



OUR REFERENCE Mr. N. Brauteseth/NU 0022
YOUR REFERENCE
DATE 20 October 2023

The Head
Department of Economic Development, Tourism and Environmental Affairs
Attention: The Director: Environmental Services, South Region
 Mr **Sabelo Ngcobo**
Per email: Sabelo.Ngcobo@kznedtea.gov.za

and to
Mr Omar Paruk
Per email: Omar.Paruk@kznedtea.gov.za

Chief Director (Acting): Enforcement
Department of Forestry, Fisheries and the Environment
Mr Grant Walters
Per email: gwalters@dffe.gov.za

The Deputy Director General: Regulation Compliance and Enforcement
Department of Water and Sanitation
Attn: Mr S Buthelezi
Per email: butheleziS2@dws.gov.za

The Director: Proto CMA
Mr J G Reddy
Per email: dukheaB@dws.gov.za

Dear Sirs,

DISCHARGE OF TREATED PCD WATER: OUR CLIENT UPL SOUTH AFRICA (PTY) LIMITED

We refer to the above matter.

1. BACKGROUND

1.1 In November 2022 UPL through its consultants submitted a proposal to the KZN Department of Economic Development, Tourism and Environmental Affairs (EDTEA) for permission to treat PCD water in an onsite UV/O3 plant and discharge the treated effluent

to the adjacent unnamed stream. That application was based on the Class and toxicity of the treated water at that stage.

- 1.2 On 6 March 2023 EDTEA issued a conditional authorization for such discharge. The associated conditions included the requirement that any such discharge should be licensed under the NWA by the Department of Water and Sanitation (DWS).
- 1.3 Pursuant to that authorization our client's freshwater specialist Dr Mark Graham of GroundTruth ("GT") conducted an engagement with DWS officials, whose advice was that an expedited application could be made and issued under a General Authorisation ("GA").
- 1.4 Based on that guidance, UPL's consultants set about registering the application, which had to be effected on the DWS online application portal. One of the requirements to make a compliant application was to procure and lodge a written landowner consent from all affected landowners who in this case were Tongaat Hulett Developments (THD) and the eThekweni Municipality (EM).
- 1.5 Our client proceeded to request such consents. It also agreed on a without prejudice basis and in an effort to obviate unnecessary delays, to lodge a conditional application for discharge approval with EM under its Stormwater Management Bylaws (the Bylaws) – a requirement that UPL has consistently denied. That application was lodged in June 2023 so that it could run in parallel with the GA application, and UPL reserved the right to withdraw it at any time.
- 1.6 On 15 June 2023, Tongaat-Hulett Developments ("THD") advised UPL that landowner consent would only be provided on certain conditions, one of which was receipt of confirmation that UPL had "*obtained approval from the eThekweni Municipality to discharge the wastewater in terms of the relevant Bylaws*".
- 1.7 The response of EM to the Bylaw application, which was received on 7 July 2023, was to set out a number of conditions to any future approval, one of which was a stipulation that as a condition precedent, UPL had to obtain the "unconditional" landowner consent of THD. Quite clearly, those stipulations created an impasse.
- 1.8 In an effort to break the impasse, on 21 June 2023 the GA application was uploaded to the DWS application portal with the THD letter of 15 June. However, contrary to every

prior assurance, DWS on 3 July 2023 advised UPL in writing that a GA application could not in fact be registered for two reasons: firstly, a GA was not permissible under the regulations, and secondly landowner consent was lacking. UPL was advised to make a full water use licence (WUL) application, which application had to include an application for the entire suite of water uses that would be involved in the s.30 directive compliance efforts.

- 1.9 The effect of the DWS advice was that UPL remained unable to upload a licence application because landowner consent was required for a full WUL as well as a GA. Faced with this situation UPL advised the authorities of the DWS response and specifically requested a directive to ensure that landowner disputes and impermissible conditions for the issue of such consents did not prevent a water use license application from being lodged and processed.
- 1.10 On 13 July 2023 DWS' Mr Reddy advised GT that a new directive would be issued dealing with landowner issues and the authorisation of PCD treated water discharges. This was confirmed in a communication between GT and DWS on 1 August 2023.
- 1.11 A new directive was issued to UPL only on 19 October, more than two months later. It will be dealt with below. However, it is plain that the problem associated with landowner consent, assuming any discharge must be licenced, has not been done away with.

