



IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL HEALTH RELATED LEGISLATIONS



MR SOLLY LINKS

03 DECEMBER 2021

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OUTLINE OF PRESENTATION

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WHAT IS ENVIRONMENTAL HEALTH

Municipal Health can be seen as a sub-set of the bigger basket of environmental health services. The WHO describes Environmental Health as comprising those aspects of human health including the quality of life, that are determined by physical, chemical, biological, social and psychological factors in the environment. It also refers to the theory and practice of assessing, correcting, controlling, minimising and preventing those factors in the environment can potentially affect adversely the health of present and future generation.

WHAT IS ENVIRONMENTAL HEALTH

LIVING ENVIRONMENT



LEGAL MANDATES

- **CONSTITUTION OF RSA** (ACT 108 OF 1996)
SCHEDULE 4 (PART B)
- **MUNICIPAL STRUCTURES ACT** (ACT NO. 117 OF 1998) AS AMENDED
SECTION 84(1) (i)
- **NATIONAL HEALTH ACT 2003** (ACT 61 OF 2003)
SECTION 32(1)
- **GOVT. NOTICE NO. 826, DATED 13TH JUNE 2003,**
MHS TO DISTRICT & METROPOLITAN MUNICIPALITIES
- **HEALTH PROFESSIONS ACT 1974** (NO.56 OF 1974)
SECTION 17 – REGISTRATION A PREREQUISITE FOR PRACTICING
SECTION 17(5) OFFENCE
- **REGULATION GOVT. GAZETTE NO.698 UNDER HEALTH PROFESSIONS**
ACT DATED 26TH JUNE 2009
- **NATIONAL HEALTH AMENDMENT ACT, 2013** (ACT 12 OF 2013)
80(1) APPOINTMENT OF HEALTH OFFICER

LEGAL MANDATES

- **CONSTITUTION OF RSA** (ACT 108 OF 1996)
SCHEDULE 4 (PART B)

Municipal Health Services as district municipality / metro function

- **MUNICIPAL STRUCTURES ACT** (ACT NO. 117 OF 1998) AS AMENDED
SECTION 84(1) (i)

Municipal health services serving the area of the district municipality as a whole.

- **NATIONAL HEALTH ACT 2003** (ACT 61 OF 2003)
SECTION 32(1)

Every metropolitan and district municipality must ensure that appropriate municipal health services are effectively and equitably provided in their respective areas

LEGISLATION

- **NATIONAL HEALTH ACT 2003(61 OF 2003)**
R 363 OF 2013: REGULATIONS RELATING TO THE MANAGEMENT OF HUMAN REMAINS
- **NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**
(ACT NO.107 OF 1998) AS AMENDED
- **AIR QUALITY ACT 2004 (ACT NO.39 OF 2004)**
- **National Dust Regulation**
- **WASTE ACT 59 OF 2008**
- **MEAT SAFETY ACT(ACT NO. 40 OF 2000)**
- **FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT(54 OF 1972) AS AMENDED**
- **R 638 OF 2018: REGULATION GOVERNING GENERAL HYGIENE REQUIREMENTS FOR FOOD PREMISES, TRANSPORT OF FOOD AND RELATED MATTERS**
- **TOBACCO PRODUCT CONTROL AMENDMENT ACT 83 OF 1993 AS AMENDED**
- **BUILDING REGULATIONS AND BUILDING STANDARDS ACT, 1997 (ACT NO.103 OF 1971)**
- **CRIMINAL PROCEDURES ACT(51 OF 1977) AS AMENDED**

LEGISLATION

- **HAZARDOUS SUBSTANCES ACT, 1973 (ACT 15 OF 1973)**
- **MUNICIPAL HEALTH SERVICES BY-LAWS**

Municipal Health Services By-laws

Supplementary to national and provincial legislation;
Provides for issues not specifically addressed in national and provincial legislation.

- **OTHER RELATED REGULATIONS ARE INCLUDED (SEMA's)**

DEFINITIONS

'**health nuisance**' means a situation, or state of affairs, that endangers life or health or adversely affects the well-being of a person or community;

'**health officer**' means any person appointed as a health officer under section 80 or designated as such in terms of that section

“**municipal health**” means the art and science which aim at preventing disease, prolonging life and promoting health through the organized efforts of society and includes the mental and physical health and well-being of people in the municipal area

DEFINITIONS

“municipal health hazard” means any actual threat to municipal health, and without limitation, includes unsanitary conditions; conditions or activity that may make it easier for a communicable disease to break out or spread; or contaminate food or water or which will encourage or harbour pest.

