



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 162340 / 158911

APPEAL DECISION

APPEAL AGAINST THE SUSPENSION OF WASTE MANAGEMENT LICENCE 12/9/11/L1200/4 ISSUED TO ENVIROSERV (PTY) LTD IN TERMS OF SECTION 56 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT WASTE ACT, 2008 (ACT NO. 59 OF 2008) AND OBJECTION AGAINST THE COMPLIANCE NOTICE ISSUED TO ENVIROSERV (PTY) LTD IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998), IN RESPECT OF THE SHONGWENI LANDFILL SITE, KWAZULU-NATAL PROVINCE

1. INTRODUCTION

- 1.1. In terms of section 31L of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement (the DDG: LACE) of the Department of Environmental Affairs (the Department) issued EnviroServ Waste Management (Pty) Ltd (the appellant) with a compliance notice on 21 October 2016 as a result of, inter alia, the appellant's alleged non-compliance with certain requirements contained in NEMA, the National Environmental Management Waste Act, 2008 (Act No. 50 of 2008) (NEMWA) and the National Environmental Management Air Quality Act, 2004 (Act No. 30 of 2004) (NEMAQA).

- 1.2. In terms of section 56 of the NEMWA, the Deputy Director-General: Chemicals and Waste Management (the DDG: CWM) of the Department suspended the Waste Management Licence (WML) on 4 April 2017, in as far as it relates to the disposal of waste at the Shongweni Landfill Site, in the KwaZulu-Natal Province.

2. BACKGROUND

- 2.1 On 8 April 2014, the DDG: CWM issued the appellant with a WML in respect of waste management activities listed in Category A and B of Government Notice No 718, dated 3 July 2009. The appellant thereafter commenced with the operation of its Shongweni Landfill Site, in the KwaZulu-Natal Province.
- 2.2 During the operation of the site in 2016, the DDG: CWM and DDG: LACE received a significant number of health and odour related complaints from the surrounding communities. Following the receipt of the said complaints, environmental management inspectors (EMIs) conducted a site inspection on 31 August 2016. Following the site inspection, a pre-compliance notice was issued to the appellant on 9 September 2016, to which the appellant submitted a response thereto on 16 September 2016. The EMIs conducted a further site inspection on 14 October 2014, following which, the DDG: LACE issued the appellant with a compliance notice on 21 October 2016 as a result of, inter alia, the appellant's non-compliance with certain requirements contained in NEMA, NEMWA and NEMAQA.
- 2.3 On 21 November 2016, the Directorate: Appeals and Legal Review received an objection from the appellant against the aforesaid compliance notice issued to it.
- 2.4 Several thousand complaints relating to serious health impacts and odour nuisance continued to be received by the Department from the surrounding communities. The EMIs conducted further site inspections on 17 and 19 January 2017, which was followed by a site inspection by the DDG: CMW, inter alia, on 25 January 2017.

- 2.5 Following a series of further communication between the appellant, the Directorate: Appeals and Legal Review, EMIs, the DDG: CMW, as well as Upper Highway Air NPC (a non-profit organisation and an interested and affected party which opposed both the appeal and the objection by the appellant (UHA)), the DDG: CWM issued the appellant with a notice to suspend or revoke its WML on 2 February 2017.
- 2.6 The appellant submitted written representations to the said notice to suspend or revoke its WML on 9 February 2017 and made further oral representations on 15 February 2017 and 27 March 2017.
- 2.7 After consideration of the appellant's representations, as well as those by the UHA, the DDG: CWM concluded, inter alia that the appellant contravened conditions 5.1.4 and 5.1.5 of its WML.
- 2.7.1 Condition 5.1.4 stipulates that the Licence Holder must ensure that impact of odour from emissions from the site is minimised.
- 2.7.2 Condition 5.1.5 stipulates that the Licence Holder must prevent the occurrence of nuisance conditions or health hazards."
- 2.8 As a result thereof, the DDG: CWM suspended the appellant's WML on 4 April 2017, in as far as it relates to the disposal of waste at the Shongweni Landfill Site.
- 2.9 Following the suspension of the aforementioned WML, the Directorate: Appeals and Legal Review received a provisional appeal from the appellant on 10 April 2017, followed by a supplemented appeal on 26 April 2017. The appellant held the view that as a consequence of the lodging of the appeal, the suspension notice was suspended by virtue of section 43(7) of NEMA. The UHA thereafter brought an application to the Durban High Court to prevent the appellant from accepting, treating and disposing of waste at its Shongweni Landfill Site, which application was heard by the court on 26 April 2017. The court ruled in favour of UHA and held that the WML must remain suspended. The UHA thereafter submitted a responding statement to the appeal on 25 May 2017.

