

Professor O Skae
Rhodes University

PER E-MAIL: o.skae@ru.ac.za

Date 13 January 2017
Your ref Owen Skae
Our ref B Brody/Glyn/S17814
Direct dial 046 603 6407
Direct fax 046 622 6556
Cell 082 657 1300
Email: bbb@wheeldon.co.za

Dear Owen

MAKANA UNITY LEAGUE / MAKANA MUNICIPALITY & OTHERS

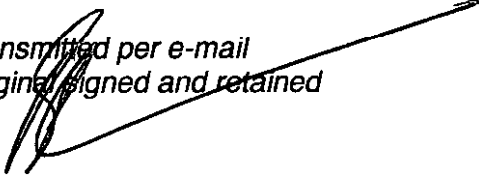
1. Arising out of our meeting we enclose herewith a copy of a letter addressed to Messrs Netteltons and confirm that we require the following work to be done before we can proceed with contempt of court proceedings:
 - 1.1 A report from the environmental expert to confirm what parts of the order and compliance notice have not been complied with as at present date;
 - 1.2 Photographs to indicate that the court order has not been complied with as at present date (duly marked and indexed);
 - 1.3 Copies of all e-mails and letters addressed to Makana Municipality in regard to the dump site by any organisation or person in Grahamstown.
2. Once we receive the above we intend drafting the contempt of court proceedings in early February 2017.
3. We look forward to hearing from you.

CONNAUGHT CHAMBERS, 119 HIGH STREET
PO BOX 88, GRAHAMSTOWN, 6140
DOCEX 8, GRAHAMSTOWN
VAT NUMBER: 4320101589
TEL: 046 622 7005 • FAX: 046 622 7084
WEBSITE: www.wrcattorneys.co.za

DIRECTORS BRIN BRODY BA LLB • MICHAEL VAN DER VEEN LLB
ASSISTANT & OFFICE MANAGERESS SANDRA AMM **CONSULTANTS** RICHARD LAING B.COM • SONETTE FRONEMAN BA LLB
CANDIDATE ATTORNEYS TINASHE MUTIZAMHEPO • BLAKE BRODY • DECLAN WILLIAMSON
FINANCE MANAGERESS GERTHA KEEVY • **REG NO. 2015/164499/21**
CERTIFIED B-BBEE COMPLIANT (Level 4)

Yours sincerely

*Transmitted per e-mail
Original signed and retained*

A handwritten signature in black ink, appearing to be 'Brin Brody', written over a long horizontal line that extends across the page.

BRIN BRODY

 **Wheeldon, Rushmere & Cole Inc.**
ATTORNEYS • NOTARIES • CONVEYANCERS

Messrs Netteltons
GRAHAMSTOWN
PER E-MAIL:
berna@netteltons.co.za
sam@netteltons.co.za

Date 13 January 2017
Your ref Mr Nettelton
Our ref B Brody/Glyn/S17814
Direct dial 046 603 6407
Direct fax 046 622 6556
Cell 082 657 1300
Email: bbb@wheeldon.co.za

Dear Sir

URGENT

MAKANA UNITY LEAGUE / MAKANA MUNICIPALITY & 4 OTHERS

1. We enclose herewith a copy of the court order obtained by agreement on the 8th of September 2015, together with the Compliance Notice referred to at paragraph 2(i) of the order and advise that your clients have failed to comply with any of the terms of the order or the Compliance Notice.
2. Although the order was personally served upon the erstwhile officials of your client last year when the issue of non-compliance was raised, we will ensure that a copy of the order and Compliance Notice is served again by the sheriff upon the first respondent, the second respondent, the third respondent, the fourth respondent, and the fifth respondent.
3. Your client is afforded until the **end of January 2017** to ensure that the court order is complied with fully in every respect failing which contempt of court proceedings will be brought against the officials of your client in **early February 2017**.
4. Our client's rights remain expressly reserved, especially as carcinogenic and toxic fumes are spewing from the site and have been since the 15th of December 2016. This to the severe prejudice of the general public in Grahamstown and all its citizens.

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CERTIFIED B-BBEE COMPLIANT (Level 4)

Yours faithfully

*Transmitted per e-mail
Original signed and retained*

BRIN BRODY



CASE NO: 3795/2015

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

18TH AUGUST 2015

BEFORE THE HONOURABLE MR. JUSTICE PICKERING

IN THE MATTER BETWEEN:

MAKANA UNITY LEAGUE

APPLICANT

AND

MAKANA MUNICIPALITY

1ST RESPONDENT

THE ADMINISTRATOR OF MAKANA

2ND RESPONDENT

MUNICIPALITY NOMINE OFFICIO

THE EXECUTIVE MAYOR OF MAKANA

3RD RESPONDENT

MUNICIPALITY NOMINE OFFICIO

THE MUNICIPAL MANAGER OF MAKANA

4TH RESPONDENT

MUNICIPALITY NOMINE OFFICIO

THE MEMBER OF THE EXECUTIVE

5TH RESPONDENT

COMMITTEE FOR ECONOMIC DEVELOPMENT,

ENVIRONMENTAL AFFAIRS & TOURISM,

PROVINCE OF THE EASTERN CAPE,

NOMINE OFFICIO

Having heard Adv. Smuts (S.C.), Counsel for the Applicant and Mr. Nettelton, Attorney for the First, Second, Third and Fourth Respondents and having read the documents filed of record

IT IS ORDERED:

1. THAT the matter be and is hereby postponed to 10th September 2015.
2. THAT the Respondents are to file answering affidavits, if any, on or before 1st September 2015.
3. THAT the Applicant is to file replying affidavits, if any, on or before 8th September 2015.