“municipal health nuisance” means the use of any premises or place in a manner which creates conditions that significantly increase the risk of a municipal health hazard occurring or which compromises any aspect of municipal health to an extent that is more than trivial or insignificant, and without limitation, includes those circumstances in which a municipal health nuisance is considered to exist

LEGAL PROCEDURES

A. APPOINTMENT AND IDENTIFICATION

- Environmental Health Practitioner (EHP) Must Be Registered With Health Professional Council Of South Africa (HPCSA) To Practice. Up to Date With The Council
- Must Be Appointed As Health Officer By The Mayor According To NHA, Must Posses Appointment Certificate.
- Criminal Procedure Act 51 Of 1977, Section 334(1) – Appointment As A Peace Officer
- Municipal Manager And District Or Metro SAPS Commissioner Must signed The EHP As Peace Officer card under Commissioner Of Oath.
- Issue Of Identification Card
- Delegated Powers



LEGAL PROCEDURES

A. PROCEDURES

- **Municipal Legal Department Must Understand MHS By-laws And Other Environmental Legislations.**
- **Develop procedure manuals or Standard Operating Procedures (SOPs)**
- **Submit Municipal Health By-laws To Magistrate And Prosecutor.**
- **Approved Spot Fines By Council And Magistrate**
- **Attend case flow meetings**
- **Court must issue with the court dates and day of court**
- **Open Municipal account at Dept of Justice or court to credit municipality all the spot Fines paid on monthly basis.**
- **Internally at the municipality create a vote for all spot fines payment**



EXAMPLE OF APPROVED SPOT FINES



Municipal Manager of the Nkangala District Municipality hereby, in terms of Section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), publishes the Municipal Health Services By-laws of the Nkangala District Municipality, as approved by its Council. The fines are as follows:

NKANGALA DISTRICT MUNICIPAL HEALTH SERVICES SPOT FINES

SCHEDULE 2: SPOT FINES

Nr	CONTRAVENTIONS	MAXIMUM PROPOSED FINE	APPROVED SPOT FINES
1	<p>Contravening Chapter 2 Part 2-</p> <ul style="list-style-type: none"> S. 9- Creating municipal health hazard S. 7- Failure to eliminate health hazard S. 8(a)b)(f)(g)(h)(i)(j)(k) S. 8 (c),(d) & (e) contaminating water resources S. 9 & 10- Creating specific & general nuisance S. 11 – Pest Control S. 12- Air pollution S. 13 -Fouling and Littering of public places (car wrecks, paper, bottles, cans, cigarette butts, etc) S. 14- General provisions and compliance 	<p>R1000,00</p> <p>R1000,00</p> <p>R500,00</p> <p>R1500,00 or Prosecution</p> <p>R500,00</p> <p>R1000,00</p> <p>R1500,00 or Prosecution</p> <p>R800,00</p> <p>R500,00</p>	<p>R1000,00</p> <p>R1000,00</p> <p>R500,00</p> <p>R1500,00 or Prosecution</p> <p>R500,00</p> <p>R1000,00</p> <p>R1500,00 or Prosecution</p> <p>R800,00</p> <p>R500,00</p>
	Chapter 3 – Sanitary Services	R500,00	R500,00
	Chapter 4 – Private Sewage Works	Prosecution	Prosecution
	Chapter 5 – Water		
	<ul style="list-style-type: none"> S. 31 - Pollution of water sources S. 32- Dangerous wells, boreholes & excavations S. 35- Provision of adequate water supply S. 36. -Use of water from sources other than the municipal supply S. 37- Furnishing of particulars of the source of water S. 38- Permission to abstract or use water S. 39 -Storm water runoff from premises which may impact on municipal health S. 41- Bottled water 	<p>R1500,00 or Prosecution</p> <p>R1500,00</p> <p>R500,00</p> <p>R500,00</p> <p>R500,00</p> <p>R1000,00</p> <p>R1000,00</p> <p>R500,00</p>	<p>R1500,00 or Prosecution</p> <p>R1500,00</p> <p>R500,00</p> <p>R500,00</p> <p>R500,00</p> <p>R1000,00</p> <p>R1000,00</p> <p>R500,00</p>



<p>Chapter 19- Waste management:</p> <ul style="list-style-type: none"> Illegal dumping of domestic waste Illegal dumping of builders rubble and e-waste Transport of waste without permit Illegal dumping of health care gen waste Illegal dumping of health care risk waste Hazardous waste 	<p>R800,00</p> <p>R1500,00</p> <p>R500,00</p> <p>R1500,00 or Prosecution</p> <p>Prosecution</p> <p>Prosecution</p>	<p>R800,00</p> <p>R1500,00</p> <p>R500,00</p> <p>R1500,00 or Prosecution</p> <p>Prosecution</p> <p>Prosecution</p>
<p>Chapter 20 – Chemical Safety</p> <ul style="list-style-type: none"> S. 150 - Compliance with National Minimum Standards S. 151 - Duty to register and duties of permit holder 	<p>R1500,00</p> <p>R1000,00</p>	<p>R1500,00</p> <p>R1000,00</p>

