, Tourism and Environmental Affairs	New England Road Landfill	Initials: <i>AL</i>	Page 1 of 2
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Also incorporated in the letter, in tabular format, is a summary of the outstanding matters which require further attention by the Municipality and which the Departmental officials, including myself, continue to monitor through the carrying out of regular site inspections and through engagements and/or correspondence addressed to the Municipality.

I remain firmly committed to continuing to take the steps necessary towards ensuring that the New England Road Landfill site is managed and operated in accordance with the requirements of the Varied Waste Management License and in a manner which does not pose unacceptable risk to human health and well being.

Should you require additional information or require clarity in respect of the information provided, please do not hesitate to contact me.

Yours sincerely



Kim van Heerden

District Manager : uMgungundlovu

Grade 1 Environmental Management Inspector





**KWAZULU-NATAL PROVINCE**

**ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA**

"C"

**ENVIRONMENTAL SERVICES : UMGUNGUNDLOVU DISTRICT OFFICE**

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Postal Address: Private, X07, PIETERMARITZBURG, 3202  
www.kznded.gov.za

Enquiries: Ian Felton  
Reference: New England Road

Your Ref: KZ/1920/0363/PP

DATE: 4 SEPTEMBER 2020

**The South African Human Rights Commission  
P O Box 1456  
DURBAN  
4000**

**Attention. Provincial Manager : Adv. Lotz**

Dear Sir

**REQUEST FOR A RESPONSE: MR I FELTON: ALLEGED NEGLECT,  
DETERIORATION AND POOR MANAGEMENT OF THE NEW ENGLAND ROAD  
LANDFILL SITE ("THE LANDFILL SITE") IN PIETERMARTIZBURG.**

The letter received from the South African Human Rights Commission dated 2 September 2020 addressed to me in my capacity as Grade 2 Environmental Management Inspector within the Department of Economic Development, Tourism & Environmental Affairs, in respect of the above-mentioned matter refers.

I have been employed within the Department since 2001 and have been based in the uMgungundlovu District office since 2003. During my employment within the Department I have had numerous interactions in relation to the New England Road Landfill site. Most notably, and relevant to your investigation, I was:

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- the team leader on a comprehensive audit that was undertaken at the New England Road Landfill on the 10th March 2015 and a drafted the June 2015 warning letter;
- a team member of the comprehensive audit undertaken on the 25th October 2017;
- the Investigating Officer for the criminal case (CAS 58/09/2019) - for the period 27 August 2019 - 6 February 2020; and,
- leading the administrative enforcement for the New England Road Landfill site for the period 6 February 2020 to present; drafted the Revised Pre-Compliance and Compliance Notices; and, have been monitoring and enforcing compliance with the Notice.

The submission made by the Acting Head of Department provides the detail in respect of the various interventions made by the Department, including those steps that I have taken in accordance with the powers granted to me as an Environmental Management Inspector. Relevant information, in support of the steps that I have taken, have been provided in electronic format. I concur with the content of the submission made by the Acting Head of Department in respect of the actions taken by the Department and myself in this matter.

I remain committed, as both an Environmental Management Inspector and an employee of the Department, to take appropriate steps within my mandate and powers to ensure compliance with the requirements of the Varied Waste Management License and the Revised Compliance Notice.

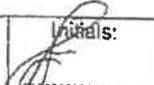
Should you require clarity or additional information please feel free to contact me.

Yours sincerely



**Ian Felton**

Control Environmental Officer: Environmental Planning: uMgungundlovu  
Grade 2 Environmental Management Inspector

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Department :  
Economic Development, Tourism and  
Environmental Affairs  
PROVINCE OF KWAZULU-NATAL

'D'

Enquiries: K.S. Dhaver  
Reference: DC22/WML/0061/2016  
Physical Address: 8 Warwick Road, Cascades  
Tel: (033) 347 1820, Fax: (033) 347 1826  
Postal Address: Private Bag X07,  
Pietermaritzburg, 3202  
www.kznded.gov.za  
Date: 22 February 2019

Directorate: Environmental Services: uMgungundlovu District

The Acting Municipal Manager  
Msunduzi Municipality  
Private Bag X321  
Pietermaritzburg  
3200

PER HAND AND FAX

Attention

Acting Municipal Manager: Ms. Nelisiwe Ngcobo

Email: [Nelisiwe.Ngcobo@msunduzi.gov.za](mailto:Nelisiwe.Ngcobo@msunduzi.gov.za)

General Manager- Community Services: Ms. Boniwe Zulu

Email: [Boniwe.Zulu@msunduzi.gov.za](mailto:Boniwe.Zulu@msunduzi.gov.za)

Acting Manager- Solid Waste Management: Mr. Cyril Naidoo

Email: [Cyril.Naidoo@msunduzi.gov.za](mailto:Cyril.Naidoo@msunduzi.gov.za)

Landfill Site Foreman: Mr. Innocent Mhlongo

Email: [Innocent.Mhlongo@msunduzi.gov.za](mailto:Innocent.Mhlongo@msunduzi.gov.za)

Dear Mesdames/Sirs

NOTICE OF INTENTION TO ISSUE A 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. DECISION

I, Kim Lea van Heerden in my capacity as a Grade 1 Environmental Management Inspector, having considered the matter, am of the view that Msunduzi Municipality, Ms. Nelisiwe Ngcobo, Ms. Boniwe Zulu, Mr. Cyril Naidoo and Mr. Innocent Mhlongo who, respectively are responsible for specific

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functions in respect of Waste Management, have failed to adhere to the provisions of the law in respect of activities conducted at the New England Landfill site on Lot 1853 of the Farm Darvill 15036 within Msunduzi Municipality, UMGungundlovu District Municipality.

Accordingly, I hereby issue the Msunduzi Municipality; and, Ms. Nelisiwe Ngcobo (Acting Municipal Manger-Msunduzi Municipality); Ms. Boniwe Zulu (General Manager: Community Services); Mr. Cyril Naidoo (Senior Manager-Solid Waste Management); and Mr. Innocent Mhlongo (Landfill Site Manager-New England Landfill Site) with a notice of my intention to issue you with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No.107 of 1998), hereinafter referred to as "NEMA" read with Regulation 8 of the Regulations Relating To Qualification Criteria, Training and Identification of, and Forms to be used by Environmental Management Inspectors (Government Notice Regulations, (GNR) 480 dated 31 May 2017) in relation to their specific role and function in respect of solid waste management in Msunduzi Municipality.

## 2. INTRODUCTION

2.1 Following a comprehensive audit undertaken by the Department on 10 March 2015 it had become evident to the Department that the management and operation of the landfill site was not meeting several of the requirements of the landfill permit dated 22 April 1998 issued in terms of the Environmental Conservation Act in 1998, Reference No. 16/27/U203/D3/Z1.

2.2 Accordingly, the Department issued the Msunduzi Municipality and municipal officials a warning letter, dated 2 June 2015, documenting the areas of non-compliance and requesting urgent actions be undertaken to address these non-compliance issues. Copy attached for ease of reference (Annexure A).

2.3 Following the issuing of the warning letter, the Municipality took steps to address some of the non-compliances. As part of these steps, a Variation WML was issued by the Department which substituted the former landfill site permit with a WML in terms of the National Environmental Management Waste Act 59 of 2008.

2.4 This Variation Waste Management License issued on the 3<sup>rd</sup> July 2017 to the Msunduzi Municipality for New England Landfill Site on Lot 1853 of the Farm Darvill No. 15036, New England Road, Pietermaritzburg was issued in terms of section 49(1) and 54(1) of NEM:WA 59 of 2008 (Ref No.

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DC22/WML/0061/2016) (hereafter referred to as the "WML,") provides the requirements and conditions under which the landfill site must be managed and operated.

- 2.5 On 25 October 2017, a comprehensive joint compliance audit by the Compliance Monitoring and Enforcement Units and Pollution and Waste Management Units of the Department; together with officials from the Msunduzi Municipality, was undertaken at the New England Landfill Site (hereinafter referred to as the "Site") in order to monitor compliance with applicable environmental legislation and with the requirements and the conditions of the WML issued in terms of such legislation.
- 2.6 The audit revealed that the Msunduzi Municipality had failed to comply with a substantial number of conditions contained within the WML issued for the operation and management of the New England Landfill Site. A copy of the audit report and its findings had been provided to the then Acting Manager, Solid Waste Management, Mr R Jogiat, who had been seconded from the UMgungundlovu District Municipality to assist with solid waste management within Msunduzi. Mr Jogiat met with the Department on 09 March 2018 to discuss matters of solid waste management within the Municipality and to advise the Department that he had been seconded to assist in addressing matters at the landfill site and in respect of waste collection more broadly. It has subsequently been established that Mr Jogiat was only seconded for a period of three months.
- 2.7 On 28 July 2018 a fire at the landfill site occurred which resulted in the air quality of the surrounding areas being severely compromised, resulting in the closure of schools. It was established that the landfill site plant had been non-functional and there was insufficient resources to attend to the blaze effectively.
- 2.8 A preliminary meeting was then convened on 14 August 2018 with the Acting Senior Manager (Waste Division), Mr. Cyril Naidoo to discuss the day to day management and operations of the landfill site. The Department informed Mr. Naidoo that there were many conditions which were not being complied with and that a formal site inspection would be conducted to verify adherence to the conditions of the WML.
- 2.9 On 30 August 2018, Departmental officials had a meeting with Mr. M. Hlope (Recycling Manger) and Mr. I. Mhlongo (Landfill Site Manager) and thereafter conducted a site inspection at the New England Landfill Site. At the site inspection it was noted that recycling activities continued to be undertaken in an uncontrolled manner in unauthorized areas; leachate from the workplace had entered the receiving

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environment; there were holes in the fences which facilitated unauthorized access; the workforce was not adequately compacted and therefore remained as a fire hazard; there was limited control of access on the workforce; and, there was mixing of domestic and garden waste. Apart from these observations, there were other non-compliances relating to the conditions of the WML that were identified at the site visit. These non-compliances were brought to the attention of the relevant officials and an opportunity was provided for these to be rectified.

2.10 A follow up inspection was conducted on the 13 of December 2018 to verify if there had been attempts made to comply with the conditions of the WML, however the Department observed that the state of the site had deteriorated further, which was of significant concern. On the 13<sup>th</sup> of January 2019, a further fire occurred.

2.11 The Municipality submitted a Section 30 incident Report dated 13 January 2019 which was received on the 04 of February 2019 in accordance with the requirements of NEMA and, while the root cause of the fire has not been identified, poor compaction was cited as one of the contributory factors. Departmental officials undertook two further site inspections following this particular incident and observed that the lack of site supervision; poor compaction and cover; uncontrolled access and other non-compliances with the WML may have been contributory factors to the fire.

2.12 The Department is of the opinion that the issuing of a Compliance Notice is justifiable and appropriate given the history of the matter and the repeated non-compliances particularly in respect of key operational issues such as poor compaction and coverage; unauthorized and uncontrolled access to the workforce and the site in general; poor supervision on the workforce; inadequate final leachate disposal; and, uncontrolled informal recycling.

