



KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE MEC

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The Honourable Ms. N Boyce
Speaker of the KwaZulu-Natal Provincial Legislature
241 Langalibalele Street
PIETERMARITZBURG
3200

WRITTEN REPLY

No. 281/2021: MR H U DE BOER (DA) TO ASK THE MEC FOR ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS:

Durban Harbour has in recent weeks been continually polluted by the eThekweni Municipality – whom has through negligence, omission or other circumstance allowed millions of litres of raw sewerage to escape the Mahatma Gandhi Pump station.

Part Two, Section 31(1) of the National Environmental Management Act states: *“...every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act and any other law affecting the environment, and to the state of the environment and actual and future threats to the environment, including any emissions to water...”*

1. WILL THE HONOURABLE MEC INSTRUCT THE KZN ENVIRONMENTAL AFFAIRS DEPARTMENT INSTRUCT (sic) TO RELEASE ANY AND ALL CONTRAVENTION NOTICES, ALL DOCUMENTATION, NOTES OR CORRESPONDENCE RELATED TO ANY AND ALL SEWERAGE SPILLS FROM THE ABOVE-MENTIONED PUMP STATION TO MYSELF?

Response: At the outset, I must advise that section 31(1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”), was repealed by virtue of the provisions of section 14 of National Environment Laws Amendment Act, 2009 (Act No. 14 of 2009). Section 31Q(1A) of NEMA now provides for access to information, as amended by section 21 of the National Environment Laws Amendment Act, 2009. Section 31Q provides as follows:

“31Q. Confidentiality

(1) It is an offence for any person to disclose information about any other person if that information was acquired while exercising or performing any power or duty in terms of this Act or a specific environmental management Act, except—

- (a) if the information is disclosed in compliance with the provisions of any law;*
- (b) if the person is ordered to disclose the information by a court;*
- (c) if the information is disclosed to enable a person to perform a function in terms of this Act or a specific environmental management Act; or*
- (d) for the purposes of the administration of justice.*

(1A) Subsection (1) does not apply to information that pertains to—

- (a) environmental quality or the state of the environment;*
- (b) any risks posed to the environment, public safety and the health and wellbeing of people; or*
- (c) compliance with or contraventions of any environmental legislation by any person.” [Emphasis added]*

Section 31Q(1A) of NEMA provides for a much narrower interpretation of access to information and caters for only three specified incidences where information may be released. I am nonetheless of the view that any information that adversely affects the environment, public health, and safety, as well as compliance notices and directives issued in terms of NEMA, must be released to any interested and affected party, as has occurred insofar as the UPL Chemical Spill is concerned. However, such a release of information must occur in a structured manner, whilst ensuring that the provisions of section 31Q(1) of NEMA are not contravened, and without causing any prejudice to ongoing or possible future investigations.

Each request for access to information will be assessed on its own merits, to ensure that no privileged information is released, and I am accordingly unable to accede to the release of *'any and all contravention notices, all documentation, notes, or correspondence related to any and all sewerage spills from the above-mentioned pump station'*.

2. IF NOT, WHY?

Response: See response to Question 1.

The above notwithstanding, I am committed to providing specific information requested, unless exceptional circumstances dictate otherwise. The "Parliamentary Question" procedure is an effective practical procedure to achieve this, in a structured and controlled manner.



MR. R. R. PILLAY, MPL
MEC FOR ECONOMIC DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS

DATE: 7/01/22