COMPILED AND SUBMITTED BY

Mr S LINKS
DIVISIONAL MANAGER
MUNICIPAL HEALTH SERVICES



CHIEF MAGISTRATE
DEPARTMENT OF JUSTICE
DISTRICT COURT MAGISTRATE

APPOINTMENT / IDENTIFICATION CARD



Municipality
Logo

ETHEKWINI
MUNICIPALITY

[REDACTED] MUNICIPALITY
CERTIFICATE OF APPOINTMENT

A. B. [REDACTED] (S/N [REDACTED])

Senior Environmental Health Practitioner
ID [REDACTED]

This is to certify that the abovementioned is appointed as a Senior Environmental Health Practitioner and Peace Officer for the Health Unit of the Ethekwini Municipality with the powers conferred on him/her in terms of The National Health Act 2003 (Act No. 61, 2003), Foodstuffs, Cosmetics and Disinfectants Act 1972 (Act No. 54 of 1972) and The Criminal Procedure Act (Act No. 51 of 1977)

[REDACTED]
Acting Head : Health
[REDACTED]



PHOTO

Municipal

HEALTH UNIT

DUTIES OF HEALTH OFFICER

SECTION 81

A health officer must monitor and enforce compliance with this Act.

DELEGATED POWERS

ROUTINE INSPECTION SECTION 82 OF NHA

You may-

- enter any premises (except a private dwelling) at a reasonable time;
- inspect the premises;
- question any person whom you believe may have information;
- require presentation of any documents;
- take samples that is relevant for inspection;
- take an interpreter or assistant;
- issue a notice of compliance for noncompliance

➤ - You must:

- issue a receipt for any samples or items taken from the premises;
- return such articles ASAP after achieving purpose for removal

DELEGATED POWERS

ENVIRONMENTAL HEALTH INVESTIGATION SECTION 83 OF NHA

If a health officer has reasonable grounds to believe that any condition exists which:

- (a) constitutes a violation of the right contained in section 24(a) of the Constitution
- (b) constitutes pollution detrimental to health;
- (c) is likely to cause a health nuisance; or
- (d) constitutes a health nuisance,

The health officer must investigate such condition.

- Where possible identify the person responsible and issue compliance notice for person to rectify, reduce or remove such items, activity, conditions

DELEGATED POWERS

ENTRY AND SEARCH OF PREMISES WITH WARRANT (SECTION 84)

You need:

- the company of a police official;
- a warrant issued by a magistrate or judge; (where there is reason to believe that act has been contravened);

You may:

- inspect, photograph, test and examine, etc.;
- seize documents, or objects;
- examine any activity or process on the premises;

You must:

- issue receipt for anything confiscated;
- inform person in charge of his right to a lawyer;
- must be executed during day

DELEGATED POWERS

POWER TO ENTER PREMISES AND IDENTIFICATION (SECTION 85)

- Audibly demand entry;
- Notify purpose of entry;
- Hand owner or occupier a copy of the warrant 16 years or older;
- Show identification card;
- Inform owner/occupier of right to legal representation;
- Officer may overcome resistance by using such force as reasonably required, including the breaking of doors or windows
- Before using force officer, must audibly demand admission announce purpose of entry unless announcing will defeat purpose of search

DELEGATED POWERS

ENTRY AND SEARCH PREMISES WITHOUT WARRANT (SECTION 86)

- Need to be accompanied by a police official;
- Only to exercise a section 84(1) power;
- Competent person must consent to search;
- Unless reasonable grounds to believe that delay in obtaining warrant would defeat object of warrant;
- Deliver any seized items to police ASAP

DELEGATED POWERS

DISPOSAL OF SEIZED ITEMS BY HEALTH OFFICER (SECTION 87)

- 1) The health officer must deliver anything seized in terms of section 84 or 86 without delay to a police official contemplated in section 30 of the Criminal Procedure Act, 1977 (Act 51 of 1977), who must deal with and dispose of the seized item in the manner provided for in Chapter 2 of that Act.
- (2) When a police official acts in terms of section 30 (a) or (b) of the Criminal Procedure Act, 1977 (Act 51 of 1977), in respect of an item contemplated in subsection (1), he or she must do so after consultation with the health officer.