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### 3. DETAILS OF NON-COMPLIANCE

3.1 The details of the specific failures to comply with the conditions of the WML as identified at the site inspections in August and December 2018 and, January 2019, respectively are given below in tabular form:

Act/ Regulation Name	Section / Regulation Number	Legal Provision (i.e. wording of the section/condition)	Finding
Waste Management Licence DC22/WML/006 1/2017	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 WML has not been advertised in the public domain.
	5.1.6	The notification referred to in 5.1.5 must – <ul style="list-style-type: none"> <li>• indicate the decision of the Department;</li> <li>• specify the date on which the licence was issued;</li> <li>• advise the interested and affected party that a copy of the licence, including reasons for the decision, will be provided on request;</li> <li>• inform the public where the decision can be accessed; and</li> </ul> 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 WML has not been advertised in the public domain.
	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 WML has not been advertised in the public domain.
	5.3.7	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	Informal recycling has continued to take place on the workplace and not in a
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		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.	formalized designated area Recycling is taking place in an uncontrolled manner and is interfering with the day to day operations of the site.
	5.3.9	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.	During the site inspections conducted on 30 August and 13 December 2018 respectively, it was observed that the waste had not been adequately covered or compacted.
	5.3.12	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 WML permits the acceptance of waste from Monday to Saturday from 07h00 until 16h00 and until 15h00 on a Saturday however the site accepts waste on a Sunday as well
	5.3.14	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.	It was noted that there were holes in the fences which facilitated unauthorised access.
	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 notices were not observed at the time of the inspection undertaken on 30 August 2018.
	5.3.17	The licence holder must take all reasonable steps	The work face has not been

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		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.	compacted regularly and to prevent exposure of the waste to the public, recyclers and employees remained a health hazard.
	5.3.18	No smoking, burning of waste or naked flames are allowed on the site.	Ash was observed on site indicating that burning had taken place which is strictly prohibited.
	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.	Waste was observed scattered throughout the site and along the fence line of the property.
	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.	Screening is limited and comprises alien wattle species.
	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 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 to the east, south and west.	To date the Department has not been informed as to whether the holder has notified relevant parties in the Municipality (i.e. Planning) or adjacent land owners of the limitations on development within the buffer area. The Municipality itself has permitted developments within the buffers.
	5.3.26	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 Department could find no evidence that storm water has been tested before being channelled into the Blackborough River. To date, the Department has not been

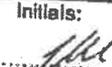
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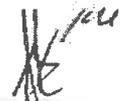
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			notified if there has been monitoring of runoff water.
	5.3.33	All leachate emanating from the site including contaminated runoff water shall be treated to comply with the aforementioned standard and discharged in a legal manner; be evaporated in a lined dam and /or; be discharged into a sewer if accepted by the authority in control of that sewer.	Leachate/stormwater dam has a spillway linked direct to the stream.
	5.3.37	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 Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 not monitor for the variable listed in Annexure VI of the WML, or for the variables listed in the Annexure of the previous Waste Permit.
	5.3.38	If, in the opinion of this Department, the water quality variables referred to 5.3.37 and listed in Annexure VI shows an increasing trend, the licence holder shall initiate a monthly monitoring programme.	The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 not monitor for the variables listed in Annexure VI of the WML, or for the variables listed in the Annexure of the previous Waste Permit. There is no trend analysis to establish if more frequent monitoring was required.
	5.3.42	The atmospheric levels in the atmosphere of (a) carbon dioxide must not exceed 0.5%; and (b) methane must not exceed 1%, by volume in air at the monitoring locations.	The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Document No. 4) indicated
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			<p>that the atmospheric levels of carbon dioxide had exceeded 0.5% v/v at gas monitoring points GMP1, GMP2, GMP4, GMP5, GMP6, GMP8, GMP9, GMP10, GMP13, GMP14, GMP15, GMP20, GMP21 and boreholes P1S, P1D, P2S and P3S.</p> <p>The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Refer to Document No. 4) indicated that the atmospheric levels of methane have exceeded 1.0% v/v in boreholes P1S, P1D and P2S.</p>
	5.3.43	Should the atmospheric levels of flammable gas be between 0.1% and 1%, 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.	<p>The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Refer to Document No. 4) indicated that the atmospheric levels of flammable gases have exceeded the specified level and a higher frequency of monitoring has not been instituted.</p>

	5.3.44	Should measurements of the gas monitoring network at any time exceed the limits specified, the licence holder must report this as an incident.	The Water Quality, Leach and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Refer to Document No. 4) indicated that the atmospheric levels of flammable gases have exceeded the specified level which has been not reported as an incident.	
	5.3.46	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. Once approved the licence holder must implement this monitoring programme.	No monitoring programme has been submitted to the Department for approval.	
	5.3.48	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 Department has not received quarterly audit reports from Msunduzi Municipality	
	5.3.50	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 of Water and Sanitation.	The Landfill Monitoring Committee has not been in existence for an extensive period of time although it is acknowledged that attempts resuscitate the Monitoring Committee have been taken	
	5.3.51	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	This has not been complied with as the Monitoring Committee is not functional.	
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	5.3.52	The licence holder must appoint an independent, suitably qualified external auditor to audit the site annually.	The last external report received by the Department was in April 2017. The external audit report for 2017 was not done and therefore has not been submitted to the Department for review.	
	5.3.53	The external audit report referred to in 5.3.52 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 last external report received by the Department was in April 2017. The external audit report for 2017 was not done and has subsequently not been submitted to the Department for review.	
	5.3.54	The external audit report referred to in 5.3.52 must be submitted to the Department within 90 (ninety) days of the audit being conducted.	The last external report received by the Department was in April 2017. The external audit report for 2017 was not done and has subsequently not been submitted to the Department for review.	
	5.3.55	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 fire that took place on 13 January 2019 was not reported within 24 hours of the occurrence of the fire.	
	5.3.56	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:  5.3.56.1 correct the impact resulting from the	The incident report was submitted 22 days from the date of the occurrence of the fire.	
Department of Economic Development, Tourism and Environmental Affairs	New England Landfill Site	Pre-Compliance Notice DC22/WML/0061/2017	Initials: <i>TLW</i>	Page 11 of 15

*TLW*

		incident; 5.3.56.2 prevent the incident from causing any further impacts; and 5.3.56.3 prevent the recurrence of a similar incident.	
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3.2 The Department is of the view that you have not complied with the abovementioned conditions of the WML DC22/WML/0061/2017 dated 03 July 2017.

3.3 Furthermore to the above, it is evident that the lifespan of the New England Road Landfill Site will be constrained in the medium term and an alternate site for waste disposal will be required.

#### 4 INSTRUCTIONS OF THE NOTICE OF INTENTION TO ISSUE A COMPLIANCE NOTICE

4.1 You are therefore afforded a period of **fourteen (14) working days** from the date of receipt of this Pre-Compliance Notice to make representations as to why I, Kim Lea van Heerden, in my capacity as a Grade 1 Environmental Management Inspector, should not issue you with a Compliance Notice in terms of Section 31L of NEMA which requires you to:

4.1.1 With immediate effect of issuing of the Compliance Notice, ensure that **Waste disposed of is covered and compacted on a dally basis with a minimum of 150mm of soli or other material approved by the licensing authority.**

4.1.2 **Provide written reports to the Department on a weekly basis confirming that waste has been covered and compacted on a dally basis, 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.**

4.1.3 Ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced, and that within **14 (fourteen) days** of receipt of the Compliance Notice measures are put in place in the event of failure of the landfill plant required for covering and compaction.

4.1.4 A contingency plan must be submitted to the Department within **14 (fourteen) days** of receipt of the Compliance Notice that addresses the measures that will be in place to ensure that the covering and compacting plant is repaired and/or replaced within a maximum of 48 hours of a failure.

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- 4.1.5 Within 14 (fourteen) days of receipt of the Compliance Notice provide written confirmation of the measures which have been taken to ensure proper on site supervision and access to the landfill site and, to prevent uncontrolled access and dumping outside of the workforce.
- 4.1.6 Within 1 (one) month of receipt of the Compliance Notice identify and demarcate an appropriate designated area, in consultation with Department of Water and Sanitation and this Department, for the recycling/reclamation of waste to take place. This area must be suitable for collection and storage to take place and must be situated off the active area of the site and must not interfere with the daily operation of the site, nor may it compromise areas of environmental sensitivity.
- 4.1.7 Within 3 (three) months of receipt of the Compliance Notice 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 shall be treated to comply with the water quality standards and discharged in a legal manner; or be evaporated in a lined dam and /or, be discharged into a sewer if accepted by the authority in control of that sewer.
- 4.1.8 Within 30 (thirty) days after appointment, to submit specialist reports and recommendations compiled by the specialist/engineer referred to in 4.1.7 above, to the Department as well as the Department of Water Affairs and Sanitation. Once approved, implement such recommendations within 2 (two) months.
- 4.1.9 Within 1 (one) month of receipt of the Compliance Notice provide an Action Plan to the Department for approval which must provide the actions required; the allocation of responsibilities; timeframes and budgets to address all the other non-compliances noted in the table contained on pages 4 (four) to 11 (eleven). Once such Action Plan is approved in writing by the Department, to diligently adhere to the approved Action Plan.
- 4.1.10 Within 6 (six) months of receipt of the Compliance Notice provide a written submission to the Department outlining the Municipality's plans towards identifying an alternate site noting the limitations of the current landfill site in the medium to long term.
- 4.2 Please note that any person that fails to comply with a Compliance Notice issued in terms of section S31L of NEMA is guilty of an offence in terms of section 31N(1) of NEMA. Any person convicted of an offence in terms of section 31N(1) may be liable for a fine not exceeding five million rand or to imprisonment for a period not exceeding 10 years or both such fine and such imprisonment in terms of section 31N(3) of NEMA.

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- 4.3 Please note that, in the Compliance Notice, you will be awarded the right to an objection within 30 (thirty) days of receipt of the Compliance Notice in terms of sections 31L and 31M of NEMA.
- 4.4 Irrespective of any representations you may make to me or to the MEC, you will be obliged to comply with the Compliance Notice when it is issued to you, unless the MEC agrees to suspend the operation of that Compliance Notice
- 4.5 If you should be unclear about any aspects of this notice, kindly contact the person indicated for enquiries in writing as soon as possible.



Signed by: Ms. Kim Lea van Heerden

Environmental Management Inspector (Grade 1)

Department of Economic Development, Tourism and Environmental Affairs

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Acknowledgement of Receipt:

PRE-COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: AS AMENDED: NON-COMPLIANCE OF THE VARIATION OF 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.

Received by Mr./Ms Hartley

On behalf of the company Msunduzi Municipality (City Manager's office)

on this 26 day of February 2019, at PMB.

Signature: Wahy

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Department :  
Economic Development, Tourism and  
Environmental Affairs  
PROVINCE OF KWAZULU-NATAL

Enquiries: K.S. Dhaver  
Reference: DC22/WML/0061/2016  
Physical Address: 8 Warwick Road, Cascades  
Tel: (033) 347 1820, Fax: (033) 347 1825  
Postal Address: Private Bag X07,  
Pietermaritzburg, 3202  
www.kznded.gov.za  
Date: 15 May 2019

**Directorate: Environmental Services: uMqungundlovu District**

The Administrator: Mr. Sibusiso Sithole

Email: [Sibusiso.Sithole@msunduzi.gov.za](mailto:Sibusiso.Sithole@msunduzi.gov.za)

Msunduzi Municipality

Private Bag X321

Pietermaritzburg

3200

PER HAND AND EMAIL

Attention

Msunduzi Municipality

Former: Acting Municipal Manager: Ms. Nelisiwe Ngcobo

Email: [Nelisiwe.Ngcobo@msunduzi.gov.za](mailto:Nelisiwe.Ngcobo@msunduzi.gov.za)

General Manager- Community Services: Ms. Boniwe Zulu

Email: [Boniwe.Zulu@msunduzi.gov.za](mailto:Boniwe.Zulu@msunduzi.gov.za)

Former: Manager- Solid Waste Management: Mr. Cyril Naidoo

Email: [Cyril.Naidoo@msunduzi.gov.za](mailto:Cyril.Naidoo@msunduzi.gov.za)

Landfill Site Foreman: Mr. Innocent Mhlongo

Email: [Innocent.Mhlongo@msunduzi.gov.za](mailto:Innocent.Mhlongo@msunduzi.gov.za)

Cc: Current Landfill Site Manager: Mr. Mandla Zuma

Email: [Mandla.Zuma@msunduzi.gov.za](mailto:Mandla.Zuma@msunduzi.gov.za)

Dear Mesdames/Sirs

**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. DECISION**

I, Kim Lea van Heerden in my capacity as a Grade 1 Environmental Management Inspector, having considered the matter, am of the view that Msunduzi Municipality, Ms. Nelisiwe Ngcobo, Ms. Boniwe

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Zulu, Mr. Cyril Naidoo and Mr. Innocent Mhlongo who, respectively were/are responsible for specific functions in respect of Waste Management, have failed to adhere to the provisions of the law in respect of activities conducted at the New England Landfill site on Lot 1853 of the Farm Darvill 15036 within Msunduzi Municipality, UMgungundlovu District Municipality.