- 2.10 Subsequent to the aforementioned developments, as well as the finalisation of a number of independent studies, the appellant amended its grounds of appeal on 12 June 2017, primarily to propose certain amendments to the suspension notice. On 12 July 2017, the UHA submitted a revised responding statement to the amended appeal.
- 2.11 Due to the complex and technical nature of the subject matter of the appeal and responses thereto, as well as the material differences of opinion between the appellant and UHA, the Directorate: Appeals and Legal Review held an appeal meeting with the appellant and UHA on 19 September 2017, which was followed by a site visit on 20 September 2017.
- 2.12 The DDG: CWM thereafter provided comments on the grounds of appeal on 25 October 2017 and the Chief Directorate: Air Quality Management provided its comments on 15 and 29 November 2017.
- 2.13 An internal meeting was thereafter convened by the Directorate: Appeals and Legal Review with the Chief Directorate: Hazardous Waste Management and Licensing, the Chief Directorate: Enforcement and the Chief Directorate: Air Quality Management on 27 November 2017.

3. DECISION

- 3.1 In reaching my decision on the appeal against the issuance of the aforementioned suspension notice and the objection against the aforementioned compliance notice, I have taken the following into consideration:
- 3.1.1 Relevant material information contained in the project files (CD:Enf/Shongweni LandfillSite/KZN Province/10/2016 and 12/9/11/L1200/4);
- 3.1.2 The grounds of appeal, including the supplementary grounds of appeal, submitted by the appellant;
- 3.1.3 The objection, including the supplementary objection, submitted by the appellant;

- 3.1.4 The responses, including supplementary responses to the appeal and objection, submitted by the UHA;
 - 3.1.5 The comments on the appeal received from the DDG: CWM on 25 October 2017;
 - 3.1.6 The comments on the appeal received from the Chief Directorate: Air Quality Management on 15 and 29 November 2017;
 - 3.1.7 The outcome of various specialist studies submitted, as well as the responses thereto;
 - 3.1.8 The outcome of the appeal meeting and site visit conducted by the Directorate: Appeals and Legal Review on 19 and 20 September 2017; and
 - 3.1.9 The minutes and outcomes of the various meetings held with the appellant, UHA, other organs of state and relevant sections in the Department.
- 3.2 In terms of section 43 (6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision or condition of the Department, or to make any other appropriate decision.
- 3.3 In terms of 31M (2) of NEMA, I have the authority, after considering the objection, to confirm, modify or cancel the notice or any part thereof.
- 3.4 Having considered the above mentioned information, and in terms of sections 43(6) and 31M of NEMA, I have decided to vary the suspension notice and to modify the compliance notice, as discussed hereunder.
- 3.5 In arriving at my decision on the appeal and objection, it should be noted that I have not responded to each and every statement set out in the appeal, objection or responses thereto, and where a particular statement is not directly addressed, the absence of any response should not be interpreted to mean that I agree with or abide by the statement made. Furthermore, this appeal decision must not be construed to supersede any other decision taken by the Department after the submission of the objection and lodgement of the appeal unless explicitly amended and / or excluded herein.

3.6 Should any party be dissatisfied with any aspect of my decision, it may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

3.7 THE REASONS FOR MY DECISION ARE AS FOLLOWS:

3.7.1 The appeal by the appellant against the aforementioned suspension notice is premised on the appellant's questioning of the reasonableness, appropriateness and practicability of implementing certain of the requirements of Annexure A to the suspension notice. In addition thereto, and based on the findings and recommendations of Envitech Solutions, the appellant proposed conditions of a revised suspension notice. Further to this, the appellant contends that based on monitoring conducted on site, it can be shown that the increase of the pH appears to have been successful. According to the appellant, improvement would take place more rapidly if waste is continued to be accepted, treated and disposed, as this would enable additional pH treatment of the waste body.