Offences section 89 NHA

- A person is guilty of an offence if he or she-
- (a) obstructs or hinders a health officer who is performing a function
- (b) refuses to provide a health officer with such information as that person is
- (c) knowingly gives false or misleading information to a health officer;
- (d) unlawfully prevents the owner of any premises, or a person working for the owner, from entering the premises in order to comply with a requirement of this Act;
- (e) impersonates a health officer;
- (f) fails to comply with a compliance notice issued to him or her
- (g) disclosure of confidential information

COMPLAINT NOTICE

WHERE AN EHP HAS REASONABLE GROUND THAT PERSON FAILED TO COMPLY WITH THE BY LAW OR ANY LEGISLATION

Notice of compliance shall be served on the person, notice must state –

- (a) the name and residential or postal address of the person;**
- (b) the requirement which has not been complied with;**
- (c) that the person must within a specified period take measures to comply with the notice and to complete the measures before a specified date; and**
- (d) that the person may within 14 days make written representations in the form of a sworn statement or affirmation to the municipality at a specified place**

COMPLAINCE NOTICE e.g.

NKANGALA DISTRICT MHS NOTICE OF COMPLIANCE

(To be handed to the owner or authorized agent, occupier, etc.)

.....
.....
.....

Notice No. 0001

Sir/Madam

.....
Upon inspection of..... on it was found that:

.....
The abovementioned action constitutes a contravention of:

.....
You are hereby requested to:

.....
on or before

Should you wish to make a representation in reply to the alleged contravention you must do so in writing to the Municipal Manager at the abovementioned address before.....¹

Failure to comply with this notice may lead to prosecution being instituted against you and I therefore request your co-operation to prevent such further action.

Your Sincerely,

Municipal Manager.

.....
Recipient's Signature

Date.....

¹ If a person cannot read or write, he or she will be entitled to call upon staff at the office of the Municipal Manager to assist with the preparation of a written representation.

PROHIBITING NOTICE

AFTER EHP HAS INSPECTED A PREMISES HE/ SHE MAY SERVE PROHIBITING NOTICE TO USE THE PREMISES UNTIL CORRECTIVE MEASURES ARE IMPLEMENTED.

Notice is served if : Premises is used in such a manner that it is causing municipal health nuisance.

A prohibition notice must state –

- (a) the reasons for serving the notice;**
- (b) whether or not the municipality will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;**
- (c) the possible consequences of failing to comply with the notice; and**
- (d) how to appeal against the notice.**

POWER TO ISSUE SPOT FINES

- (1) the council may, by resolution appoint any environmental health practitioner as a peace officers in terms of section 334 of the criminal procedure act 51/1977 and government notice R159 of 2/2/1979.**
- (2) an environmental health practitioner appointed as a peace officer shall have the authority to act according to such powers as are delegated to him or her by council.**
- (3) sections 80 to 89 of the NHA shall apply with the necessary changes, to the appointment, responsibilities and powers of the environmental health practitioner and offences relating to such practitioner**

POWER TO ISSUE SPOT FINES

- Environmental Health Practitioner appointed as peace officer may issue a spot fine not exceeding the amount determined by Council or its authorised agent
- Environmental Health Practitioner shall use his/her discretion as to the seriousness and consequences to public health and the environmental harm caused by the infringement in deciding if the infringement justifies the imposition of a spot fine or warrants prosecution in terms of these By-laws or the NHA

PAYMENT OF SPOT FINES

SECTION 56 SUMMONS OR NOTICE MUST BE IN TRIPLICATE

- The peace officer shall issue the spot fine to the accused
- The duplicate original summons shall be submitted to clerk of court
- The summons shall have two dates that is admission of guilt and trial date
- The accused may pay the fine without appearing before court by complying to admission of guilt date.
- Appear before court on trial date and explain the reason for not paying the fine or want a fair trial.
- The court may reduce or order the original fine be paid after hearing the accused reasons for not paying the fine.

PAYMENT OF SPOT FINES

SECTION 56 SUMMONS OR NOTICE MUST BE IN TRIPLICATE

- If the accused have paid the fine at local municipality or police station, the control document shall be forwarded to clerk of the court for recording the admission of guilt.
- Failure to appear on the court date will lead to warrant of arrest of the accused by the court.
- The court may impose another fine for failing to honour the court date.