Accordingly, I hereby issue you, I hereby issue the Msunduzi Municipality; and, Ms. Nelisiwe Ngcobo (Former: Acting Municipal Manger-Msunduzi Municipality); Ms. Boniwe Zulu (General Manager: Community Services); Mr. Cyril Naidoo (Landfill Site Manager-Solid Waste Management); and Mr. Innocent Mhlongo (Landfill Site Foreman-New England Landfill Site) with a compliance notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No.107 of 1998), hereinafter referred to as "NEMA" read with Regulation 8 of the Regulations Relating To Qualification Criteria, Training and Identification of, and Forms to be used by Environmental Management Inspectors (Government Notice Regulations, (GNR) 480 dated 31 May 2017).

## 2. INTRODUCTION

2.1 Following a comprehensive audit undertaken by the Department on 10 March 2015 it had become evident to the Department that the management and operation of the landfill site was not meeting several of the requirements of the landfill permit dated 22 April 1998 issued in terms of the Environmental Conservation Act in 1998, Reference No. 16/2/7/U203/D3/Z1.

2.2 Accordingly, the Department issued the Msunduzi Municipality and municipal officials a warning letter, dated 2 June 2015, documenting the areas of non-compliance and requesting urgent actions be undertaken to address these non-compliance issues. Copy attached for ease of reference (Annexure A).

2.3 Following the issuing of the warning letter, the Municipality took steps to address some of the non-compliances. As part of these steps, a Variation WML was issued by the Department which substituted the former landfill site permit with a WML in terms of the National Environmental Management Waste Act 59 of 2008.

2.4 This Variation Waste Management License issued on the 3<sup>rd</sup> July 2017 to the Msunduzi Municipality for New England Landfill Site on Lot 1853 of the Farm Darvill No. 15036, New England Road, Pietermaritzburg was issued in terms of section 49(1) and 54(1) of NEM:WA 59 of 2008 (Ref No.

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DC22/WML/0081/2016) (hereafter referred to as the "WML,") provides the requirements and conditions under which the landfill site must be managed and operated.

- 2.5 On 25 October 2017, a comprehensive joint compliance audit by the Compliance Monitoring and Enforcement Units and Pollution and Waste Management Units of the Department; together with officials from the Msunduzi Municipality, was undertaken at the New England Landfill Site (hereinafter referred to as the "Site") in order to monitor compliance with applicable environmental legislation and with the requirements and the conditions of the WML issued in terms of such legislation.
- 2.6 The audit revealed that the Msunduzi Municipality had failed to comply with a substantial number of conditions contained within the WML issued for the operation and management of the New England Landfill Site. A copy of the audit report and its findings had been provided to the then Acting Manager: Solid Waste Management, Mr R Jogiat, who had been seconded from the UMgungundlovu District Municipality to assist with solid waste management within Msunduzi. Mr Jogiat met with the Department on 09 March 2018 to discuss matters of solid waste management within the Municipality and to advise the Department that he had been seconded to assist in addressing matters at the landfill site and in respect of waste collection more broadly. It has subsequently been established that Mr Jogiat was only seconded for a period of three months.
- 2.7 On 28 July 2018 a fire at the landfill site occurred which resulted in the air quality of the surrounding areas being severely compromised, resulting in the closure of schools. It was established that the landfill site plant had been non-functional and there was insufficient resources to attend to the blaze effectively.
- 2.8 A preliminary meeting was then convened on 14 August 2018 with the then Acting Senior Manager (Waste Division), Mr. Cyril Naidoo to discuss the day to day management and operations of the landfill site. The Department informed Mr. Naidoo that there were many conditions which were not being complied with and that a formal site inspection would be conducted to verify adherence to the conditions of the WML.
- 2.9 On 30 August 2018, Departmental officials had a meeting with Mr. M. Hlope (Recycling Manager) and Mr. I. Mhlongo (Landfill Site Manager) and thereafter conducted a site inspection at the New England Landfill Site. At the site inspection it was noted that recycling activities continued to be undertaken in an uncontrolled manner in unauthorized areas; leachate from the workface had entered the receiving

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environment; there were holes in the fences which facilitated unauthorized access; the workface was not adequately compacted and therefore remained as a fire hazard; there was limited control of access on the workface; and, there was mixing of domestic and garden waste. Apart from these observations, there were other non-compliances relating to the conditions of the WML that were identified at the site visit. These non-compliances were brought to the attention of the relevant officials and an opportunity was provided for these to be rectified.

- 2.10 A follow up inspection was conducted on the 13 of December 2018 to verify if there had been attempts made to comply with the conditions of the WML, however the Department observed that the state of the site had deteriorated further, which was of significant concern. On the 13<sup>th</sup> of January 2019, a further fire occurred.
- 2.11 The Municipality submitted a Section 30 incident Report dated 13 January 2019 which was received on the 04 of February 2019 in accordance with the requirements of NEMA and, while the root cause of the fire has not been identified, poor compaction was cited as one of the contributory factors. Departmental officials undertook two further site inspections following this particular incident and observed that the lack of site supervision; poor compaction and cover; uncontrolled access and other non-compliances with the WML may have been contributory factors to the fire.
- 2.12 The Department subsequently issued a Pre-Compliance Notice to Msunduzi Municipality and, Ms. Nelisiwe Ngcobo (Former: Acting Municipal Manger-Msunduzi Municipality); Ms. Boniwe Zulu (General Manager: Community Services); Mr. Cyril Naidoo (Landfill Site Manager- New England Landfill Site); and Mr. Innocent Mhlongo (Landfill Site Foreman-New England Landfill Site) on 22 February 2019 given the history of the matter and the repeated non-compliances.
- 2.13 The Department only received representations from Mr. Cyril Naidoo (Landfill Site Manager: New England Landfill Site) on 12 March 2019. Ms. Nelisiwe Ngcobo (Acting Municipal Manger-Msunduzi Municipality); Ms. Boniwe Zulu (General Manager: Community Services); and Mr. Innocent Mhlongo (Landfill Site Foreman-New England Landfill Site) failed to provide representations to the Department in respect of the Pre-Compliance Notice issued on 22 February 2019 regarding their areas of responsibility in respect of the management and operation of the landfill site.
- 2.14 The representations received from Mr. Cyril Naidoo on 12 March 2019 did not address all of the instructions of the Pre-Compliance Notice and the Department requested that a formal response be sent to the Department detailing the Municipality's plan of action to address the non-compliances.

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2.15 Mr. Cyril Naidoo then provided an amended representation to the Department on 18 March 2019.

2.16 In addition, according to the Witness, published on 27 March 2019, it was alleged that New England Road Landfill Site had come to a halt and that rubbish was being dumped on the side of the municipal road. A Departmental official enquired from Mr. Cyril Naidoo on 28 March 2019, as to what the status of the landfill site was. Mr. Cyril Naidoo informed the Department that machinery had been broken and would be repaired however machinery was hired as an interim measure.

2.17 The Department is of the opinion that the issuing of a Compliance Notice is justifiable and appropriate given the history of the matter and the repeated non-compliances particularly in respect of key operational issues such as poor compaction and coverage; unauthorized and uncontrolled access to the workface and the site in general; poor supervision on the workface; inadequate final leachate disposal; and, uncontrolled informal recycling.

2.18 During the intervening period, the Municipality has been placed under Administration and, accordingly the Administrator, Mr. S. Sithole has been appointed to oversee the running of the Msunduzi Municipality, and is accordingly copied into this Notice, as is the current Acting Landfill Site Manager, Mr. Mandla Zuma.

### 3. DETAILS OF NON-COMPLIANCE

3.1 The details of the specific failures to comply with the provisions of the law are given below in tabular form:

Act/ Regulation Name	Section / Regulation Number	Legal Provision (i.e. wording of the section/condition)	Finding
Waste Management Licence DC22/WML/006 1/2017	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 WML has not been advertised in the public domain.
	5.1.6	The notification referred to in 5.1.5 must – <ul style="list-style-type: none"> <li>• indicate the decision of the Department;</li> <li>• specify the date on which the licence was issued;</li> </ul>	The WML has not been advertised in the public domain.

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		<ul style="list-style-type: none"> <li>advise the interested and affected party that a copy of the licence, including reasons for the decision, will be provided on request;</li> <li>Inform the public where the decision can be accessed; and</li> </ul> <p>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>	
	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 WML has not been advertised in the public domain.
	5.3.7	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.	Informal recycling has continued to take place on the workface and not in a formalized designated area. Recycling is taking place in an uncontrolled manner and is interfering with the day to day operations of the site.
	5.3.9	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.	During the site inspections conducted on 30 August and 13 December 2018 respectively, it was observed that the waste had not been adequately covered or compacted.
	5.3.12	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 WML permits the acceptance of waste from Monday to Saturday from 07h00 until 16h00 and until

			15h00 on a Saturday however the site accepts waste on a Sunday as well.
	5.3.14	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.	It was noted that there were holes in the fences which facilitated unauthorised access.
	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 notices were not observed at the time of the inspection undertaken on 30 August 2016.
	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 work face has not been compacted regularly and the exposure of the waste to the recyclers and employees remained a health hazard.
	5.3.18	No smoking, burning of waste or naked flames are allowed on the site.	Ash was observed on site indicating that burning had taken place which is strictly prohibited.
	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.	Waste was observed scattered throughout the site and along the fence line of the property.
	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.	Screening is limited and comprises alien wattle species.

	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 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 to the east, south and west.	To date the Department has not been informed as to whether the holder has notified relevant parties in the Municipality (i.e. Planning) or adjacent land owners of the limitations on development within the buffer area. The Municipality itself has permitted developments within the buffers.
	5.3.26	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 Department could find no evidence that storm water has been tested before being channelled into the Black borough River. To date, the Department has not been notified if there has been monitoring of runoff water.
	5.3.33	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.	Leeachate/stormwater dam has a spillway linked direct to the stream.
	5.3.37	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 Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 did not monitor for the variables listed in Annexure VI of the WML, or for the variables listed in the Annexure of the previous Waste Permit.

	5.3.38	If, in the opinion of this Department, the water quality variables referred to 5.3.37 and listed in Annexure VI shows an increasing trend, the licence holder shall initiate a monthly monitoring programme.	The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 did not monitor for the variables listed in Annexure VI of the WML, or for the variables listed in the Annexure of the previous Waste Permit. There is no trend analysis to establish if more frequent monitoring was required.
	5.3.42	<p>The atmospheric levels in the atmosphere of</p> <p>(a) carbon dioxide must not exceed 0.5%; and</p> <p>(b) methane must not exceed 1%, by volume in air at the monitoring locations.</p>	<p>The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Document No. 4) indicated that the atmospheric levels of carbon dioxide had exceeded 0.5% v/v at gas monitoring points GMP1, GMP2, GMP3, GMP4, GMP5, GMP6, GMP7, GMP8, GMP9, GMP10, GMP13, GMP14, GMP15, GMP20, GMP21 and boreholes P1S, P1D, P2S and P3S.</p> <p>The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Refer to Document No. 4) indicated that the</p>

			atmospheric levels of methane have exceeded 1.0% v/v in boreholes P1S, P1D and P2S.
	5.3.43	Should the atmospheric levels of flammable gas be between 0.1% and 1%, 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 Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Refer to Document No. 4) indicated that the atmospheric levels of flammable gases have exceeded the specified levels and a higher frequency of monitoring has not been instituted.
	5.3.44	Should measurements of the gas monitoring network at any time exceed the limits specified, the licence holder must report this as an incident.	The Water Quality, Leachate and Gas Monitoring Report produced by Envitech Solutions dated April 2017 (Refer to Document No. 4) indicated that the atmospheric levels of flammable gases have exceeded the specified levels which has been not reported as an incident.
	5.3.46	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. Once approved the licence holder must implement this monitoring programme.	No monitoring programme has been submitted to the Department for approval.