4. THAT the First to Fourth Respondents are to pay the wasted costs occasioned by the postponement.

BY ORDER OF COURT



P.M. TOYISI

COURT REGISTRAR



Wheelton, Rushmere & Cole
ATTORNEYS • NOTARIES • CONVEYANCERS
119 HIGH STREET, GRAHAMSTOWN
T: (046) 622 7576 F: (046) 622 6556
(REF: MR B BRODY)

Received 2 Copy/Copies

thereof this 19 date

of Aug. 2015.

12:13 - (10)

Netteltons

Max 2.015.103/09



Province of the
EASTERN CAPE
DEPARTMENT OF ECONOMIC AFFAIRS,
ENVIRONMENTAL AND TOURISM.

South Africa, 5605
Phone: +27 (043) 605 7188
Fax: +27 (043) 605 7300
Web: www.deaet.ecprov.gov.za
Email: div.devilliers@deaet.ecape.gov.za

Ref: ED#08/09/2013
Enq: Jan Kapp (041-588 5821)

The Municipal Manager

Makana Municipality

P.O. Box 176

Grahamstown

6140

Fax: (046) 603 6070

Attention: The Municipality Manager

Dear Sir/Madam

COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT (ACT 107 OF 1998) AS AMENDED AS A RESULT OF NON-COMPLIANCE WITH PERMIT (B33/2/1400/3/P243) ISSUED IN TERMS OF SECTION 20 OF THE ENVIRONMENTAL CONSERVATION ACT (ACT 73 OF 1989).

1. I, Deon de Villiers, in my capacity as an Environmental Management Inspector, hereby issue you the Municipal Manager of the Makana Local Municipality with a compliance notice in terms of section 31L of the National Environmental Management Act (Act 107 of 1998) as amended (NEMA) and Regulation 8 of the Regulations relating to Environmental Management Inspectors (GN R.494 in *Government Gazette* 28869 of 2 June 2006) in terms of NEMA.
2. The Environmental Conservation Act, 1989 (Act 73 of 1989) is a Specific Environmental Management Act in terms of the NEMA.
3. This section 31L compliance notice in terms of NEMA relates to your non-compliance with the provisions of permit (B33/2/1400/3/P243) read with section 24F, section 1, section 24 and section 49A of the NEMA and further read with Section 250 of the Criminal Procedure Act 1977 (Act 51 of 1977) as amended.

4. I refer to the above matter following a site inspection conducted at the Makana Municipality Landfill Site in Grahamstown on 23 September 2013 and again on the 21 January 2015. The site inspection was undertaken by officials from this Department. On the first occasion the site inspection was facilitated by your Mr. J Magidisa who is known as the controller of the above mentioned site. The second site inspection was not facilitated by an employee of the local municipality as there was no local municipality official on site. The inspecting team did communicate with the driver of a front end loader (Mr. Welcome Fontein.) Please note that the second site inspection was undertaken after I informed the local municipality that I intended to issue this compliance notice (This Department is not in receipt of any representations made in respect thereof.)
5. The above mentioned inspections emanated from public complaints received in relation to the activities and operations at the landfill site. Following the inspection this Department established that some aspects of the operation on the site are not compliant with the permit (B33/2/1400/3/P243). Detected non-compliance with the permit (B33/2/1400/3/P243) includes:
- 5.1 Condition 3.6 which requires 'The construction and maintenance of a diversion drain to prevent water from adjacent land entering the site'. After a thorough inspection this Department has established that 'no diversion drain was constructed on the premises'.
- 5.2 Condition 3.7 which requires 'the construction and maintenance of a diversion drain to channel water from the face of the site away from the leachate to prevent mixing of leachate and run off water'. After a thorough inspection, the officials from this Department have detected that the diversion drains have not been constructed.
- 5.3 Condition 3.10 which stipulates that 'All leachate will be diverted to sewer, or treated or be evaporated in dams or sprayed over the landfill site in which refuse is compacted.' After a thorough inspection, the officials from this Department have detected that there is leachate that is allowed to drain into a dam and there is no free board of 0.5m maintained. In addition the leachate is not diverted to sewer, treated or sprayed over the landfill site. The management of the leachate is unacceptable.
- 5.4 Condition 5.1 which provides that on a daily basis, 150 mm of cover material should be spread and the waste compacted. The thorough inspection by this Department has established that there is inadequate compaction of the material due to refuse trucks battling to drive over the disposal field. There is inadequate cover material available to cover the refuse as large portions of the refuse were exposed.
- 5.5 Condition 5.3 which requires you to "Make use of movable fences to control windblown litter". The inspection revealed that there was no movable fence. Windblown litter was observed attached to the fence line all over the site.
- 5.6 Condition 5.6 which requires you to provide the operator to keep track of the volume and nature of the waste.' This Departments inspection has established that a weigh bridge has been constructed on site, however it is not operational.