SECTION 56 SPOT FINE

Tel: 013 249 2000 • Postbus/P.O. Box 437 Middelburg, 1050 NDM/SF/ 0401

SKRYFTELIKE KENNISGEWING OM IN DIE HOF TE VERSKYN (Artikel 56 van Wet 51 van 1977)
WRITTEN NOTICE TO APPEAR IN COURT (Section 56 of Act 51 of 1977)

A AAN/TO: THANDABANTU CASH & CARRY

Van/Surname: LATIF
 Voornam/First Names: NASIR
 Woonadres/Residential Address: 570 VEZUBUHLE
 Besigheidsadres/Business Address: 218 SUNCITY AA KWA-NHLANGA
 Beroep/Occupation: _____ ID Nr/No: _____

Geslag/Sex: MALE Oudertom/Age: 33 Nasionaliteit/Nationality: CHRISTIAN Landdrosdistrik/Magisterial district: KWA-NHLANGA

B Kragtens die bepalinge van artikel 58 van die Strafprosedurewet, 1977 (Wet 51 van 1977) word u hiermee in kennis gestel om voor die ondergenoemde Hof te verskyn om 08:30 op die verhoordatum hieronder vermeld om te antwoord op 'n aanklag van:
 You are hereby notified in terms of section 58 of the Criminal Procedure Act, 1977 (Act 51 of 1977) to appear before the Court mentioned below on the trial date mentioned below at 08:30 to answer to a charge of:

Klagte 1/Charge 1: CONTRAVENING FOODSTUFFS, COSMETICS AND DISINFECTANT ACT 54 OF 1970 REGULATION 638 OF 22 JUNE 2018
 Klagte 2/Charge 2: CONTRAVENING CHAPTER 2 PART 2 SECTION 7 OF NKAZANALA DISTRICT MUNICIPAL HEALTH SERVICES BY LAWS OF 10 JUNE 2016

Alternatiewe/Alternative: _____

of enige ander klag wat die Staatsaanklaer teen u mag bring op grond daarvan dat u op of omtrent die dag van _____ (day of _____) in die voormelde distrik wederregtelik en onwettig _____ and at (or near) _____ in the said district you did wrongfully and unlawfully _____

SLEEPING INSIDE THE FOOD PREMISES OF SUNCITY AA STAND 218
FAILING TO MAINTAIN MUNICIPAL HEALTH HAZARD BY KEEPING YOUR TOILETS, STORAGE AREA UNHYGIENIC

C Datum waarop en plek waar u persoonlik in die hof moet verskyn/Date and place you are personally to appear in court

Verhoordatum/Date of trial: 03 OCTOBER 2019 Plek van verhoor/Place of trial: KWA-NHLANGA Hof Nr./Court No.: D

D Datum waarop en plek waar skulderkenningsboete(s) betaal kan word ten einde / Date and place where admission of guilt fine(s) may be paid to avoid appearance in court.

Skulderkenningsboete(s) ten bedrae van / Admission of guilt fine(s) of:

Aanklag 1/Charge 1	Aanklag 2/Charge 2	Alt. Aanklag / Alt. Charge	Alternatiewe / Alternative
<u>R 1500</u>	<u>R 1000</u>	<u>R</u>	<u>R</u>

kan betaal word, in welke geval betaling moet geskied voor of op _____ may be paid, in which case payment must be made on or before _____

DAG/DAY: 17 MAAND/MONTH: SEPTEMBER 2019 steps by only at: KWA-NHLANGA Die klerk van die hof van die landdros: _____ The clerk of the court of the magistrate: _____

DAG/DAY: 08 MAAND/MONTH: AUGUST 2019 Plek/Place: SUNCITY AA Handtekening, Bekendgemaakte / Signature: Accused: _____

Die oorspronklike hiervan is vandag aan die genoemde beskuldigde persoonlik oerhandig en die betekenis daarvan aan hom/haar verduidelik
 The original hereof was today handed to the abovementioned accused personally and the importance thereof explained to him/her

Vredesbeampte/Peace Officer: _____ Jyd./Jug: _____ Kode Nr. / Code No.: 116393

F VIR AMPTELIKE GEBRUIK / FOR OFFICIAL USE

ISSUING OF SPOT FINES AND NOTICES DURING JOINT OPERATIONS



ISSUING OF SPOT FINES AND NOTICES DURING JOINT OPERATIONS



COLLECTION OF EVIDENCE

MAINTAIN CHAIN OF CUSTODY AND WHAT IS CHAIN OF CUSTODY

The order in which a sample should be handled by persons investigating a case. the unbroken trail of accountability that ensures the physical security of samples, data, and records in an investigation. the results of the sample or documents must be able to stand in the court of law.

Or

Mechanism for tracing the lineage of a sample from the time of collection through reporting of results to sample disposal. samples are passed from individual to individual, the transfers are noted. this process continues until the samples are delivered to the laboratory where the chain of custody form is signed, evidencing the date and time of sample receipt with the rationale of the sample results being able to stand in the court of law.