	5.3.48	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 Department has not received quarterly audit reports from Msunduzi Municipality
	5.3.50	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 of Water and Sanitation.	The Landfill Monitoring Committee has not been in existence for an extensive period of time although it is acknowledged that attempts to resuscitate the Monitoring Committee have been taken.
	5.3.51	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	This has not been complied with as the Monitoring Committee is not functional.
	5.3.52	The licence holder must appoint an independent, suitably qualified external auditor to audit the site annually.	The last external report received by the Department was in April 2017. The external audit report for 2018 was not done and therefore has not been submitted to the Department for review.
	5.3.53	The external audit report referred to in 5.3.52 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 last external report received by the Department was in April 2017. The external audit report for 2018 was not done and has subsequently not been submitted to the Department for review.
	5.3.54	The external audit report referred to in 5.3.52 must	The last external report

		be submitted to the Department within 90 (ninety) days of the audit being conducted.	received by the Department was in April 2017. The external audit report for 2018 was not done and has subsequently not been submitted to the Department for review.
	5.3.55	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 fire that took place on 13 January 2019 was not reported within 24 hours of the occurrence of the fire.
	5.3.56	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:  5.3.56.1 correct the impact resulting from the incident; 5.3.56.2 prevent the incident from causing any further impacts; and 5.3.56.3 prevent the recurrence of a similar incident.	The incident report was submitted 22 days from the date of the occurrence of the fire.

#### 4. INSTRUCTIONS OF THE COMPLIANCE NOTICE

4.1 I, Kim Lea van Heerden, in my capacity as a Grade 1 Environmental Management Inspector, hereby issue you with a Compliance Notice in terms of Section 31L of NEMA, which requires you to do the following:

4.1.1 With immediate effect of issuing of the Compliance Notice, ensure that Waste disposed of is covered and compacted on a daily basis with a minimum of 150mm of soil or other material approved by the licensing authority.

4.1.2 Provide written reports to the Department on a weekly basis confirming that waste has been covered and compacted on a daily basis, or if this has not been possible provide

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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.

- 4.1.3 Ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced, and that within 14 (fourteen) days of receipt of the Compliance Notice measures are put in place in the event of failure of the landfill plant required for covering and compaction.
- 4.1.4 A contingency plan must be submitted to the Department within 14 (fourteen) days of receipt of the Compliance Notice that addresses the measures that will be in place to ensure that the covering and compacting plant is repaired and/or replaced within a maximum of 48 hours of a failure.
- 4.1.5 Within 14 (fourteen) days of receipt of the Compliance Notice provide written confirmation of the measures which have been taken to ensure proper on site supervision and access to the landfill site and, to prevent uncontrolled access and dumping outside of the workface.
- 4.1.6 Within 1 (one) month of receipt of the Compliance Notice identify and demarcate an appropriate designated area, in consultation with Department of Water and Sanitation and this Department, for the recycling/reclamation of waste to take place. This area must be suitable for collection and storage to take place and must be situated off the active area of the site and must not interfere with the daily operation of the site, nor may it compromise areas of environmental sensitivity.
- 4.1.7 Within 3 (three) months of receipt of the Compliance Notice 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 shall be treated to comply with the water quality standards and discharged in a legal manner; or be evaporated in a lined dam and /or, be discharged into a sewer if accepted by the authority in control of that sewer.
- 4.1.8 Within 30 (thirty) days after appointment, to submit specialist reports and recommendations compiled by the specialist/engineer referred to in 4.1.7 above, to the Department as well as the Department of Water Affairs and Sanitation. Once approved, implement such recommendations within 2 (two) months.

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4.1.9 Within 1 (one) month of receipt of the Compliance Notice provide an Action Plan to the Department for approval which must provide the actions required; the allocation of responsibilities; timeframes and budgets to address all the other non-compliances noted in the table contained on pages 4 (four) to 11 (eleven). Once such Action Plan is approved in writing by the Department, to diligently adhere to the approved Action Plan.

4.1.10 Within 6 (six) months of receipt of the Compliance Notice provide a written submission to the Department outlining the Municipality's plans towards identifying an alternate site noting the limitations of the current landfill site in the medium to long term.

## 5. PROCEDURAL ARRANGEMENTS

5.1 If you would like me to vary this compliance notice, including by extending the period to which it relates, you may make representation to me to do so.

5.2 If you wish to lodge an objection to this compliance notice, you may do so by making representations, in writing to the Member of the Executive Council for Economic Development, Tourism & Environmental Affairs (the MEC), within 30 days of receipt of this notice.

5.3 You may also make representations to the MEC to suspend the operation of the compliance notice pending finalisation of the objection. The contact details of the MEC are as follows:

The MEC: Hon. Mr. S. Zikalala

Department of Economic Development, Tourism & Environmental Affairs

<b>POSTAL:</b>	<b>PHYSICAL ADDRESS (DURBAN):</b>
Private Bag X 9162 Pietermaritzburg 3200	181 Hoosan Haffejee Street (formerly Berg Street), Pietermaritzburg 3201
<b>TELEPHONE:</b>	<b>ATTENTION:</b>
033 328 8000	Appeals Administrator: Mr. Haresh Inderiall
<b>MOBILE:</b>	<b>EMAIL:</b> haresh.inderiall@kznedtea.gov.za
081 731 7361	

5.4 Irrespective of any representation you may make to me or to the MEC, you must comply with this compliance notice within the time period stated in the notice unless the MEC agrees to suspend the operation of the compliance notice.

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**6. FAILURE TO COMPLY**

6.1 Should you fail to comply with this compliance notice:

- (a) you will have committed an additional offence in terms of section 49A(1)(k) of NEMA. Kindly take note that Environmental Management Inspectors (EMI) from this Department are given wide powers in terms of NEMA to investigate whether or not you have complied or are complying with this compliance notice, and to exercise certain powers in order to enforce any contravention thereof, including but not limited to the power to seize items used in the commission of an offence as well as the power of arrest; and
- (b) the Department will be entitled to take the required steps on your behalf and to claim from you any costs incurred in so doing.

**7. CONCLUSION**

7.1 If you are unclear about any aspects of this compliance notice, kindly contact the person indicated for enquiries in writing as soon as possible; or if no such person is indicated then the EMI who has signed this notice.

Signed on this 15 day of MAY 2019 at PIETERMARITZBURG



Signed by: Ms. Kim Lea van Heerden

Environmental Management Inspector (Grade 1)

Department of Economic Development, Tourism and Environmental Affairs

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Acknowledgement of Receipt:

**COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: 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/0061/2018) FOR THE NEW ENGLAND LANDFILL SITE, PIETERMARITZBURG, MSUNDUZI LOCAL MUNICIPALITY.**

Received by Mr./Ms Hartley

On behalf of the company Msunduzi Municipality.

on this 16 day of May 2018, at PMB.

Signature: [Signature]

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**edtea**

Department:  
Economic Development, Tourism and  
Environmental Affairs

PROVINCE OF KWAZULU-NATAL

Enquiries: Ms. K. van Heerden  
Reference: DC22/WML/0061/2016  
Physical Address: 8 Warwick Road, Cascades  
Tel: (033) 347 1820, Fax: (033) 347 1826  
Postal Address: Private Bag X07,  
Pietermaritzburg, 3202  
www.kznded.gov.za

Date: 18 February 2020

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**REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL  
MANAGEMENT ACT, 1998 (Act No. 107 OF 1998)**

**MSUNDUZI MUNICIPALITY**

Postal Address:

Private Bag X321

PIETERMARITZBURG, 3200

AND

BY HAND AND EMAIL

**MR. SIBUSISO SITHOLE**

Email: [Sibusiso.Sithole@msunduzi.gov.za](mailto:Sibusiso.Sithole@msunduzi.gov.za)

Administrator: Msunduzi Municipality

AND

**MRS. NELISIWE NGCOBO**

Email: [Nelisiwe.Ngcobo@msunduzi.gov.za](mailto:Nelisiwe.Ngcobo@msunduzi.gov.za)

Acting Municipal Manager: Msunduzi Municipality

Dear Sir/Madam

**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. DECISION**

I, Kim Lea van Heerden in my capacity as a Grade 1 Environmental Management Inspector, having considered the matter, am of the view that MSUNDUZI MUNICIPALITY; Mr. SIBUSISO SITHOLE, the duly appointed Administrator for Msunduzi Municipality; and, Mrs. NELISIWE NGCOBO the Acting Municipal Manager for Msunduzi Municipality, who, respectively were/are responsible for specific functions in respect of Waste Management, have failed to adhere to the provisions of the law in respect of waste

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management activities conducted at the New England Landfill site on Lot 1853 of the Farm Darvill 15036 within Msunduzi Municipality, UMgungundlovu District Municipality.

Accordingly, I hereby issue **MSUNDUZI MUNICIPALITY**, Mr. SIBUSISO SITHOLE, the duly appointed Administrator for Msunduzi Municipality; and, Mrs. NELISIWE NGCOBO the Acting Municipal Manager for Msunduzi Municipality, the with a Revised Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No.107 of 1998), hereinafter referred to as "NEMA" read with Regulation 8 of the Regulations Relating To Qualification Criteria, Training and Identification of, and Forms to be used by Environmental Management Inspectors (Government Notice Regulations, (GNR) 480 dated 31 May 2017).

## 2. INTRODUCTION

- 2.1 Following a comprehensive audit undertaken by the Department on 10 March 2015 it had become evident to the Department that the management and operation of the New England Road landfill site was not meeting several of the requirements of the Waste Permit dated 22 April 1998 issued in terms of the Environmental Conservation Act in 1998, Reference No. 16/27/U203/D3/Z1.
- 2.2 Accordingly, the Department issued the Msunduzi Municipality and municipal officials a warning letter, dated 2 June 2015, documenting the areas of non-compliance and requesting urgent actions be undertaken to address these non-compliance issues.
- 2.3 Following the issuing of the warning letter, the Municipality took steps to address some of the non-compliances. As part of these steps, Msunduzi Municipality made an application to replace and vary the Waste Permit with a Waste Management Licence [WML] in terms of the National Environmental Management Waste Act 59 of 2008. This Varied WML was issued by the Department on the 3rd July 2017 and substituted the former Waste Permit with a WML.
- 2.4 This Variation Waste Management License issued on the 3<sup>rd</sup> July 2017 to the Msunduzi Municipality for New England Landfill Site on Lot 1853 of the Farm Darvill No. 15036, New England Road, Pietermaritzburg was issued in terms of section 49(1) and 54(1) of NEM:WA 59 of 2008 (Ref No. DC22/WML0061/2016) (hereafter referred to as the "WML,") and provides the requirements and conditions under which the landfill site must be managed and operated.

