

Open Letter by **Michelle Wasserman**
ActionSA Western Cape Provincial Chairperson

Open Letter to Minister Creecy Requesting Action Amidst Raw Sewage Discharge into Cape Town's Sea

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RELEASE: Immediate

Dear Minister Creecy,

ActionSA has appealed against the issuing of permits that authorise the City of Cape Town to continue discharging untreated sewage into Marine Protected Areas in Cape Town at Camps Bay, Green Point, and Hout Bay. We write to you today, recognising that, as the Minister of Environment, Forestry and Fisheries, you are the guardian of everyone's Constitutional right to an environment that is not harmful to their health or wellbeing, and to have the environment protected for the benefit of present and future generations.

As you deliberate on the issuance of the permits, it is crucial that you take into account the fact that the City of Cape Town ("CoCT" or "the City") has not complied with the requirements of the Hout Bay permit, issued to the City on 7 May 2019 (i.e., four and a half years ago).

Information about the City's lack of compliance with the requirements of the Hout Bay permit was obtained by means of a *Promotion of Access to Information Act* (PAIA) request, which was submitted to the CoCT, asking for records showing their compliance with each of the conditions contained in the Hout Bay permit.

A. NON-COMPLIANCE WITH HOUT BAY PERMIT

The City's PAIA response, received on 31 August 2023 (the full content of which will be made available to you on request) showed that the City has not complied with conditions of the Hout Bay permit relating to:

1. The permitted effluent quantity (flow) limit.
2. The permitted effluent quality limits.
3. Monitoring requirements.
4. Reporting requirements.
5. The establishment of a Permit Advisory Forum.
6. The requirement to improve effluent quality.

The following are examples of Hout Bay permit requirements and how the CoCT's PAIA response shows that requirement has not been complied with.

1. NON-COMPLIANCE WITH EFFLUENT QUANTITY (FLOW) LIMIT

a) Section F, paragraph 1.1 and paragraph 3.2.1 of the Hout Bay Permit

Permit requirement:

Paragraph 1.1: *"Total daily discharge volume must not exceed the level stipulated in section C of this permit."*

Paragraph 3.2.1: *"The maximum daily discharge volume stipulated in Section C of this permit must not be exceeded."*

(Section C Maximum Discharge Volume (final effluent) = 5000m³/day)

Breach of permit requirement:

According to the "Hout Bay Flows" document provided by the CoCT in its PAIA response, in the six-month period from 1 January 2023 to 30 June 2023, the maximum daily discharge volume was exceeded on 104 days in that 6-month period. In other words, the maximum daily discharge volume was exceeded 57% of the time. The daily discharge

volume sometimes doubled the prescribed limit, reaching up to 12.5m³ in a single day (on 14 June 2023).

b) Section F, paragraph 1.2 and paragraph 3.2.2 of the Hout Bay Permit

Permit requirement:

Paragraphs 1.2 and 3.2.2: *“Authorised discharge volumes in terms of this permit must not be exceeded without prior authorisation by the Delegated Authority.”*

Breach of permit requirement:

Despite its own data showing that the daily limits had been exceeded on a regular basis, the CoCT confirmed in its PAIA response that it had not received any authorisations from the Department to exceed the permitted discharge volumes.

2. NON-COMPLIANCE WITH EFFLUENT QUALITY LIMITS

a) Section F, paragraphs 2.2 and 3.3.1 of the Hout Bay Permit

Permit requirement:

Paragraph 2.2: *“The maximum limits prescribed in Table 1 and 2 for the constituents of the effluent discharged via the coastal outfall pipeline must not be exceeded without prior authorisation by the Delegated Authority.”*

Paragraph 3.3.1: *“The specific maximum limits prescribed in Table 1 for the constituents of the effluent discharged via the marine outfall must not be exceeded.”*

Breach of permit requirement:

The CoCT’s own data provided in its PAIA response shows that the prescribed quality limits contained in Table 1 had been exceeded on a regular basis for Total Suspended Solids, Total Kjeldahl nitrogen and COD. pH limits were also enormously exceeded for the period February to April 2023.

The City of Cape Town confirmed in its PAIA response that it had not received any authorisations from the Department to exceed the limits prescribed in Tables 1 and 2.

According to Table 1 of the permit, the City of Cape Town must monitor the effluent for Arsenic, Cadmium, Calcium, Copper, Chromium, Cyanide and Mercury on a weekly basis. It appears from the documents “hby lims data” and “Hout Bay Compliance” provided in the CoCT PAIA response that these had not been monitored at all.

(It should also be noted that research done by Prof Leslie Petrik shows that constituents, particularly contaminants of emerging concern, not listed in Tables 1 and 2 of the permit, are being discharged in the effluent via the Marine Outfall Pipeline.)