COLLECTION OF EVIDENCE

➤ Sampling procedures:

- always take sample in presence of person in charge or adult employed on premises;
- notify person in charge ASAP in case of sample in presence of employee;
- if person in charge requires part of sample:
 - divide sample in three parts(one to owner, one to analyst and one to EHP);
 - complete the necessary forms (offer for division of sample)
 - pack seal and label

COLLECTION OF EVIDENCE

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 - pack seal and label

PREPARATION OF DOCKET

- **Evidence by EHP:**
- Evidence can be photographs taken, documents, records and samples.
- Statement by EHP or peace officer

PREPARATION OF DOCKET

- **Statement by EHP:**
- Details of deponent – names and surname, contacts, ID number, address, gender and work address.
- Write the statement under oath with numbering of paragraphs
- I know and understand the contents of this declaration and have no objection/objection to taking of the oath. i consider the oath as binding/not binding on my conscience. Signed and date
- I hereby certify that the deponent has acknowledged the he/she understands the contents of this declaration which was sworn/affirmed before me, and the deponent's signature/mark/thumbprint was placed thereon in my presence at: place – date - time
- Rank and names of commissioner of oath - signature

Practical example of statement

- **Statement by EHP:**
- Demonstration of statement by EHP who conducted investigation at the hospital. EHP received a call regarding poor health care waste management .
 - 1
- I am Mr ZS Cage an Environmental Health Practitioner employed by XYZ district municipality and appointed as peace officer. i have 10 years experience. i am registered as such with the health professions council of South Africa, registration no. HI001234. i am conversant with the background and facts of this matter and i am authorised to make this statement

Practical example of cont..

➤ 2

- On 10 may 2020, at approximately 12h00, I received a phone call from a male person who did not want to identify himself.

➤ 3

- He told me that he was a patient at the XYZ public hospital in Klein town and that he was concerned about several refuse bags containing medical waste that were kept in the courtyard of the hospital

➤ 4

- I immediately went to the hospital and introduced myself to the CEO of hospital by producing my appointment certificate. the CEO, Mrs. Govender accompanied me to the courtyard where i found several refuse bags containing used syringes, blades and human body parts.

Practical example of cont..

➤ 5

- Mrs. Govender explained that they do not have proper facilities at the hospital to store medical waste and that they had to leave it in the court yard. I explained the seriousness of the matter and told her that I will have to take steps against the hospital. On our way to her office, I noticed an open office door and on the floor of the office I noticed some more refuse bags containing used surgical dressings, blood bags and laboratory waste.

➤ 6

- I again questioned Mrs. Govender about the hospital's storage procedures upon which she became upset and refused to answer further questions. I explained to her that their actions were a contravention of the following sections of the Klein Town Municipality Municipal Health By-law:
 - Section 2(1) : Failing to handle and store medical waste in a safe manner that poses threat to human health or the environment;

Practical example of cont..

➤ 6

- Section 2(b): Failing to store medical waste in leakproof, sealable containers and to ensure storage of sharps in rigid or puncture resistant containers
- Section 2(d): Failing to prevent public access to medical waste.
- Section 89(1)(b) National Health Act, 61/2003: Refusing to give information.

➤ 7

- I then issued Mrs. Govender with a notice to remove all the medical waste from the premises by not later than 12h00 on 11 May 2020, as I regarded this as a serious matter. I attach a copy of the notice as Annexure A. I also attach two photos taken with my digital camera showing the refuse bags in the court yard Photo A and the refuse bags in the office, Photo B

Practical example of cont..

➤ 8

- On 11 May 2020 at 14h00, I went back to the hospital for a follow-up inspection and found that the medical waste was still in the court yard and the office. Mrs. Govender was nowhere to be seen. As Mrs. Govender has failed to comply with my notice attached as Annexure A, I now request Mrs. Govender to be prosecuted for a contravention of the sections of the Klein Town Municipality Municipal Health By-Law as set out in paragraph 6 above.
- I know and understand the contents of this declaration and have no objection/objection to taking of the oath. i consider the oath as binding/not binding on my conscience.
- Sign and date
- Commissioner of oath sign and date - place and time

APPEALS

- A person whose rights are affected by a decision of Council in terms of these by-laws may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000.
- The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection 62 (4) of the Local Government: Municipal Systems Act, 32/2000 as amended.

Environmental health and Environmental Management Inspectorate (EMI)

- Most of Environmental health practitioners have been trained as EMIs
- EHPs must be designated by MEC of the province , who delegates the powers to Mayors of municipalities or metros in terms of sec 31G of National Environmental Management (NEMA, 1998).
- The Function of EMI is to monitor and enforce compliance with NEMA and Specific Environmental Management Acts (SEMAs)
- EHPs to conduct a successful investigation and assist in the prosecution of environmental violations.
- EHPs must work with sector departments on the implementation of SEMAs to promote cooperative governance.