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- 2.5 On 25 October 2017, a comprehensive joint compliance audit by the Compliance Monitoring and Enforcement Units and Pollution and Waste Management Units of the Department, together with officials from the Msunduzi Municipality, was undertaken at the New England Landfill Site (hereafter referred to as the "Site") in order to monitor compliance with applicable environmental legislation and with the requirements and the conditions of the WML issued in terms of such legislation.
- 2.6 The audit revealed that the Msunduzi Municipality had failed to comply with a substantial number of conditions contained within the WML issued for the operation and management of the New England Landfill Site. A copy of the audit report and its findings was hand delivered to the Msunduzi Municipality on the 13th February 2018. On the 9th March 2018 the then Acting Manager: Solid Waste Management, Mr. R. Jogiati, who had been seconded from the UMgungundlovu District Municipality to assist with solid waste management within Msunduzi met with the Department on to discuss matters of solid waste management within the Municipality and to advise the Department that he had been seconded to assist in addressing matters at the landfill site and in respect of waste collection more broadly. It has subsequently been established that Mr. Jogiati was only seconded for a period of three months.
- 2.7 On 28 July 2018 a fire at the landfill site occurred which resulted in the air quality of the surrounding areas being severely compromised, resulting in the closure of schools. It was established that the landfill site plant had been non-functional and there was insufficient resources to attend to the blaze effectively.
- 2.8 A preliminary meeting was then convened on 14 August 2018 with the then Acting Senior Manager (Waste Division), Mr. Cyril Naidoo to discuss the day to day management and operations of the landfill site. The Department informed Mr. Naidoo that there were many conditions of the WML which were not being complied with and that a formal site inspection would be conducted to verify adherence to the conditions of the WML.
- 2.9 On 30 August 2018, Departmental officials had a meeting with Municipal officials, Mr. M. Hlope (Recycling Manger) and Mr. I. Mhlongo (Landfill Site Manager) and thereafter conducted a site inspection at the New England Landfill Site. At the site inspection it was observed that recycling activities continued to be undertaken in an uncontrolled manner and within unauthorized areas, leachate from the workface had entered the receiving environment, there were holes in the fence which facilitated unauthorized access, the workface was not adequately compacted and therefore remained as a fire hazard; there was limited control of access on the workface, and, there was mixing of domestic and garden waste. Apart from these observations, other non-compliances relating to the conditions of the WML that were identified at the site

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visit were brought to the attention of the relevant officials and an opportunity was provided for these to be rectified.

2.10 A follow up inspection was conducted on the 13 of December 2018 to verify if there had been attempts made to comply with the conditions of the WML, however the Department observed that the state of the site had deteriorated further, which was of significant concern as it was apparent that actions were not being taken to address the non-compliance issues of the site. On the 13<sup>th</sup> of January 2019, a further fire occurred.

2.11 On the 04 of February 2019, the Municipality submitted a Incident Report (dated dated 13 January 2019) in terms of Section 30 of the National Environmental Management Act, 1998, to the Department which identified poor compaction as one of the contributory factors that caused the fire. Departmental officials undertook two further site inspections following this particular incident and observed that the lack of site supervision; poor compaction and cover; uncontrolled access; and, other non-compliances with the WML may have been contributory factors to the fire.

2.12 The Department subsequently issued a Pre-Compliance Notice to Msunduzi Municipality and, Ms. Nelisiwe Ngcobo (Acting Municipal Manger-Msunduzi Municipality); Ms. Boniwe Zulu (General Manager: Community Services); Mr. Cyril Naidoo (Landfill Site Manager- New England Landfill Site); and Mr. Innocent Mhlongo (Landfill Site Foreman-New England Landfill Site) on 22 February 2019 given the history of the matter and the repeated non-compliances.

2.13 The Department only received representations from Mr. Cyril Naidoo (Landfill Site Manager New England Landfill Site) on 12 March 2019, Ms. Nelisiwe Ngcobo (Acting Municipal Manger-Msunduzi Municipality), Ms. Boniwe Zulu (General Manager: Community Services); and Mr. Innocent Mhlongo (Landfill Site Foreman- New England Landfill Site) failed to provide representations to the Department in respect of the Pre-Compliance Notice issued on 22 February 2019 regarding their areas of responsibility in respect of the management and operation of the landfill site.

2.14 The representations received from Mr. Cyril Naidoo on 12 March 2019 did not address the intended instructions provided within the Pre-Compliance Notice and the Department requested that a formal response be sent to the Department detailing the Municipality's plan of action to address the non-compliances. Mr. Cyril Naidoo then provided an amended representation to the Department on 18 March 2019.

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2.15 In a newspaper report published in the Witness, on the 27th March 2019, it was alleged that New England Road Landfill Site had come to a halt and that rubbish was being dumped on the side of the municipal road. A significant amount of waste was deposited outside of the landfill site blocking roads and causing significant environmental pollution due to machinery being broken and non-payment of invoices for outsourced services. Mr. Cyril Naidoo informed the Department on 28 March 2019 that machinery had been broken and that this had resulted in waste being disposed of outside of the landfill site. He further informed the Department that the machinery would be repaired and that machinery was hired as an interim measure.

2.16 In April 2019 the Municipality was placed under Administration and, accordingly an Administrator, Mr. S. Sithole was appointed as a Ministerial Appointee to oversee the running of the Msunduzi Municipality including inter alia to perform services to ensure that the Municipality implements measures to urgently improve its operations and maintenance programmes related to waste management.

2.17 A Compliance Notice in terms of section 31L of NEMA was then issued to the municipality and individual officials of the municipality responsible for waste management on the 15 May 2019. The Department, in accordance with co-operative governance prescripts, met the with newly appointed Administrator and municipal officials on 20 June 2019 where the content of the Compliance Notice was outlined and the Administrator and officials were informed that the Compliance Notice is in force and effect; that non-compliance with a Compliance Notice is a criminal offence; and, that each person may be held criminally liable in their individual capacity. Mr. Sibusiso Sithole stated that capacity and financial constraints were a challenge however committed to supply the representations to the Department by 28 June 2019. No representation on the Compliance Notice was received by this date.

2.18 A landfill site inspection was conducted by the Department on the 24 July 2019 with Mr. Siphon Dubazana who had been appointed as the Acting Manager for Waste Management at Msunduzi Municipality. Mr. Siphon Dubazana raised the issues around security challenges and financial constraints which affected overall operations at the site. The key non-compliances and environmental concerns identified at the landfill site remained unchanged and had worsened. It was observed that waste pickers had uncontrolled access to the landfill site and had built shelters on the site; waste was disposed of outside of the approved landfill area; there was no clearly defined working face; there was insufficient machinery to compact and cover the waste; and, there was a lack of cover material to cover the waste on a daily basis as is required.

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- 2.19 Mr. Sipho Dubazana submitted a draft action plan to the Department on the 26 July 2019 as to how Msunduzi Municipality plans to address the issues of non-compliances outlined in the Compliance Notice. He confirmed that reports were being prepared for Council's urgent attention.
- 2.20 On the weekend of 24-25 August 2019 another fire started at the landfill site with investigations indicating that this was caused by the lack of site supervision and security; poor compaction and cover; uncontrolled access of significant numbers of waste pickers; and other non-compliances with the WML.
- 2.21 Given the repeated non-compliances; the failure to comply with the requirements of the Compliance Notice and the poor response by the Municipality to effectively address the issue; and, to safeguard and protect the environmental rights of the citizens of Msunduzi a complaint was lodged with SAPS on 27 September 2019 and a criminal case has been opened. The case is currently under investigation by Departmental Environmental Management Inspectors.
- 2.22 Over the weekend of the 05-06 October 2019, the New England Road landfill site was once again on fire. The smoke and particulate matter has compromised the air quality of the municipal area and schools in the area were forced to close.
- 2.23 An urgent meeting was convened on 07 October 2019 to ascertain the cause of the fire and to obtain the plan of action proposed by the Municipality to address the matter. The appointed Administrator of Msunduzi Municipality; the Acting Municipal Manager; Heads of Community Services and the fire Department were in attendance together with the Acting DDG of COGTA and Senior Departmental officials.
- 2.24 Mr. Sithole indicated that there are many challenges around the operation of the landsite which included inter alia: absence of an appointed Landfill site manager; lack of financial and technical resources; lack of suitable plant and equipment; and security risks associated with the waste pickers.
- 2.25 The Department, together with Department of Cooperative Governance and Traditional Affairs reiterated the magnitude and seriousness of the resultant impacts of the landfill site fire, and requested for immediate intervention and a comprehensive Action Plan to address the management of the site in order to avoid a repeated incidents of this nature.

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2.26 On the weekend of the 1st and 2nd February 2020 a further large fire occurred at the Landfill site. The smoke and particulate matter compromised the air quality of the municipal area. Site inspections were undertaken by Environmental Management Inspectorate officials of the Department and the National Department of Environmental Affairs and Forestry on the 3rd and 4th of February 2020. It was observed that the management of the landfill site had substantially deteriorated and it was evident that:

- significant volumes of waste had been disposed of along access roads and open areas outside of the approved and lined waste disposal area;
- uncontrolled access was evident and gates were unmanned and remained open;
- no management by the municipality was taking place at the landfill site and waste disposal was being directed by the waste pickers;
- contaminated storm water with direct access to adjoining streams and rivers was observed;
- No cover material was available on site and no compaction or cover of waste being disposed was taking place;
- access roads to the approved landfill area were degraded and prevented access to the disposal area, and/or were covered with waste;
- uncontrolled human access to the waste site and areas of the site that were burning, were exposing people to significantly harmful situations that could pose risk to life; and,
- the situation was posing a direct threat to human and environmental rights

2.27 On the 7th February 2020 the Department issued Msunduzi Municipality; Mr. Sibusiso Sithole, the duly appointed Administrator for Msunduzi Municipality; and, Mrs. Nelisiwe Ngcobo the Acting Municipal Manager for Msunduzi Municipality, with a notice of intention to issue a Revised Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (Act No.107 of 1998). On the 12th February 2020 motivation to vary the period within which representation may be made was submitted and the Department granted extension to the period within which to make representations, until 16h00 on Friday 14th February 2020.

2.28 On the 12th and 14th February 2020 representation was submitted by Msunduzi Municipality, although it remains unclear if this representation is on behalf of all or only one of the relevant parties.

2.29 The representation submitted on the 12 February 2020 and the 14th February 2020 relates to the development of a plan to address the identified non-compliance issues associated with the Landfill site and does not provide any compelling reasons for me not to issue the Revised Compliance Notice. The action plan/s submitted on the 14th of February 2020 made input on the intended actions and timeframes

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			taken.
	5.3.51	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.	This has not been complied with as the Monitoring Committee is not functional.
	5.3.52	The licence holder must appoint an independent, suitably qualified external auditor to audit the site annually.	The last external report received by the Department was in April 2017. The external audit report for 2018 was not done and therefore has not been submitted to the Department for review.
	5.3.53	The external audit report referred to in 5.3.52 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 last external report received by the Department was in April 2017. The external audit report for 2018 was not done and has subsequently not been submitted to the Department for review.
	5.3.54	The external audit report referred to in 5.3.52 must be submitted to the Department within 90 (ninety) days of the audit being conducted	The last external report received by the Department was in April 2017. The external audit report for 2018 was not done and has subsequently not been submitted to the Department for review.
	5.3.55	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	Fires that have taken place have not reported within 24

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		environmental impact or water pollution.	hours of the occurrence of the fire.
	5.3.56	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: 5.3.56.1 correct the impact resulting from the incident; 5.3.56.2 prevent the incident from causing any further impacts; and 5.3.56.3 prevent the recurrence of a similar incident.	The incident reports have not been submitted in respect of the incidents that have occurred on site.

3.2 Furthermore, the Compliance Notice relates to the Department's reason to believe that that you have not complied with the provisions of the following set of environmental legislation:

- (1) Section 19(1)(a) and (b) of the National Water Act, 1998 (Act No. 36 of 1998) [hereafter referred to as NWA];
- (2) Section 21(f) and (g) of the NWA;
- (3) Section 151(i) and (j) of the NWA;
- (4) Section 16(1)(c), (d) and/or (e) of the National Environmental Management Waste Act, 2008 (Act No. 59 of 2008) [hereafter referred to as NEM:WA];
- (5) Section 26(1)(a) and (b) of the NEM:WA; and,
- (6) Sections 49A(1)(e) and/or (f) of the National Environmental Management Act, 1998 (Act No. 107 of 1998 (as amended)) (hereafter referred to as NEMA).

The Department has reason to believe that you have contravened the provisions of Section 19(1)(a) and (b) of the NWA by causing, or having caused, pollution of a water resource and not taking all reasonable measures to prevent such pollution from occurring.