2 EMERGENCY DISCHARGE

- 2.1 Given the untenable position in which UPL was placed in its abortive attempt to obtain a water use licence, GT made application to DWS for authorisation to discharge treated PCD water to the adjacent stream in order to maintain a 60% level in the PCD and avoid overtopping in an imminent storm. That application was granted on specific conditions on 14 June 2023, and was implemented during and after the extreme rainfall that occurred in late June 2023.
- 2.2 As required by that emergency discharge authorization, extensive monitoring and testing of the discharge water and receiving environment was conducted by UPL through the consultants and included in a report submitted to DWS and the other authorities by GT in July 2023. GT concluded that the treatment plant was consistently able to deliver non-toxic treated water and that there was absolutely no deleterious effect on the receiving environment. The discharge results were significantly improved from those sent in

support of the March 2023 approval.

3 LICENCING

3.1 UPL has taken advice on whether, based on the test results from the emergency discharge and the findings and recommendations in the GT July report, discharge of treated water into the environment requires licencing as a legislated water use. Based on the GT results, it does not.

3.2 On legal advice, however, UPL consulted and obtained a review report from Dr Sebastian Jooste, an acknowledged water and sanitation specialist, to substantiate those findings. Dr Jooste has advised UPL as follows:

- *The use of the aquatic ecotoxicity protocols used in this investigation, and the DEEEP methodology used, is fit for purpose in this instance.*
- *The results from the discharge from the treated PCD water do not appear to indicate any negative impact on the receiving environment. It does appear though to be highly impacted by the noted sewage impacts.*
- *The Class I (no lethal/sub-lethal hazard), as achieved in the post treatment of the PCD water, indicates that this water does not pose any additional toxicity risk to any aquatic trophic level beyond which is already within the receiving system – as measured. As such, this plant would appear to be a suitable treatment for any residual pesticide toxicity, and prior to its discharge to the receiving environment.*
- *Achieving a Class I level with the PCD treatment plant, and toxicity testing, would imply that no further dilution is needed to further reduce the toxicity of the PCD discharge water.*
- *Once the water in PCD is able to reach a Class I level consistently, it could be discharged safely into the receiving natural water environment, provided that suitable up and downstream monitoring in accord with good scientific practice is followed.*

3.3 The water in the PCD has now consistently, over many testing cycles, achieved a Class 1 level, and the toxicity test results, including the most recent this week, indicate no toxicity. In the result, the treated PCD water no longer constitutes water with a pollution effect, which is the legislative test for licencing.

3.4 In the result, the treated PCD water can be discharged to the adjacent stream without licencing.

4 EFFECT ON THE MARCH 2023 APPROVAL AND THE PROPOSED DWS DIRECTIVE

4.1 The history set out in the first paragraph above is included to indicate the length of time it has taken to achieve a sustainable solution to the PCD discharge issue. As you are aware, our client has been tankering PCD water to landfill since the incident, at a cost of many hundreds of millions of rands, which exercise was unnecessarily extended by the protracted delays encountered in fulfilling the conditions to the March 2023 authorization.

4.2 UPL is required by EDTEA directive to maintain the PCD at a maximum level of 60%, and demands have been made in the last week for UPL to recommence tankering to regain that level. The need to tanker is however now entirely redundant in the light of the non-toxic nature of the successful treatment.

4.3 The level of the PCD currently sit at over 90%, and rain is expected in the next days which may, without discharge, overtop the spillway. GT has advised that the level must therefore be reduced on an expedited basis.

4.4 In the circumstances as set out above, and the fact that the treated PCD water is able to be discharged without licencing, UPL will no longer tanker clean water to landfill. It is able to be safely treated and discharged in situ, and UPL has accordingly today instructed its consultants to run the plant, discharge it in accordance with the submitted SOP and EMP and lower the PCD level to 60%.

4.5 This decision has been taken on the following basis:

4.5.1 The March approval was requested because UPL was at that stage advised that its treated PCD water was not sufficiently clean to avoid licencing. That no longer applies;

4.5.2 The pursuit of a GA and discussions regarding the need for a WUL were based on the water treatment results at that stage. Obtaining an expeditious approval has

proven impossible, and the way remains blocked. Given the treatment improvements and results obtained, tankering is no longer required and in any event is the costliest and least environmentally responsible option.

- 4.5.3 There is no WUL licence application underway, and as repeatedly pointed out to the authorities and EM, UPL does not require an approval under the EM Bylaws in order to discharge treated water to the adjacent stream. The Bylaw application is being withdrawn;
- 4.5.4 UPL has been advised to fully discharge the PCD in order to effect the rehabilitation and reinstatement of the PCD. That will not however be done at this stage: the level will be taken to 60% and maintained at that level. Once the issue of the potentially competing directives has been resolved and decisions have been taken on the PCD rehabilitation process, discharge to lower levels can be achieved.
- 4.6 As recommended by Dr Jooste, UPL will monitor the upstream and downstream water environment during discharge and respond accordingly in the light of those results. All information will be shared with the authorities.

Yours faithfully,

Norman Brauteseth

NORMAN BRAUTESETH
NORMAN BRAUTESETH & ASSOCIATES