Environmental Management Inspectorate (EMI) Legislations

- National Environmental Management (NEMA, 107 of 1998).
- Specific Environmental Management Acts (SEMAs)
- The National Environmental Management: Biodiversity Act 10 of 2004 (“NEM:BA”);
- National Environmental Management: Protected Areas Act 57 of 2003 (“NEMPAA”);
- National Environmental Management: Air Quality Act 39 of 2004 (“NEM:AQA”);
- Environment Conservation Act (“ECA”);
- National Water Act 36 of 1998 (“NWA”);
- National Environmental Management: Waste Act 59 of 2008 (“NEMWA”);
- National Environmental Management: Integrated Coastal Management Act (“NEM:ICM”).

Environmental Management Inspectorate (EMI)

Designation and mandate

- Section 31D provides that the Minister or MEC designate EMI with specific powers and mandate. Not all SEMAs and certain section of NEMA
- an EMI can only enforce legislation within his or her mandate and within specified jurisdiction
- Section 28(1) of NEMA provides that “every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.” this section is very broad and covers many environmental legislations.

Environmental Management Inspectorate (EMI) Identification

- All EMIs are required to produce, on demand by a member of the public identity card
- EMI should show their identity card not only when asked, but whenever exercising his or her powers, as a matter of good practice.
- In terms of Section 31H(5) of NEMA, an EMI are regarded as a peace officer, may exercise chapter 2,5,7 and 8 of Criminal procedure Act. Dealing with search and seizure of items.

Environmental Management Inspectorate (EMI) Powers Sec 31H

- The power to enter and inspect to ascertain compliance;
- to enter premises for purpose of interrogation;
- to question witnesses, suspects and to take statements;
- to obtain documents;
- to collect physical evidence;
- to search and seize;
- to set up a roadblock, to stop and immobilise vehicles;
- to arrest;
- to issue a Section 56 notice for an admission of guilt fine; and,
- The power to issue a compliance notice 31L

EMI RANKING 31D(3)

- EMI ranking have five different grades with different powers
- Grade 1 EMI – administrator, all the powers given to EMIs under the Act.
- Grade 2 EMI – Enforcer, all the powers, except for the power under Section 31L Excluded: compliance notices.
- Grade 3 EMI – Investigator, all the powers, except for the power under Sections 31H(5) and 31L: exclude CPA powers of search & seizure and arrest, and compliance notices (still have NEMA search & seizure powers)

EMI RANKING 31D(3)

- EMI ranking have five different grades with different powers
- Grade 4 EMI – Inspector, all the powers, except for the power under Sections 31H(1)(b), 31H(5), 31I(3), 31J, 31L and 34G(2) notice to answer questions, immobilising vehicles, stop, search & entering vehicles, vessels, aircraft, CPA powers of search & seizure and arrest, Section 56 notices and compliance notices
- Grade 5 EMI – Field Ranger, Powers in terms of Section 31H, Section 31I(3), and Section 31J Excluded: routine inspection powers, immobilising vehicles, Section 56 notices, compliance notices.

Practical example environmental violation and contravention - Question?

- You received a complain from anonymous regarding the activity taking place around the plot, zoned for agricultural purpose. The owner of the farm constructed 50 rooms quest house, he planted trees along the road to beautify the place which he got from a friend from neighbouring country, among the trees there are trees that a protected species. 50 metres from the guest house the farmer constructed a race track that is generating dust and noise from the motor cycles.
- As EMIs you are requested to investigate and indicate which pieces of legislations are going to apply. Who is authorise to conduct an investigation?

Practical example environmental violation and contravention - Answer

- EMI grade 3 -1 are vested with those powers
- Legislation Section 24F of NEMA - no person may commence an activity listed in terms of section 24(2)(a) or (b) unless the competent authority has granted an environmental authorisation for the activity.
- Section 28 (1) of NEMA every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

Practical example environmental violation and contravention - Answer

- EMI grade 3 -1 are vested with those powers
- Section 32(a-c) NEM:AQA control of dust / Municipal health by laws – Air pollution
- Section 34 (a-b) NEM:AQA control of noise / Municipal noise by laws
- Section 57 (1) NEM: BA no person may carryout an activity involving specimen of listed protected or threatened species without a permit.
- Town Planning scheme – zoning certificate

Practical example Illegal disposal of medical waste

- Complain received by municipality from community member that the owner of premises is burning and burying medical waste on his plot.
- EHPs went to investigate and gather the information
- EHPs identified themselves and explain the purpose of inspection
- The workers refused EHPs entry to the property and SAPS was called at the premises and the owner only then allowed entry.
- Investigation was conducted and questions were asked, where is the waste coming from and who is the owner.
- Photos were taken as part of evidence
- Because EHPs are not designated as EMI, the provincial EMIs were called in the following day.