The Department also has reason to believe that you have contravened the provisions of Section 21(f) and/or (g) of the NWA by discharging waste or water containing waste into a water resource through a pipe or other conduit, and/or disposing of waste in a manner which may detrimentally impact on a water resource.

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The Department also has reason to believe that you have contravened the provisions of Section 151(i) and/or (j) of the NWA by unlawfully and intentionally or negligently committing an act or omission which pollutes, or is likely to pollute or detrimentally effect a water resource.

The Department also has reason to believe that you have contravened the provisions of Section 16(1)(c), (d) and/or (e) of the NEM:WA by not taking all reasonable measures to -

- (1) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner,
- (2) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts; and,
- (3) prevent any employee or any other person under his or her supervision from contravening this Act.

The Department also has reason to believe that you have contravened the provisions of Section 26(1) (a) and (b) of the NEM:WA by -

- (1) disposing of waste, or knowingly or negligently causing or permitting waste to be disposed of, in or on any land, water-body or at any facility unless the disposal of that waste is authorised by law; and
- (2) disposing of waste in a manner that is likely to cause pollution of the environment or harm to health and well-being.

The Department also has reason to believe that you have contravened the provisions of Section 67(1) (h) of the NEM:WA by contravening or failing to comply with a condition or requirement of a waste management licence issued in terms of section 49(1) of the NEM:WA.

The Department has reason to believe that you have contravened the provisions of Section 49A(1)(e) and/or (f) of the NEMA by -

- (1) unlawfully and intentionally or negligently committing an act or omission which caused significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment; and/or
- (2) unlawfully and intentionally or negligently committing an act or omission which has detrimentally affected the environment or is likely to detrimentally affect the environment.

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#### 4. INSTRUCTIONS OF THE COMPLIANCE NOTICE

4.1 I, Kim Lea van Heerden, in my capacity as a Grade 1 Environmental Management Inspector, hereby issue you with a Compliance Notice in terms of Section 31L of NEMA, which requires you to do the following:

- 4.1.1 Within three days of the issuing of the Compliance Notice, ensure that a 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, that this senior manager is provided the requisite resources in terms of staffing, equipment, and finances to manage and operate the landfill site;
- 4.1.2 Within three days of the issuing of the Compliance Notice, provide the Department, in writing, the name and contact details of the senior manager that will be based at the New England Road Landfill site to oversee and manage the daily functions of the site;
- 4.1.3 Within 14 (fourteen) days of the issuing of the Compliance Notice, ensure that waste disposed of at the New England Road Landfill site is covered and compacted on a daily basis with a minimum of 150mm of soil or other material approved by the licensing authority;
- 4.1.4 Provide written reports to the Department on a weekly basis confirming that waste has been covered and compacted on a daily basis, 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;
- 4.1.5 Within 14 (fourteen) days of the issuing of the Compliance Notice ensure that the 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.
- 4.1.6 Within 14 (fourteen) days of the issuing of the Compliance Notice ensure that all waste brought to be disposed of at the New England Road Landfill site is disposed of within the waste disposal area, approved in terms of the Waste Management Licence dated 3 July 2017 issued to the Msunduzi Municipality for New England Landfill Site (Ref No. DC22/WML/0061/2016);

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- 4.1.7 Within 7 (seven) days of the issuing of the Compliance Notice provide the Department with an 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. Once approved by the Department, to diligently and immediately implement this action plan and ensure the rehabilitation of the areas impacted by the unlawful waste disposal;
- 4.1.8 Ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced, and that within 7 (seven) days of the issuing of the Compliance Notice ensure that a contingency plan is put in place in the event of failure of the landfill plant required for covering and compaction;
- 4.1.9 This contingency plan must be submitted to the Department within 7 (seven) days of the issuing of the Compliance Notice and must address the measures that will be implemented to ensure that the covering and compacting plant is repaired and/or replaced within a maximum of 48 hours of a failure;
- 4.1.10 Within 7 (seven) days of the issuing of the Compliance Notice 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 workplace;
- 4.1.11 Within 14 (fourteen) days of the issuing of the Compliance Notice appoint a suitably qualified landfill site specialist to conduct and finalise a Technical Assessment Report of the New England Road Landfill site within 30 (thirty) days of appointment, with the objective of:
- 4.1.11.1 reviewing and assessing the current situation;
  - 4.1.11.2 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;
  - 4.1.11.3 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,
  - 4.1.11.4 to identify appropriate timeframes to implement the identified actions and measures.

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- 4.1.12 The Technical Assessment Report must be submitted to the Department within 30 (thirty) days of the appointment of the suitably qualified landfill site specialist. Once the Technical Assessment Report is approved in writing by the Department, to immediately and diligently adhere to and implement the approved report within the timeframes identified in the report.
- 4.1.13 Within 1 (one) month of the issuing of the Compliance Notice identify and demarcate an appropriate designated area, in consultation with Department of Water and Sanitation and this Department, for the recycling/reclamation of waste to take place. This area must be suitable for collection and storage to take place and must be situated off the active area of the site and must not interfere with the daily operation of the site, nor may it compromise areas of environmental sensitivity.
- 4.1.14 Within 1 (one) month of the issuing of the Compliance Notice 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 shall be treated to comply with the water quality standards and discharged in a legal manner, or be evaporated in a lined dam and for, be discharged into a sewer if accepted by the authority in control of that sewer.
- 4.1.15 Within 30 (thirty) days after appointment of the specialist/engineer, to submit specialist reports and recommendations and associated timeframes for implementation compiled by the specialist/engineer referred to above, to the Department and to the Department of Water Affairs and Sanitation for approval. Once approved, to immediately implement such recommendations and ensure that these approved recommendations and associated timeframes for implementation are adhered to.
- 4.1.16 Within 14 (fourteen) days of the issuing of the Compliance Notice provide a detailed and comprehensive Action Plan that addresses all the other non-compliances noted in the table contained in section 3.1 of this Compliance Notice to the Department for approval. This Action Plan must include all actions required; the allocation of responsibilities; and, the timeframes and budgets necessary to manage and operate the New England Road Landfill site in accordance with the Waste Management Licence conditions and the requirements of the National Environmental Management: Waste Act, 1998. Once the Action Plan is approved in writing by the Department, to immediately and diligently adhere to and implement the approved Action Plan.

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4.1.17 Within 3 (three) months of the issuing of the Compliance Notice 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; and, within 6 (six) months of the issuing of the Compliance Notice provide a written submission to the Department outlining the Municipality's plans towards decommissioning and rehabilitating the New England Road Landfill site, noting the limitations of the current landfill site in the medium to long term and in identifying an alternate landfill site. The Decommissioning and Rehabilitation plan must contain clearly defined recommendations and mitigation measures; and, clearly defined responsibilities and timeframes for implementing these recommendations and measures.

4.1.18 Immediately upon approval of the Decommissioning and Rehabilitation plan by the Licencing Authority diligently initiate and implement the Decommissioning and Rehabilitation plan in accordance with the timeframes specified in the plan.

## 5. PROCEDURAL ARRANGEMENTS

5.1 If you would like me to vary this compliance notice, including by extending the period to which it relates, you may make representation to me to do so.

5.2 If you wish to lodge an objection to this compliance notice, you may do so by making representations, in writing to the Member of the Executive Council for Economic Development, Tourism & Environmental Affairs (the MEC), within 30 days of receipt of this notice.

5.3 You may also make representations to the MEC to suspend the operation of the compliance notice pending finalisation of the objection. The contact details of the MEC are as follows:

The MEC: Hon. Mrs. N. Dube-Ncube

Department of Economic Development, Tourism & Environmental Affairs

<b>POSTAL:</b> Private Bag X 9162 Pietermaritzburg 3200	<b>PHYSICAL ADDRESS (DURBAN):</b> 181 HoosenHaffejee Street (formerly Berg Street), Pietermaritzburg 3201
<b>TELEPHONE:</b> 033 328 8000	<b>ATTENTION:</b> Appeals Administrator: Mr. Haresh Inderlal
<b>MOBILE:</b> 081 731 7361	<b>EMAIL:</b> haresh.inderlal@kznedtea.gov.za

5.4 Irrespective of any representation you may make to me or to the MEC, you must comply with this compliance notice within the time period stated in the notice unless the MEC agrees to suspend the operation of the compliance notice.

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**6. FAILURE TO COMPLY**

6.1 Should you fail to comply with this compliance notice:

- (a) you will have committed an additional offence in terms of section 49A(1)(k) of NEMA. Kindly take note that Environmental Management Inspectors (EMI) from this Department are given wide powers in terms of NEMA to investigate whether or not you have complied or are complying with this compliance notice, and to exercise certain powers in order to enforce any contravention thereof, including but not limited to the power to seize items used in the commission of an offence as well as the power of arrest; and
- (b) the Department will be entitled to take the required steps on your behalf and to claim from you any costs incurred in so doing.

**7. CONCLUSION**

7.1 If you are unclear about any aspects of this compliance notice, kindly contact the person indicated for enquiries in writing as soon as possible, or if no such person is indicated then the EMI who has signed this notice.

Signed on this 18 day of February 2020 at Pietermaritzburg

*Kim Lea van Heerden*

Signed by: Ms. Kim Lea van Heerden

Environmental Management Inspector (Grade 1)

Department of Economic Development, Tourism and Environmental Affairs

Acknowledgement of Receipt:

REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: 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

Received by Mr./Ms. \_\_\_\_\_

On behalf of the company \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 2020, at \_\_\_\_\_

Signature: \_\_\_\_\_

Department of Economic Development, Tourism and Environmental Affairs	Revised Compliance Notice	DC22/WML/0061/2016 New England Road, Landfill Site	Initials: <u><i>KLH</i></u>	Page 22 of 22
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**edtea**

Department :  
Economic Development, Tourism and  
Environmental Affairs

PROVINCE OF KWAZULU-NATAL

Enquiries: Ms. K. van Heerden  
Reference: DC22/WML/0061/2016  
Physical Address: 8 Warwick Road, Cascades  
Tel: (033) 347 1820, Fax: (033) 347 1126  
Postal Address: Private Bag X07,  
Pietermaritzburg, 3202  
www.kznded.gov.za

Date: 05 March 2020

**VARIATION OF REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (Act No. 107 OF 1998)**

**MSUNDUZI MUNICIPALITY**

Postal Address:

Private Bag X321

PIETERMARITZBURG, 3200

AND

**BY EMAIL**

**MR. SCELO DUMA**

Administrator: Msunduzi Municipality

Email: [scelo.duma@msunduzi.gov.za](mailto:scelo.duma@msunduzi.gov.za)

AND

**MR. SIBUSISO SITHOLE**

Former Administrator: Msunduzi Municipality

(Please forward to Mr. Sithole)

AND

**MRS. NELISIWE NGCOBO**

Acting Municipal Manager: Msunduzi Municipality

Email: [Nelisiwe.Ngcobo@msunduzi.gov.za](mailto:Nelisiwe.Ngcobo@msunduzi.gov.za)

Dear Sir/Madam

**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 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 28 February 2020, the meeting held on 4 March 2020 and, your subsequent letter of the same date, regarding a request 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.