6. You are hereby instructed to:
 - 6.1 Compile a work plan to address the non-compliance detected at the Makana Landfill Site (the non-compliance is stated in Paragraph 5.1. to 5.6. herein) within 15 working days of receipt hereof. The work plan must specify specific work that must be undertaken and completed against realistic time periods that can be measured from the date of commencement thereof.
 - 6.2 Prior to the implementation of the work plan, the work plan must be provided to this Department's Senior Manager: Environmental Quality Management for her approval. (The work plan will be directed to the Senior Manager: Environmental Quality Management care of myself.)
 - 6.3 After you have received the Senior Manager: Environmental Quality Management approval of your work plan, within 5 working days thereof you must implement the work plan at your own cost. You will have to adhere the time frames contained in your work plan.
 - 6.4 Once complete I must be informed in writing after which I arrange for a site inspection.
 - 6.5 If the Department is satisfied with the work undertaken then they will issue a letter indicating their satisfaction.

7. Procedure for lodging an objection to this NEMA Section 31L Compliance Notice (Section 31L and Section 31M of the NEMA):
 - 7.1. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make written representation to me to do so.
 - 7.2. If you wish to lodge an objection against this Compliance Notice you may do so by making a representation in writing to the Member of the Executive Council (the MEC) of Economic Development Environmental Affairs and Tourism within 30 days of receipt of this Notice.
 - 7.3. You may also make a representation to the MEC to suspend the operation of the Compliance Notice pending finalization of your objection.
 - 7.4. Irrespective of any representation you may make to the MEC or me, you must comply with this Compliance Notice within the time period mentioned in this Notice unless the MEC agrees to suspend the operation of the Compliance Notice.

8. Failure to comply with a NEMA Section 31L compliance notice:
 - 8.1. The Environmental Management Inspector must report the non-compliance to the MEC who may:
 - 8.1.1. Revoke or vary the relevant permit, authorisation or other instrument that is the subject of the Compliance Notice;
 - 8.1.2. Take any necessary steps and recover the costs from doing so from the person who failed to comply.
 - 8.2. If a person is convicted of an offence as a consequence of their failure to comply with a compliance notice they may be liable to a fine not exceeding ten (10) million Rand or to imprisonment for a period not exceeding ten (10) years or to both such fine and imprisonment.



Acknowledgement of Receipt: COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT (ACT 107 OF 1998) AS AMENDED AS A RESULT OF NON-COMPLIANCE WITH PERMIT (B33/2/1400/3/P243) ISSUED IN TERMS OF SECTION 20 OF THE ENVIRONMENTAL CONSERVATION ACT (ACT 73 OF 1989) (Page 5 of 5).

Received by Mr. /Ms. _____

On behalf of the company _____

on this _____ day of _____ 2015, at _____

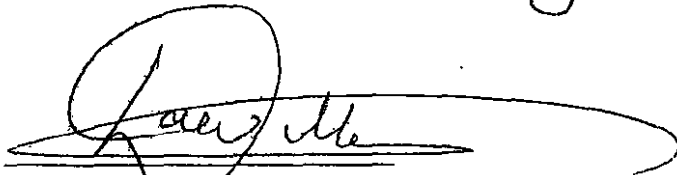
Signature: _____

9. It should be noted that a conviction in respect of this offence may also result in the following:
- 9.1. Payment of part of the fine recovered to an informant.
 - 9.2. Disqualification of convicted persons from obtaining authorization for a period not exceeding five (5) years, and
 - 9.3. Forfeiture of items used in connection with the commissioning of the offence.

9 I wish to make it clear that the instructions contained in this letter are made in the interest of responsible environmental management, and with a view to a co-operative resolution of the issue. Further, please note that this compliance notice does not negate your obligations to comply with Section 28(4) of the NEMA or the consequences of contravening any other overlapping or concurrent environmental legislation which may include the National Water Act, 1993 (Act 43 of 1993). Should you have any further queries, please contact Ast Mgr Kapp.

10 Notice is hereby given in terms of Section 31H and 31K of the NEMA that duly authorized officials from this Department may/will enter the site at various times after issuing this notice and at reasonable intervals thereafter in order to ensure that you are complying with this notice.

Signed on this 9th day of March, 2015, at King Mankwani's Town



Environmental Management Inspector (Grade 1)

D. de Villiers

Senior Manager: Compliance and Enforcement

Department of Economic Development Environmental Affairs and Tourism