3.7.2 In response to appeal by the appellant, the UHA contends, *inter alia*, that there is simply no logical or factual basis advanced for the proposed variation. According to the UHA, the proposed variation to the suspension notice will result in the emission of H₂S because the appellant will be permitted to dispose of leachate and excess contaminated storm water back into the waste body by way of lime dosing and micro-encapsulation. Apart from the foregoing, the UHA states that the proposed variation is in breach of the Compliance Notice. In addition thereto, the UHA argues that the Community Health Risk Assessment prepared by Infotox did not serve to interrogate or investigate the health complaints of the community. The UHA therefore argues that the lifting of the suspension of the license is not justified and suggests that if the negative health effects and odour annoyance continue, then revocation of the license is the only solution.

3.7.3 In evaluating the appeal by the appellant and the responses thereto, I am aware that the relevant sections in the Department have been receiving weekly updates on the appellant's compliance against the approved odour and gas management plan.

- 3.7.4 I note, furthermore, that the appellant has scientifically demonstrated a significant reduction in H₂S emissions from the site. In this regard, for example, the levels of H₂S have decreased from approximately 160ppm prior to the implementation of various measures at the site to approximately 26ppb after implementation. However, notwithstanding the notable improvements at the site, I have noted the queries by the UHA on the veracity of the monitoring results, as well as continued health impact and odour annoyance complaints from members of the public living in close proximity to the site.
- 3.7.5 I am satisfied, however, that the appellant has demonstrated sufficient progress at the Shongweni Landfill Site to warrant a partial relaxation of the conditions of its suspension notice. In this regard, the appellant is accordingly permitted to reintroduce the acceptance, treatment and disposal of only solid waste that is inorganic and does not contain sulphur. This reintroduction must be done in a phased approach and must be closely monitored, as per the conditions set out hereunder.
- 3.7.6 As a result of the foregoing, I have decided to vary Annexure A to the suspension notice issued on 4 April 2017.
- 3.7.7 Furthermore, in light of the below mentioned amended Annexure A to the suspension notice, I have deemed it unnecessary to discuss in detail the instructions in the compliance notice, the objections thereto by the appellant, or the comments thereon by the UHA. The effluxion of time and events pursuant to the issuance of the compliance notice furthermore render any such discussion of little more than academic value.
- 3.7.8 As a result thereof, paragraph 8 of the compliance notice is accordingly modified. The relevant portions of the amended suspension notice and varied compliance notice are set out hereunder:


DR B E E MOLEWA, MP

MINISTER OF ENVIRONMENTAL AFFAIRS

DATE 2017/12/09

ANNEXURE A

1. DISPOSAL OF WASTE

- 1.1 The acceptance, treatment and disposal of solid waste that is inorganic and does not contain sulphur (including treated medical waste) may be accepted at the Shongweni Landfill Site for a period of 6 months. On demonstration of containment of odours that are likely to be a nuisance, the Minister will review acceptance of further waste streams.
- 1.2 The brine from the leachate treatment plant can be disposed of onto the working face provided it is microencapsulated. However, this disposal must take place on the periphery of the workface to protect against this material being broken down by other waste which may have a low pH.
- 1.3 The waste body must be monitored to determine if the three identified H₂S hotspots have been mitigated. Continuous monitoring of the waste body must take place to ensure that further hotspots do not develop. All necessary mitigation measures to control this must be implemented and should any new hotspots be identified, the Minister and all relevant sections of the Department must be notified within 24 hours of detection thereof.
- 1.4 The Minister and relevant sections of the Department must be sent inventories on a monthly basis of all waste being accepted at the Shongweni Landfill Site subsequent to the re-opening of the site.
- 1.5 Caution must be exercised in terms of the treatment of waste to a very high pH prior to disposal as this could have an impact on the liner at Valley 2.