Department of Economic Development, Tourism and Environmental Affairs	Variation of Compliance Notice	DC22/WML/0061/2016 New England Road, Landfill Site	Initials: 	Page 1 of 3
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2. The Department acknowledges the submission of the request for the variation of the obligations provided in paragraphs 4.1.3 and 4.17 of the Compliance Notice issued to you on the 18th February 2020.
3. These obligations relate to the requirements to undertaken the following actions:
  - "4.1.3: Within 14 (fourteen) days of the issuing of the Compliance Notice, ensure that waste disposed of at the New England Road Landfill site is covered and compacted on a daily basis with a minimum of 150mm of soil or other material approved by the licensing authority"; and;
  - "4.1.7: Within 7 (seven) days of the issuing of the Compliance Notice provide the Department with an 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. Once approved by the Department, to diligently and immediately implement this action plan and ensure the rehabilitation of the areas impacted by the unlawful waste disposal."
4. It is requested that the Compliance Notice be varied to allow for a period within which the landfill site can be surveyed and in order to develop an appropriate filling plan in accordance with best practice guidelines and engineering practices. It is submitted that the covering and compaction of waste can only occur following the survey the site and the development of the appropriate filling plan. It is requested that a reasonable period be granted in order to undertake these activities, prior to the requirement to cover and compact the waste being disposed of.
5. It is further requested that prior to developing the action plan for the removal of the significant volumes of waste that have been disposed of along roads and open areas outside of the approved and lined waste disposal area, that time be give to survey the quantity of waste that needs to be disposed of within the approved landfill working cell and to assess the approved landfill area. Specialists to undertaken this work are not readily available and can only undertake the survey work from the 2nd of March 2020. The Action Plan for the removal of the waste disposed of outside of the working cell can only therefore be submitted thereafter.
6. Taking into consideration the urgency of actions required; and, the motivations submitted to vary the timeframes contained within paragraphs 4.1.3 and 4.1.7 of the Revised Compliance Notice, the Department is satisfied that there is sufficient justification to accede to the requests and to vary the timeframes as provided below.
7. As a Grade 1 Environmental Management Inspector, I hereby vary paragraphs 4.1.3 and 4.1.7 of the Revised Compliance Notice to read as follows:
  - 4.1.3 *By the 31st March 2020, ensure that waste disposed of at the New England Road Landfill site is covered and compacted on a daily basis with a minimum of 150mm of soil or other material approved by the licensing authority.*
  - 4.1.7 *By the 13th March 2020, provide the Department with an 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. Once approved by the Department, to diligently and immediately implement this action plan and ensure the rehabilitation of the areas impacted by the unlawful waste disposal.*
8. This variation notice does not vary any other steps or timeframes contained in the Revised Compliance Notice issued to you on the 18th February 2020.

Department of Economic Development, Tourism and Environmental Affairs	Revised Compliance Notice	DC22AVML/0061/2016 New England Road, Landfill Site	Initials: <i>[Signature]</i>	Page 2 of 3
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9. Should you have any queries please feel free to contact the Department.

Signed on this 05 day of March 2020 at Pietermaritzburg



Signed by: Ms. Kim Lea van Heerden

Environmental Management Inspector (Grade 1)

Department of Economic Development, Tourism and Environmental Affairs

Acknowledgement of Receipt:

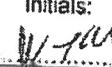
VARIATION OF REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: NON-COMPLIANCE WITH THE VARIATION WASTE MANAGEMENT LICENCE (WML) ISSUED IN TERMS SECTION 49 (1) AND 54 (1) OF THE NATIONAL ENVIRONMENTAL WASTE MANAGEMENT ACT (NEM:WA) 59 OF 2008 (REF NO.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

Received by Mr./Ms \_\_\_\_\_

On behalf of the company \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 2020, at \_\_\_\_\_

Signature: \_\_\_\_\_

Department of Economic Development, Tourism and Environmental Affairs	Revised Compliance Notice	DC22/WML/0061/2016 New England Road, Landfill Site	Initials: 	Page 3 of 3
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"H"



**edtea**

Department :  
Economic Development, Tourism and  
Environmental Affairs

PROVINCE OF KWAZULU-NATAL

Enquiries: Ms. K. van Heerden  
Reference: DC22/WML/0061/2016  
Physical Address: 8 Warwick Road, Cascades  
Tel: (033) 347 1820, Fax: (033) 347 1826  
Postal Address: Private Bag X07,  
Pietermaritzburg, 3202  
www.kznded.gov.za

Date: 23 March 2020

**2nd VARIATION OF REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (Act No. 107 OF 1998)**

**MSUNDUZI MUNICIPALITY**

Postal Address:

Private Bag X321

PIETERMARITZBURG, 3200

AND

**BY EMAIL**

**MR. SCELO DUMA**

Administrator: Msunduzi Municipality

Email: [scelo.duma@msunduzi.gov.za](mailto:scelo.duma@msunduzi.gov.za)

AND

**MR. SIBUSISO SITHOLE**

Former Administrator: Msunduzi Municipality

(Please forward to Mr. Sithole)

AND

**MRS. NELISIWE NGCOBO**

Acting Municipal Manager, Msunduzi Municipality

Email: [Nelisiwe.Ngcobo@msunduzi.gov.za](mailto:Nelisiwe.Ngcobo@msunduzi.gov.za)

Dear Sir/Madam

**2nd 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 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 16 March 2020, including as Annexure B, the request 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, refer.

Department of Economic Development, Tourism and Environmental Affairs	2nd Variation of Compliance Notice	DC22/WML/0061/2016 New England Road, Landfill Site	Initials <i>[Signature]</i>	Page 1 of 3
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2. The Department acknowledges the submission of the request for the variation of the obligations provided in paragraphs 4.1.3; 4.1.5 and 4.1.6 of the Revised Compliance Notice issued to you on the 18th February 2020 (as varied).
3. These obligations relate to the requirements to undertaken the following actions:
- **"4.1.3: By the 23rd March 2020, ensure that waste disposed of at the New England Road Landfill site is covered and compacted on a daily basis with a minimum of 150mm of soil or other material approved by the licensing authority"; and;**
  - **"4.1.5: Within 14 (fourteen) days of the issuing of the Compliance Notice ensure that the 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."**
  - **"4.1.6: Within 14 (fourteen) days of the issuing of the Compliance Notice ensure that all waste brought to be disposed of at the New England Road Landfill site is disposed of within the waste disposal area, approved in terms of the Waste Management Licence dated 3 July 2017 issued to the Msunduzi Municipality for New England Landfill Site (Ref No. DC22/WML/0061/2016)."**
4. It is requested that the Compliance Notice be varied to allow for a period develop an appropriate filling plan in accordance with best practice guidelines and engineering practices. It is noted that the landfill site has been surveyed however coordination between service providers and the Municipality is required to establish a practical operational plan for the filling and management of the site. It is submitted that the covering and compaction of waste can only occur following the development of the filling and operational plan. It is requested that a reasonable period be granted in order to undertake these activities, prior to the requirement to cover and compact the waste being disposed of.
5. It is further suggested that road repairs to the perimeter road and north access can only be undertaken following the removal of waste that has been illegally disposed of adjacent to the road way.
6. Taking into consideration the urgency of actions required, and the motivations submitted to vary the timeframes contained within paragraphs 4.1.3; 4.1.5 and 4.1.6 of the Revised Compliance Notice, the Department is satisfied that there is sufficient justification to accede to the requests and to vary the timeframes as provided below.
7. As a Grade 1 Environmental Management Inspector, I hereby vary paragraphs 4.1.3; 4.1.5 and 4.1.6 of the Revised Compliance Notice to read as follows:
- 4.1.3 By the 31st March 2020, ensure that waste disposed of at the New England Road Landfill site is covered and compacted on a daily basis with a minimum of 150mm of soil or other material approved by the licensing authority.**
- 4.1.5 By the 31st March 2020, ensure that the 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.**
- 4.1.6 By the 31st March 2020, ensure that all waste brought to be disposed of at the New England Road Landfill site is disposed of within the waste disposal area, approved in terms of the Waste Management Licence dated 3 July 2017 issued to the Msunduzi Municipality for New England Landfill Site (Ref No. DC22/WML/0061/2016)."**
8. This variation notice does not vary any other steps or timeframes contained in the Revised Compliance Notice issued to you on the 18th February 2020.

Department of Economic Development, Tourism and Environmental Affairs	2nd Variation of Revised Compliance Notice	DC22/WML/0061/2016 New England Road, Landfill Site	Initials: 	Page 2 of 3
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9. Should you have any queries please feel free to contact the Department

Signed on this 22 day of March 2020 at Pietermaritzburg



Signed by: Ms. Kim Lea van Heerden

Environmental Management Inspector (Grade 1)

Department of Economic Development, Tourism and Environmental Affairs

Acknowledgement of Receipt:

2nd VARIATION OF REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998: 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

Received by Mr./Ms \_\_\_\_\_

On behalf of the company \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 2020, at \_\_\_\_\_

Signature: \_\_\_\_\_

Department of Economic Development, Tourism and Environmental Affairs	2nd Variation of Revised Compliance Notice	DC22/WML/0061/2016 New England Road, Landfill Site	Initials 	Page 3 of 3
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**Kimera Dhaver**

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**From:** Marche B. Anthony <Marche.Anthony@msunduzi.gov.za>  
**Sent:** 17 June 2020 04:10 PM  
**To:** Kim Van Heerden; Ian Felton; Kimera Dhaver; Kim Van Heerden; scelo.duma@kzncogta.gov.za  
**Cc:** Madeleine Jackson; Mbongeni Mathe; Amidah Mnguni; 'Wilson Mhlongo'; Madoda Khathide  
**Subject:** R: revised compliance  
**Attachments:** We sent you safe versions of your files; Untitled\_16062020\_234031.pdf

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

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Good morning Kim, Mr Felton and Mr Dhaver

Please find attached document sent on behalf of the City Manager, Mr Khathide. Apologies for the delay, we have been experiencing network problems.

Regards

Marché

Marche B. Anthony  
Personal Assistant- CMO  
City Hall, 1st Floor Room 102  
Chief Albert Luthuli Street  
PMB  
3201  
033 392 2666

[Marche.Anthony@msunduzi.gov.za](mailto:Marche.Anthony@msunduzi.gov.za)  
Msunduzi Municipality  
[www.msunduzi.gov.za](http://www.msunduzi.gov.za)

[Msunduzi]

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# The Msunduzi Municipality

Private Bag X 321  
Pietermaritzburg  
3200  
(033) 392 2002

City Hall, Chief Albert Luthuli Street  
Pietermaritzburg  
3201  
[www.msunduzi.gov.za](http://www.msunduzi.gov.za)



Enq: M Mathe

Tel. 033 3922880

E-mail: [Mbongeni.Mathe@msunduzi.gov.za](mailto:Mbongeni.Mathe@msunduzi.gov.za)

05 June 2020

**"WITHOUT PREJUDICE"**

Ref: NERLS Compliance Notice

Enquiries: M Govender

Cell: 062 129 4320

109 Alan Paton Avenue  
Scottsville  
3201

Ms. Kim Lea van Heerden

Environmental Management Inspector

Department of Economic Development, Tourism and Environmental Affairs.

Private Bag X07

Pietermaritzburg

3202

Dear Madam

**RE: REVISED COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO 10 OF 1998) AS AMENDED: NON COMPLIANCE WITH THE VARIATION WASTE MANAGEMENT LICENCE(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 LANDFILL SITE, PIETERMARITZBURG, MSUNDUZI LOCAL MUNICIPALITY: REPRESENTATION TO EXTEND TIME PERIOD.**

**OFFICE OF THE CITY MANAGER**

Telephone/uCingo: 033 3922002  
Facsimile/Fekisi: 0868047309

Private Bag / Isikhwama: X321  
Pietermaritzburg/ePietermaritzburg 3200

Your revised letter of compliance dated 18<sup>th</sup> of February 2020 has reference.

In terms of paragraph 5.1 of the revised compliance notice dated 18 February 2020, an invitation was extended to the Municipal Manager to make representation to vary the issued compliance notice including the extension of the time period.

As the Accounting Officer of the Msunduzi Municipality, I would like to make the following representations to vary and extend the time periods stipulated 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, 4.1.16, 4.1.17 and paragraph 4.1.18 of your instruction as set forth below:

#### PARAGRAPH 4.1.3

The time period stipulated for the covering and compaction on daily basis with a minimum of 150 mm or other approved material is 14 (fourteen) days of the issuing of the notice. This time period cannot be reasonably achieved due to the following reasons:

- i) The Municipality, through the approved Supply Chain Management Processes and procedures need to have procurement instrument to hire/repair the necessary plant and equipment to ensure that the deposited waste is covered with a minimum of 150 mm of soil. It is estimated that the Supply Chain Management Division will need 90 days to procure the necessary contracts for the hire/repair of the necessary equipment and plant.