Practical example Illegal disposal of medical waste

- Provincial EMIs also informed the National
- Case was open regarding contravention of NEM: WA section 26 (a) (b) prohibition of unauthorised waste disposal and Municipal Health by-laws section 145 (1) (2) disposal of health care waste. – section prohibit the person to dispose such waste at permitted site and must have a permit to dispose. No person is allowed to dispose medical waste anywhere.
- Case still pending

PRACTICAL EXAMPLE OF ILLEGAL HEALTH CARE WASTE DISPOSAL - ENTRY REFUSAL



PRACTICAL EXAMPLE OF ILLEGAL HEALTH CARE WASTE DISPOSAL - BURNING AND BURYING OF MEDICAL WASTE



PRACTICAL EXAMPLE OF ILLEGAL HEALTH CARE WASTE DISPOSAL - BURNING AND BURYING OF MEDICAL WASTE



ARREST PROCEDURES

- Section 39 of CPA an arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody
- Inform the arrested person of the cause of the arrest / make a copy of warrant of arrest if issued upon demand.
- Person arrested shall be in lawful custody until released from custody
- Peace officer / EMI may without warrant arrest any person- if the person commits or intend to commit crime
- Peace officer / EMI must audibly announce to the person to be arrested their rights.

ARREST PROCEDURES

- In terms of Section 35 of the Constitution, an arrested person must be informed of the following, in his or her own language, at the time of arrest:
- 1. I am an EHP / EMI employed by... (Identify yourself and your organisation and produce your EMI ID card).
- 2. I am arresting you for ... (state the detail).
- 3. You have the right to consult with a legal practitioner of your choice, or should you prefer you may apply to be provided with the services of a legal practitioner by the State.
- 4. You have the right to remain silent. Anything you say may be used in evidence in a court of law.
- 5. You have the right to apply to be released on bail.
- 6. Do you understand?

Ethical conduct for EHPs during legislation Enforcement

- The Constitution
- Municipal Code of Conduct
- EHP Code of Conduct
- Criminal Procedure Act 1977
- Prevention and Combating of Corrupt Activities Act 12 of 2004

Ethical conduct for EHPs during legislation Enforcement

➤ **Relationship with the community**

- Equal treatment of all citizens
- Consistent with the highest professional standards of accountability
- Within legal framework
- Put public interest first;
- Remember, the public are customers;
- Do not discriminate;
- Do not use your position to favors relatives and friends

Ethical conduct for EHPs during legislation Enforcement

➤ **Forms of corrupt activities**

- **Bribery:** is the promise, offering or giving of a benefit that affects the actions or decisions of an employee. The benefit may accrue to the public servant, a third person or an entity, such as a company.
- **Fraud:** involves the making of false representations by an employee to another person or entity in exchange for acting or failing to act in a certain way.
- **Abuse of power:** involves an employee using his or her authority to benefit in an improper manner from another employee, person or entity
- **Favoritisms:** involves the provision of services or goods according to one's personal affiliation.
- **Nepotism:** takes place when an employee ensures that his family members are appointed to public service positions or receive contracts from the state.

CHALLENGES FOR IMPLEMENTING AND ENFORCING LEGISLATIONS

- Shortage of Administrative Staff
- Court Backlogs
- Lack Of System To Record Fines
- EHPs not UpToDate with HPCSA registration
- EHPs Not Appointed As Peace Officers
- Shortage of SAPS staff to deal with warrant of arrests
- Completion Of Spot Fine Books
- Poor Support From Legal Services
- Facility owners or occupiers changing all the time (tuck shops)
- EHPs not designated as EMIs

RECOMMENDATIONS

- Municipalities To Appoint Administrative Staff
- Courts To Prioritise MHS Fines And Cases
- Development Of System To Record Fines
- EHPs to update with HPCSA registration
- EHPs must be Appointed As Peace Officers by Municipal Manager
- SAPS must delegate staff to deal with warrant of arrests
- Training on Completion Of Spot Fine Books
- Support From Legal Services is very important
- Facility owners must register themselves as the owners of the premises
- MEC to delegate powers to Mayors to designate EHPs as EMI

I HOPE I ARRESTED YOUR ATTENTION





**QUESTIONS
QUESTIONS**