2. LEACHATE TREATMENT

- 2.1 No leachate is to be recirculated into the waste body. Alternative discharge/disposal/reuse/recovery methods must be investigated and implemented after approval from this Department and other competent authorities responsible for this.
- 2.2 No contaminated stormwater is to be recirculated into the waste body unless as a last resort and only if microencapsulated. Disposal of this must take place on the periphery of the workplace to minimise the release of the encapsulated salts through other wastes of low pH.
- 2.3 Further to condition 2.2, the re-trenching of contaminated storm water into the landfill site must be kept to an absolute minimum to avoid any stability issues that may arise on Valley 2.
- 2.4 Enviroserv must report to the Minister and relevant sections in the Department on how leachate will be dealt with, the volumes generated on site, the pH and constituents of the leachate, BOD, COD, VOCs, Phenols, Total Sulphur (sulphates, sulphites, sulphides, and thiosulphates). Reporting must take place on a monthly basis.

3. ODOUR AND GAS MONITORING

- 3.1 Enviroserv must continue to monitor the odours and gases emanating from the site. Special focus must be given to the monitoring of Volatile Organic Compounds emanating from the site, especially in light of the measures implemented not resulting in a reduction in terms of the complaints from residents in the surrounding areas.
- 3.2 Enviroserv must implement best practical environmental options in dealing with odours and gas emanating from the site to prevent an increase of noxious and nuisance odours in the area. In this regard, Enviroserv must detail how the extraction and treatment of the gases generated from the site are going to be dealt with.

3.3 Enviroserv must report on the quantity and quality of gas being produced as it is an indicator of the bacterial activity and the landfill as a whole.

3.4 Enviroserv must prevent the occurrence of nuisance conditions, including malodours or health hazards.

3.5 Enviroserv must investigate the re-positioning of the real time monitors closer to the site to focus on any emissions leaving the site in the various directions. A report in this regard must be submitted to the Minister and relevant sections of the Department within one month of the commencement of operations at the site.

4. COMPLAINTS

4.1 All complaints relating to the Shongweni Site must continue to be documented and submitted to the Minister and relevant sections of the Department on a bi-weekly basis until such time as the Department instructs you in writing to do otherwise.

4.2 Reporting in accordance with 4.1 must overlay the wind direction, wind speed, complaints, levels of H₂S and mercaptans leaving the site.

5. ENVIRONMENTAL MONITORING COMMITTEE

5.1 Members of the Environmental Monitoring Committee (EMC) must be notified of the re-introduction of certain waste streams to the Shongweni Landfill site within 24 hours of receipt of this appeal decision.

5.2 EMC meetings must take place once every quarter from the date of issuance of this decision. The frequency of such meetings can be increased by the facility in consultation and agreement with the members of the Monitoring Committee.

6. MODIFIED INSTRUCTIONS TO THE COMPLIANCE NOTICE

- 6.1 Upon receipt of this decision, you are instructed to accept, treat and dispose of only solid waste that is inorganic and does not contain sulphur at your Shongweni Landfill Site. This instruction must be complied with until such time that this Department confirms, in writing, that the disposal of other waste types may recommence at the Shongweni Landfill Site.
- 6.2 You are instructed to ensure that all waste which is accepted by Enviroserv for disposal, but which is not allowed to be disposed at the Shongweni Landfill site, is routed to any alternative lawful and suitable landfill or disposal or treatment site/s for treatment and / or disposal.
- 6.3 You are instructed to provide this Department's Directorate: Enforcement: Environmental Impact and Pollution with proof, as well as the details, of the chosen disposal site/s, as well as the quantities of waste disposed of, on a monthly basis, commencing from the date of this appeal decision, until such time as the Department confirms, in writing, that said information is no longer required.
- 6.4 On a monthly basis provide this Department's Directorate: Enforcement: Environmental Impact and Pollution with a report on the amount of leachate produced, treated and removed from the site for disposal. This report must also include the details of the disposal / treatment facility used, and must be provided until such time as the Department's Directorate: Enforcement: Environmental Impact and Pollution Directorate confirms, in writing that this information is no longer required.