It is anticipated that that the above process will reasonably be accomplished by the 31<sup>st</sup> of August 2020.

**Accordingly, we request that the timeline herein be extended and varied to the 31 August 2020.**

#### PARAGRAPH 4.1.7

The time period stipulated for the action plan for the removal of the significant volume of waste along the access road and open areas is seven (7) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

- i) The Municipality, through the approved Supply Chain Management Processes and procedures need to have procurement instrument to hire 2 x payloaders and 10 x tipper trucks for a period of ninety days for the removal of the significant volume of waste in the amount of approximately 42, 000 m<sup>3</sup> along the access roads.

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#### OFFICE OF THE CITY MANAGER

Telephone/uCingo: 033 3922002  
Facsimile/Feksa: 0868047308

Private Bag / iinkhwanu: X321  
Pietermaritzburg/ePietermaritzburg 3200



Accordingly, we hereby request an extension of the period herein to the 31 August 2020 to produce the action plan for the removal of the significant volume of waste along the access road and open areas (It is anticipated that the waste will be removed by the 30<sup>th</sup> of November 2020).

#### **PARAGRAPH 4.1.8 AND PARAGRAPH 4.1.9**

The time period stipulated for the Municipality to ensure that appropriate landfill plant, required to cover and compact the disposed waste, is functioning and serviced and for the Municipality to 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 is 7 (seven) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality, through the approved Supply Chain Management Processes and procedures need to have procurement instrument to hire/repair appropriate landfill plant, required to cover and compact the disposed waste on daily basis. The contract with the Service Provider for the provision of the plant will have a contingency clause to ensure that the hired landfill plant for covering and compacting is repaired and/or replaced within a maximum of 48 hours of a failure. It is estimated that Supply Chain Management Division will need ninety days to put such a contract in place.

Accordingly, we hereby request an extension of the period herein to the 31<sup>st</sup> of August 2020 for the Municipality to ensure that a hire contract for appropriate landfill plant, required to cover and compact the disposed waste, with 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 is in place.

#### **PARAGRAPH 4.1.11**

The time period stipulated for the Municipality to appoint a suitably qualified landfill site specialist to conduct and finalise a Technical Assessment Report of the New England Road Landfill site, including:

##### **4.1.11.1 Reviewing and assessing the current situation.**

**4.1.11.1.1 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.**

**4.1.11.1.2 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.**

---

#### **OFFICE OF THE CITY MANAGER**

Telephone/fuCingo: 033 2822002  
Facsimile/faketsi: 0868047309

Private Bag / Isikhawana: X321  
Pietermaritzburg/ePietermaritzburg 3200



4.1.11.1.3 Identifying appropriate interventions and measures needed to ensure that the site is managed and operated in accordance with the Waste Management License conditions; relevant legislation; and industry best practice; is fourteen (14) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality, through the Project Management Division and the Supply Chain Management Division are expected to finalize the appointment for Emzansi Engineers in Thirty (30) days from 1 June 2020.

Accordingly, we hereby request an extension of the period herein to 30 June 2020 to finalize the appointment of a suitably qualified landfill site specialist to conduct and finalise a Technical Assessment Report of the New England Road Landfill site.

#### PARAGRAPH 4.1.12

The time period stipulated for the Municipality to Submit the Technical Assessment Report to the Department is forty-four (44) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality, through the Project Management Division and the Supply Chain Management Division are expected to finalize the appointment for Emzansi Engineers on 30 June 2020. Emzansi are expected to finish the Technical Assessment Report sixty (60) days after the finalization of the appointment.

Accordingly, we hereby request an extension of the period herein to 31 August 2020 to submit the Technical Assessment Report to the Department.

#### PARAGRAPH 4.1.14

The time period stipulated for the Municipality to appoint 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 runoff water treated and disposed lawfully is thirty (30) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality, through the Project Management Division and the Supply Chain Management Division are drawing up a Service Level Agreement for Emzansi Engineers to assess the storm water management system and provide recommendations to ensure that all leachate emanating from the site, including contaminated runoff water, is treated and disposed lawfully. This will be finalized after the Covid-19 lockdown period. It is estimated that the Supply Chain Management Division will need thirty (30) days to finalize the SLA.

Accordingly, we hereby request an extension of the period herein to 30 June 2020 for the Supply Chain Management to finalize the appointment of Emzansi Engineers.

---

#### OFFICE OF THE CITY MANAGER

Telephone/Cingo: 033 3822002  
Facsimile/Feksa: 0868047309

Private Bag / Isikhwama: X321  
Pietermaritzburg/Pietermaritzburg 3200



**PARAGRAPH 4.1.15**

The time period stipulated for the Municipality to submit **specialist storm water/ leachate report and recommendations and associated timeframes for implementation compiled by the specialist/engineer is Sixty (60) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:**

The Municipality, through the Project Management Division and the Supply Chain Management Division are expected to finalize the appointment for Emzansi Engineers to assess the storm water management system and provide recommendations to ensure that all leachate emanating from the site including contaminated runoff water is treated and disposed lawfully by 30 June 2020. It is estimated that Emzansi Engineers will need Sixty (60) days to finalize the commission.

**Accordingly, we hereby request an extension of the period herein to 31 August 2020 for the Municipality to submit specialist storm water/ leachate report and recommendations and associated timeframes.**

**PARAGRAPH 4.1.16**

The time period stipulated for the Municipality to provide a detailed and comprehensive Action Plan that addresses all the other non-compliance noted in the table contained in section 3.1 of the revised Compliance Notice to the Department for approval is Fourteen (14) days from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality has to communicate with the Service Provider to get details of the registered interested and affected parties who participated in the application for the conversion of the waste permit to the Waste License. This process was delayed by the declaration of the Covid-19 Lockdown. It is expected that communication with Envitech Solutions will be finalized by the 30<sup>th</sup> of June 2020.

**Accordingly, we hereby request an extension of the period herein to 31 July 2020 for the Municipality to provide a detailed and comprehensive Action Plan that addresses all the other non-compliance noted in the table contained in section 3.1 of the revised Compliance Notice to the Department for approval.**

**PARAGRAPH 4.1.17**

The time period stipulated for the Municipality to appoint an independent and suitably qualified landfill site specialist, registered with a relevant professional body, to develop a long-term operational plan including decommissioning and rehabilitation plan for the landfill site is three (3) months from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality, through the Project Management Division and the Supply Chain Management Division are expected to appoint an independent and suitably qualified landfill site specialist, registered with a relevant professional body, to develop a long-term operational plan including the Decommissioning and Rehabilitation plan for the landfill site in three months after 1 June 2020.

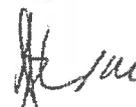
**Accordingly, we hereby request an extension of the period herein to 31 August 2020 for the Municipality to appoint an independent and suitably qualified landfill site specialist,**

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**OFFICE OF THE CITY MANAGER**

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*registered with a relevant professional body, to develop a long-term operational plan including decommissioning and rehabilitation plan for the landfill site.*

**PARAGRAPH 4.1.18**

The time period stipulated for the Municipality to provide a written submission to the Department outlining the Municipality's long-term operational plan including plans towards decommissioning and rehabilitating the New England Road Landfill site is three (3) months from the date of the notice. The stated timeline cannot be reasonably achieved for the following reasons:

The Municipality, through the Project Management Division and the Supply Chain Management Division are expected to appoint an independent and suitably qualified landfill site specialist, registered with a relevant professional body, to develop a long-term operational plan including the Decommissioning and Rehabilitation plan for the landfill site by 31 August 2020. It is expected that it will take the specialist six (6) months for the Specialist to finalize plans.

*Accordingly, we hereby request an extension of the period herein to 28 February 2021 for the Municipality to provide a written submission to the Department outlining the Municipality's long-term operational plan including plans towards decommissioning and rehabilitating the New England Road Landfill site.*

Regards



**M P KHATHIDE  
CITY MANAGER**



"J"



**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**

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**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 3<sup>RD</sup> 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**

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## **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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 non-compliance 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. 2<sup>nd</sup> 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. 3<sup>rd</sup> 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:



- 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 co-operative 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 9<sup>th</sup> and 20<sup>th</sup> 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.**

**IN THE HIGH COURT OF SOUTH AFRICA**

**KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case Number: 8407/20P

In the matter between:

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**Applicant**

and

**MSUNDUZI MUNICIPALITY**

**First Respondent**

**HOD, DEPT OF ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS, KZN**

**Second Respondent**

**MEC FOR ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS, KZN**

**Third Respondent**

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**THIRD RESPONDENT'S CONFIRMATORY AFFIDAVIT: MEC**

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I, the undersigned, **RAVIGASEN RANGANATHAN PILLAY**, do hereby state under oath:

1. I am the Member of the Executive Council of the Province of KwaZulu-Natal responsible for Economic Development, Tourism and Environmental Affairs and the Executive Head in charge of the Department. I am based at the

offices of the KwaZulu-Natal Department of Economic Tourism and Environmental Affairs ("Department") which operates from 181 Hoosen Haffejee Street, Deloittee House, in Pietermaritzburg.

2. The facts deposed to in this affidavit are within my knowledge, except where I state otherwise, arise from documents and personnel under my control and I believe that these facts are true and correct.
3. I have read the main explanatory affidavit deposed to by **KIM LEA VAN HEERDEN**, which is filed on my behalf and on behalf of the second respondent. I can and do confirm the contents of that affidavit in so far as it relates to me, my engagements with the Msunduzi Municipality and the extensive efforts taken by Departmental officials to resolve the situation at the New England Road Landfill Site with Municipal officials.
4. As noted in the explanatory affidavit of **VAN HEERDEN**, although the Province has constitutional duties to assist, monitor and supervise the work of the Msunduzi Municipality, and to do so in accordance with Constitutional Principles of Co-Operative Governance, it is of utmost concern to me and my Department that the situation at the New England Road Landfill Site must be finally regularised and brought under effective control.
5. It is a matter of great regret that the Msunduzi Municipality allowed the New England Road Landfill Site to deteriorate to such an extent that it will now

take time to regularise and remediating the landfill site in accordance with its Waste Management Licence and conditions stipulated therein.

6. At present, what remains outstanding is a comprehensive Action Plan from the Msunduzi Municipality, with realistic time-lines within which the Municipality must commit to implement the remedial measures outlined in the Revised Compliance Notice of 18 February 2020 (which are summarised in the tables in the affidavit of **VAN HEERDEN**). I should note that the Department received an Action Plan from the Municipality on Friday 5 February 2020, in response to paragraph 4.1.16 of the Revised Compliance Notice. My Department will assess this and respond to the Municipality.
  
7. The affidavit by **VAN HEERDEN**, sets out the exhaustive co-operative governance engagements that my Department and I have undertaken with the Municipality, as well as the many enforcement measures that have been taken in terms of the applicable environmental laws. The progress by the Municipality can only be described as "stop-start".
  
8. My Department and I remain committed to continue our engagements with the Municipality to monitor, supervise and assist it and, most importantly, to

ensure that there is no further compromise to the health and safety of the surrounding communities, the public and to the environment.

9. As noted in the main explanatory affidavit, the respondents will abide the decision of this Honourable Court.

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**DEPONENT**

I HEREBY CERTIFY that the deponent has acknowledged that he / she knows and understands the contents of this affidavit which was signed and sworn to before me at ..... on the ..... day of ..... 2021, the requirements of Section 10 of Act 16 of 1963, as read with Regulations published under Government Notice R1258 in Gazette No. 3619 dated the 21st of July 1972, having been fulfilled.

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**COMMISSIONER OF OATHS**