3. NON-COMPLIANCE WITH MONITORING REQUIREMENTS

a) Section F, paragraphs 2.2 and 4.1.7, and Table 2 of the Hout Bay Permit

Permit requirement:

Table 2 sets out the *“Receiving water quality substance / parameters and the target value for the natural environment at the end of the mixing zone.”*

Paragraph 2.2: *“The maximum limits prescribed in Table 1 and 2 for the constituents of the effluent discharged via the coastal outfall pipeline must not be exceeded without prior authorisation by the Delegated Authority.”*

Paragraph 4.1.7 requires a program that includes *“Management and contingency actions to immediately shut down the discharge if the environmental quality objectives at the end of the mixing zone are not met.”*

Breach of permit requirement:

Despite strict prescriptions contained in the permit regarding the quality limits allowed for the mixing zone, in the CoCT's PAIA response it said that ***"We do not do routine tests in the mixing zone any longer as after contract 124S and the discharge permit applications we were waiting on the permits to give the boundaries of mixing zone and what parameters what has to be monitored (sic)."*** (bold my emphasis).

According to the CoCT's PAIA response, the maximum mixing zone limits prescribed in Table 2 are not being tested at all.

b) Section F, paragraph 6.2 of the Hout Bay Permit

Permit requirement:

Paragraph 6.2: *"Monitoring points for the receiving environment must be approved by the Department prior to the commencement of sampling."*

Breach of permit requirement:

When the CoCT was asked in the PAIA request for copies of the applications for approval, as well as the approvals given by the Department, for the monitoring points for the receiving environment as per paragraph 6.2 of the Permit, its response was *"Figure 1 page 4 of permit number 2014/024/WC/WWTW"*. Figure 1 on page 4 of the permit is simply an aerial view of the entire Hout Bay Waste Water Treatment Plant, the layout of the discharge pipeline, and the discharge point. In other words, the City did not provide any approvals of monitoring points as required by the permit.

4. NON-COMPLAINT WITH REPORTING REQUIREMENTS

a) Section E, paragraph 9 of the Hout Bay Permit

Permit requirement:

Paragraph 9: *"If an incident resulting in a discharge that exceeds the limits prescribed in this permit occurs – whether the requisite permission has been obtained from the*

Department or not, the permit holder must report the incident immediately to the Department, or where that is not possible, at the earliest opportunity, which must be within seven calendar days, providing full details of the cause of the incident, the measures taken to mitigate the incident, alternatives considered other than the discharge of the effluent, the volume of the effluent released, the location where the effluent has been released, and any other information requested by the Department subsequent to the reporting of the emergency."

Breach of permit requirement:

My request was for all reports made to the Department in terms of Section E paragraph 9 of the permit (reports of incidents resulting in a discharge that exceeds the limits prescribed).

Despite the CoCT's PAIA response showing numerous incidents of discharges that exceeded the prescribed quantity and quality limits, the CoCT did not provide any records of reports made to the Department. The CoCT simply provided an "incident logbook" which contained only two entries.

b) Section F, paragraph 3.3.2 of the Hout Bay Permit

Permit requirement:

Paragraph 3.3.2: *"Where the sampling and analysis is done internally, an independent, reputable external service provider must be appointed to determine compliance with section F: condition 1 and 2 of this permit every 6 months. The reports must be submitted to the Department bi-annually (twice a year)."*

Breach of permit requirement:

In the CoCT's PAIA response it said that "these reports are available on the City of Cape Town website <https://www.capetown.gov.za/search?k=marine%20outfalls>" but did not provide evidence of these reports ever being submitted to the Department.

c) Section F, paragraph 10.3 of the Hout Bay Permit**Permit requirement:**

Paragraph 10.3: *"The following must be reported on and presented quarterly to the Department:*

10.3.1 The exact volume discharged, showing monthly and daily discharge volumes.

10.3.2 All minutes emanating from the PAF, where established.

10.3.3 The results / findings of the monitoring programmes done in terms of section F condition 3.2 (effluent quantity / flow monitoring) and 3.3 (effluent quality monitoring)"

Breach of permit requirement:

When asked for copies of all reports to the Department compiled and / or presented in terms of paragraph 10.3 of the permit, the CoCT's response was: "No records".

5. NON-COMPLIANCE WITH REQUIREMENT TO ESTABLISH AN ADVISORY FORUM**a) Section F, paragraph 10.2 of the Hout Bay Permit****Permit requirement:**

Paragraph 10.2: *"The permit holder must establish or join a Permit Advisory Forum ("PAF") or an environmental stakeholders meeting. Such a body must meet, as a minimum, once quarterly, to discuss any breach of permit conditions, monitoring, and reporting requirements as well as general effluent issues."*

Breach of permit requirement:

In my PAIA request to the CoCT, I asked for the date of the establishment or joining of the Permit Advisory Forum established or joined in terms of paragraph 10.2 of the Permit, and the names of the members of the Forum.

