

AFFIDAVIT

I, the undersigned,

KEVIN JOHN MILEHAM
ID NUMBER 710423 5139 089

Hereby make oath and state that:

AD DEPONENT

1.

- 1.1 I am an adult male person of the above details and of full legal capacity, employed as a Member of Parliament, at **PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**, and residing in **Cape Town**. I am the Constituency Leader for the Democratic Alliance in Makana Local Municipality.
- 1.2 Unless specifically indicated otherwise, the facts contained in this affidavit fall within my personal knowledge, and are to the best of my belief both true and correct.
- 1.3 I do however point out that in as far as I draw on information contained in any newspaper or other reports, I rely upon the veracity of the newspaper articles and reports referred to, and that I am deposing this affidavit on the presumption that the reports are factually accurate.

2.

- 2.1 I attach hereto, as **Annexure A**, a copy of the court order against the Municipality, its erstwhile Executive Mayor and Municipal Manager, as well as the erstwhile Member of the Provincial Executive Committee, among others, dated 11 September 2015. I attach, as **Annexure B**, a letter from the Senior Manager: Compliance and Enforcement of the Department of Economic Development, Environmental Affairs and

Tourism, Deon de Villiers, dated 9 March 2015. I attach, as **Annexure C**, the original permit for the Grahamstown Municipal Disposal Site from the then Department of Water Affairs and Forestry, dated 10 September 1996. I attach, as **Annexures D & E**, reports from the local newspaper, *Grocotts Mail*, dated 24 June and 10 July 2019 respectively, highlighting the fact that the landfill site had been burning continuously for a number of weeks. Lastly, I attach, as **Annexure F**, a letter from Andrew Whitfield MPL to the then MEC for Economic Development, Environmental Affairs and Tourism, Oscar Mabuyane, requesting his intervention in the ongoing problems at the Makana landfill site.

- 2.2 The Makhanda landfill site (then referred to as the Grahamstown Municipal Disposal Site) was established through a permit issued by the former national Department of Water Affairs and Forestry. This permit established criteria for the management and operation of the site.
- 2.3 Over the course of several years (notably from 2014 onwards), the site was increasingly mismanaged, resulting in numerous complaints from residents. Among the most serious issues were the frequent burning of the site, resulting in clouds of noxious and health-threatening smoke over the town, and leachate draining into a watercourse below the landfill site.
- 2.4 Despite the issue being raised in Council on more than one occasion, no significant steps have been taken to improve the situation.
- 2.5 This led to concerned residents and ratepayers, as well as the Democratic Alliance, submitting formal complaints to the provincial Department of Economic Development, Environmental Affairs and Tourism.
- 2.6 In March 2015, the Department issued a section 31L Compliance Notice in terms of the National Environment Management Act (NEMA), which identified numerous egregious breaches of the site's permit conditions, and instructed the municipal manager (as the representative of the municipality) to take certain remedial actions. The Notice further advised the municipal manager of the consequences of non-compliance.
- 2.7 Since the section 31L Notice was issued, there has not been a significant improvement in the management and operation of the landfill site. This prompted the Makana Unity

League (an organization of residents and ratepayers of the municipality) to take the matter to the Grahamstown High Court in September of 2015. The court found in favour of their application, and ordered further remedial action.

- 2.8. Unfortunately, the situation did not improve, prompting Democratic Alliance Member of the Provincial Legislature Andrew Whitfield to write to the Member of the Provincial Executive Council responsible for Economic Development, Environmental Affairs and Tourism, Oscar Mabuyane, in November 2018. No response was received from Mabuyane.
- 2.9. In June and July 2019, the landfill site again caught fire. As far as can be ascertained, the municipality lacks sufficient security to prevent persons from accessing the site, where they allegedly burn the insulation off electrical wiring to extract the metal for scrap. In addition, the municipality does not have the appropriate equipment to bulldoze the site regularly, or, if it does, it is not in proper working order.
- 2.10. I have been informed, although I am unable to verify, that there has been no testing of air quality or water quality around the site for an extended period of time.

3.

- 3.1 The **National Environment Management Act No 107 of 1998 (NEMA)** (as amended) seeks to provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote cooperative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws; and to provide for matters connected therewith.
- 3.2 **Section 49A of NEMA: Offences:-**
 - (1) *A person is guilty of an offence if that person-*
 - (a) *commences with an activity in contravention of section 24F(1);*
 - (b) *fails to comply with any applicable norm or standard contemplated in section 24(2)(d);*

- (c) fails to comply with or contravenes a condition of an environmental authorisation granted for a listed activity or specified activity or an approved environmental management programme;
- (d) commences or continues with an activity in terms of section 24(2)(c), (d) or (e) unless he or she complies with the procedures, criteria or conditions specified by the Minister or MEC in any regulation made under section 24(5)(bB);
- (e) unlawfully and intentionally or negligently commits any act or omission which causes significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment;
- (f) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the environment;
- (g) fails to comply with a directive issued in terms of this Act;
- (h) fails to comply with or contravenes any condition applicable to an exemption granted in terms of section 24M;
- (i) fails to comply with section 30(3), (4), (5) or (6);
- (j) contravenes section 31(7) or (8);
- (k) fails to comply with or contravenes a compliance notice issued in terms of section 31L;
- (l) discloses information about any other person if that information was acquired while exercising or performing any power or duty in terms of section 31Q(1);
- (m) hinders or interferes with an environmental management inspector in the execution of that inspector's official duties;
- (n) pretends to be an environmental management inspector, or the interpreter or assistant of such an inspector;
- (o) furnishes false or misleading information when complying with a request of an environmental management inspector;
- (p) fails to comply with a request of an environmental management inspector.

3.3. Section 49B of NEMA: Penalties:--

- (1) A person convicted of an offence in terms of section 49A(1)(a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.
- (2) A person convicted of an offence in terms of section 49A(1)(i), (j) or (k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both

instances to both such fine and such imprisonment.

(3) A person convicted of an offence in terms of section 49A(1)(h), (l), (m), (n), (o) or (p) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

4.

4.1. It is my submission that the failure to adequately secure, manage and control the Makana landfill site be thoroughly investigated to determine whether or not any offence has been committed in terms of s49 (b), (c), (e), (f), (g) and (k) of the National Environment Management Act No 107 of 1998 or in terms of any other relevant South African laws or regulation.

This is all I can declare.

DEPONENT: KEVIN JOHN MILEHAM

I CERTIFY THAT THIS AFFIDAVIT WAS SIGNED AND SWORN TO BEFORE ME AT _____
ON THIS _____ DAY OF _____ 2019. THE DEPONENT HAVING
ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND
I CERTIFY THAT THE REGULATIONS IN TERMS OF SECTION 10 OF ACT 16 OF 1963, AS PUBLISHED
UNDER GN. R1258 OF 21 JULY 1972 AS AMENDED BY GN. R1648 OF 1977 AND GN. R1428 OF 1980 AND
GN. R773 OF 1982, HAVE BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

FULL NAMES : _____
DESIGNATION : _____
AREA : _____
ADDRESS : _____