

22 August 2021

Attention: The Western Cape Government
Minister A Bredell
Provincial Minister: Local Government, Environmental Affairs and
Development Planning

Per E-Mail: magdalena.griesel@westerncape.gov.za

And to: Directorate: Environmental Law Enforcement
Mr Piet van Zyl
Head of Department: DEA-&DP
Directorate: Environmental Law Enforcement

Per E-mail: Pieter.vanZyl@westerncape.gov.za

And to: Mr Grant Deyers
Environmental Management Inspector
Directorate: Environmental Law Enforcement

Per E-mail: Grant.Dyers@westerncape.gov.za

And to: Mr Achmad Bassier
Director: Environmental Law Enforcement
Directorate: Environmental Law Enforcement

Per E-mail: Achmad.bassier@westerncape.gov.za

CC: Dale Wakefield
Region Manager: Sub directorate: Environmental Law Enforcement
Directorate: Environmental Law Enforcement

Per E-mail: dale.wakefield@westerncape.gov.za

CC: Mr Saleigh Jacobs
National Department of Environmental Affairs

Per E-mail: sjacobs@environment.gov.za

Good day Sir/s,

POLLUTION AND DEGRADATION OF THE DIEP RIVER CATCHMENT AND THE MILNERTON LAGOON

1. The Organisation Undoing Tax Abuse (“OUTA”) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation.
2. With reference to your letter, dated 12 August 2021, OUTA wishes to, at the outset, thank you for the detailed work that your department has undertaken to ensure that sufficient forums and measures are established to monitor and enforce compliance with the directive, as modified on appeal (“the Directive”).
3. Your letter to OUTA, read with your letter to the City, seeking information that includes a status update on all of the obligations that your audit revealed, the City has not yet complied with, demonstrates that you share OUTA’s objective of eradicating the prolonged pollution of the Diep River and Milnerton Lagoon.
4. Unfortunately, the response OUTA received from the City does not provide the same level of assurance. On the contrary, the City suggested that OUTA address the concerns with regard to compliance with the Directive to your department, yet opted to append to its response a table that appears to reflect the outcome of a self-review exercise, which purports to claim that the City has complied with all but two of its obligations under the Directive.
5. OUTA is also disappointed in the City’s ongoing, noticeable silence on the extent to which it is compliant with the conditions of its water use license (“WUL”), despite OUTA specifically raising the matter in the letter to the City, dated 23 July 2021. The Department of Water and Sanitation (“DWS”) has also not responded to OUTA’s call for information in this regard.
6. Furthermore, OUTA has noted and appreciates the departments undertaking to provide a copy of the final audit report, once your department has considered the information that the City has been requested to provide. The final report will determine whether OUTA will be taking any further action against the City.

7. In the meantime, we wish to raise the following two pertinent issues.

7.1 Firstly, given that your department has established an inter-governmental task team representing all three spheres of government, we would be grateful if your department could encourage DWS to respond to OUTA's letter, dated 23 July 2021, in which we sought information on the level of compliance with the conditions of the City's WUL.

We were informed that an "agreement" has been concluded between the City and DWS and/or that a "temporary approval" has been granted (presumably for a departure from one or more conditions of the WUL). We do not believe that it would be lawful for DWS, as the regulatory authority, to make any concession on compliance with these conditions in favour of the City, as the licensee, based on an "agreement" or "approval" and it is time for both entities to come clean on the issue.

Over and above the questionable validity of such an arrangement, we are concerned that any concession that might have been made by DWS vis-à-vis the conditions of the WUL would undermine the sense of urgency that is required on the part of the City to comply with the Directive and prevent further harm to the environment.

7.2 Secondly, OUTA notes that a WCG/City task team has been established to identify short- and medium-term measures to be implemented while the various project upgrades are in progress. Whilst we do not, in principle, object to such collaboration, it provides cause for concern insofar as it might detract from the need for independent verification of compliance with, and enforcement of the Directive.

In particular, we note that the compliance audit is one of the actions on which the WCG/City task team must report on quarterly. At the risk of

stating the obvious, the audit, as well as any enforcement action that might flow from verified non-compliance, must at all times be independent and objective if it is to be lawful and credible, and OUTA therefore requests that your department take steps to ensure that the collaboration between your department and the City, via the task team, does not compromise the integrity and validity of the audit and any enforcement action that might have to be taken in the future.

8. OUTA once again wishes to thank the department for it's diligence in delivering on their mandate and we look forward to receiving a copy of the final audit report in due course.
9. We trust that you find the above in order.
10. Should you have any queries, kindly contact OUTA's Senior Legal Project Manager, Ms. Andrea Korff, on andrea.korff@outa.co.za.

Yours Sincerely,



Stefanie Fick

Executive Director of the Accountability Division

OUTA – Organisation Undoing Tax Abuse

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