The CoCT's response to this was: *"The City of Cape Town has previously reached out to"* [sic].

From the CoCT's response, it is clear that this important oversight body required by the Permit was never established.

6. NON-COMPLIANCE WITH REQUIREMENT TO IMPROVE EFFLUENT QUALITY

a) Section F, paragraph 2.3 of the Hout Bay Permit

Permit requirement:

Paragraph 2.3: *"The permit holder must submit effluent improvement plan within one (1) year of the date of the issue of this permit. The effluent improvement plan must include an improved level of treatment i.e. secondary or tertiary treatment level or alternative discharge options."*

Breach of permit requirement:

In its PAIA response, the CoCT stated that it *"took the initiative to survey the Hout Bay area and appointed an external service provider to indicate if further treatment methods were required. This is detailed in the 2017 CSIR report on the city's website <https://resource.capetown.gov.za/cityassets/Media%20Centre%20Assets/CT-Outfalls-Report.zip>. In line with the recommendations of the report **the City did not make provision for improvement plans as the report did not deem this necessary.** Therefore, in the CWDP response sent 27 March 2018 the City did not submit an improvement plan but submitted the CSIR report."* (bold my emphasis).

b) Section F, paragraph 11.2 of the Hout Bay Permit

Permit requirement:

Paragraph 11.2 of the permit: *"The permit holder must investigate means of optimizing dispersion at sea and minimizing the impact on the receiving environment and other beneficial users in the coastal waters within Hout Bay area."*

Breach of permit requirement:

When asked for copies of the outcomes of the investigations done as per paragraph 11.2, the CoCT's response was "No records".

c) Section F, paragraph 11.1 of the Hout Bay Permit**Permit requirement:**

Paragraph 11.1 of the permit: *"The permit holder must investigate methods for continuous improvement for the effluent quality."*

Breach of permit requirement:

The CoCT's response to my request for copies of the outcomes of this investigation was that: *"This is part of the report on the City of Cape Town website and current Marine Outfalls: Investigation into alternatives for land-based treatment in new or existing land based WwTW **is underway**."* (my bold emphasis).

It is concerning that this is only being done now - 4 years after the permit was issued in May 2019.

B. CONCLUSION

Regrettably, it is imperative to draw your attention to the City of Cape Town's MMC for Water and Sanitation, Zahid Badroodien's dissemination of misinformation, asserting that the City was not obligated to adhere to the stipulations of the 2019 Hout Bay permit due to its filing of an appeal against that permit's issuance. This rationale for non-compliance with the Hout

Bay permit is legally unsound, as the *Integrated Coastal Management Act* explicitly specifies that an appeal does not suspend an authorisation or any provision or condition of an authorisation.

This misinformation is further evidence of the City's continued attempts to dodge responsibility for its ongoing failure to protect the environment, public health and the tourism economy.

The *Marine Living Resources Act* states that no person may discharge or deposit waste or any other polluting matter into a Marine Protected Area unless you, the Minister, have given permission for them to do so. The only circumstances in which you may give this permission is when it is required for the proper management of the Marine Protected Area.

The Camps Bay, Hout Bay and Green Point Marine Outfall Pipelines are discharging untreated effluent directly into Marine Protected Areas. They do not have permission from you to do so and, in terms of the provisions of the *Marine Living Resources Act*, it would not be legally possible for you to grant this permission because the discharge of untreated effluent can't possibly be required for the proper management of a Marine Protected Area.

In light of this, the City of Cape Town is in violation of the *Integrated Coastal Management Act* by failing to adhere to permit conditions, and it is also infringing the *Marine Living Resources Act* by discharging untreated sewage into Marine Protected Areas. These actions constitute criminal offenses, perpetrated by the City of Cape Town on a daily basis.

The City of Cape Town's approach to its obligations under these laws, particularly with regard to the conditions contained in permits issued by your Department, reflects a disconcerting attitude of contempt and arrogance. Therefore, the issuance of permits for the Camps Bay, Green Point, and Hout Bay marine outfalls cannot be treated as business-as-usual.

ActionSA therefore makes the following recommendations:

1. That, in your consideration of the issuing of the permits, you consult with SANParks, being the management authority that is responsible for managing the relevant Marine Protected

Areas, as provided in Section 48(A)(3) of the *National Environmental Management: Protected Areas Amendment Act, 2014*.

2. That you issue permits which include the requirement that the City of Cape Town must treat the effluent released via the outfall pipelines at Camps Bay, Green Point and Hout Bay to a tertiary treatment level, which must be operational within three (3) years.
3. That you establish a Permit Advisory Forum, made up of independent experts, who have access to all necessary information and who report directly to the Minister, on the City of Cape Town's compliance with permit conditions and on progress with regard to the implementation of a system which treats the effluent to a tertiary level.

Issued by:

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